

HOUSE BILL 729

L6, C5

CONSTITUTIONAL AMENDMENT

4lr0844
CF 4lr3027

By: **Delegates Carr, Barve, Beidle, Braveboy, Carter, Clagett, Cullison, Fraser-Hidalgo, Frush, Gaines, Gilchrist, Glass, Gutierrez, Hixson, Huckler, Ivey, A. Kelly, Kramer, Lee, Luedtke, A. Miller, Mizeur, Niemann, Pena-Melnyk, B. Robinson, S. Robinson, Simmons, Summers, Valentino-Smith, Waldstreicher, and A. Washington**

Introduced and read first time: January 31, 2014

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **County and Municipal Street Lighting Investment Act**

3 FOR the purpose of proposing an amendment to the Maryland Constitution to
4 authorize the General Assembly to provide that certain property consisting of
5 street lighting equipment may be taken by a county or municipality for public
6 use immediately on payment to the owner of the property of the amount that
7 the county or municipality estimates to be the net book value of the property
8 calculated in a certain manner, provided the legislation also requires the
9 payment of any further sum that may be subsequently awarded by the Public
10 Service Commission; submitting the amendment to the Maryland Constitution
11 to the qualified voters of the State for their adoption or rejection; authorizing a
12 certain county or municipality, after giving certain notice to certain persons, to
13 convert its street lighting service to a certain alternative energy only tariff,
14 acquire certain street lighting equipment from the electric company, and enter
15 into an agreement to purchase electricity for a certain use from any available
16 electricity supplier under certain circumstances; authorizing a county or
17 municipality to request that an electric company remove certain street lighting
18 equipment under certain circumstances; requiring a county or municipality to
19 pay the net book value of certain street lighting equipment that is being
20 removed and the costs of its removal under certain circumstances; providing
21 that the net book value of certain street lighting equipment shall be calculated
22 in a certain manner or be determined in a proceeding before the Public Service
23 Commission under certain circumstances; requiring a certain county or
24 municipality to notify a certain electric company of any alteration to the
25 county's or municipality's street lighting equipment inventory within a certain
26 period of time under certain circumstances; prohibiting a certain agreement or
27 contract for sale or license agreement from including certain fees or other costs

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 under certain circumstances; prohibiting an electric company from making
2 certain requirements of a certain county or municipality; requiring that certain
3 workers be fully qualified and meet certain requirements; requiring that certain
4 disputes be submitted to the Commission for resolution; requiring the
5 Commission to issue a determination on certain disputes within a certain time
6 period; requiring each electric company to develop a certain alternative energy
7 only tariff for street lighting on or before a certain date; requiring a certain
8 alternative energy only tariff to include certain fees; requiring that a certain
9 alternative energy only tariff provide for monthly bills for street lighting that
10 include a schedule of electricity charges based on a certain determination;
11 prohibiting the alternative energy only tariff from including certain charges;
12 requiring that, for street lighting equipment in use on a certain date, the
13 alternative energy only tariff shall use certain calculation methods and rates
14 that existed on a certain date; requiring the alternative energy only tariff to
15 provide for reasonable rates for street lighting equipment that is adopted after a
16 certain date; requiring the alternative energy only tariff to provide for options
17 for certain street lighting controls; requiring the Commission to issue a decision
18 regarding the adoption of a certain alternative energy only tariff within a
19 certain period of time after receiving the alternative energy only tariff from an
20 electric company; stating the findings and declarations of the General
21 Assembly; making certain clarifying changes; defining a certain term; making
22 certain provisions of this Act contingent on the passage and ratification of a
23 certain constitutional amendment; and generally relating to the purchase of
24 certain street lighting equipment by a county or municipality from an electric
25 company and tariffs for street lighting.

26 BY proposing an addition to the Maryland Constitution
27 Article III – Legislative Department
28 Section 40D

29 BY repealing and reenacting, with amendments,
30 Article – Local Government
31 Section 1–1309
32 Annotated Code of Maryland
33 (2013 Volume)

34 BY adding to
35 Article – Public Utilities
36 Section 4–211
37 Annotated Code of Maryland
38 (2010 Replacement Volume and 2013 Supplement)

39 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
40 MARYLAND, (Three-fifths of all the members elected to each of the two Houses
41 concurring), That it be proposed that the Maryland Constitution read as follows:

42 **Article III – Legislative Department**

1 40D.

2 THE GENERAL ASSEMBLY SHALL ENACT NO LAW AUTHORIZING PRIVATE
 3 PROPERTY TO BE TAKEN FOR PUBLIC USE WITHOUT JUST COMPENSATION, TO
 4 BE AGREED UPON BETWEEN THE PARTIES OR AWARDED BY A JURY, BEING FIRST
 5 PAID OR TENDERED TO THE PARTY ENTITLED TO SUCH COMPENSATION, EXCEPT
 6 THAT WHERE SUCH PROPERTY CONSISTS OF STREET LIGHTING EQUIPMENT
 7 THAT IS DESIRED BY THE COUNTY OR MUNICIPALITY IN WHICH THE STREET
 8 LIGHTING EQUIPMENT IS INSTALLED, THE GENERAL ASSEMBLY MAY PROVIDE
 9 THAT SUCH PROPERTY MAY BE TAKEN IMMEDIATELY BY THE COUNTY OR
 10 MUNICIPALITY ON PAYMENT TO THE OWNER OF THE PROPERTY OF THE AMOUNT
 11 THAT THE COUNTY OR MUNICIPALITY ESTIMATES TO BE THE NET BOOK VALUE
 12 OF THE PROPERTY, CALCULATED, USING FEDERAL ENERGY REGULATORY
 13 COMMISSION ACCOUNTING METHODS AND NOT USING METHODS OTHER THAN
 14 THOSE USED FOR STANDARD RATE SETTING, AS THE ORIGINAL COST OF THE
 15 PROPERTY, LESS DEPRECIATION, OF ANY ACTIVE OR INACTIVE EXISTING
 16 STREET LIGHTING EQUIPMENT INSTALLED IN THE COUNTY OR MUNICIPALITY
 17 AS OF THE DATE THE COUNTY OR MUNICIPALITY EXERCISES ITS RIGHT OF
 18 ACQUISITION, PROVIDED THE LEGISLATION ALSO REQUIRES THE PAYMENT OF
 19 ANY FURTHER SUM THAT MAY BE SUBSEQUENTLY AWARDED BY THE PUBLIC
 20 SERVICE COMMISSION.

21 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 22 read as follows:

23 **Article – Local Government**

24 1–1309.

25 (a) (1) In this section[, “electric] THE FOLLOWING WORDS HAVE THE
 26 MEANINGS INDICATED.

27 (2) “ELECTRIC company” has the meaning stated in § 1–101 of the
 28 Public Utilities Article.

29 (3) (I) “STREET LIGHTING EQUIPMENT” MEANS ALL
 30 EQUIPMENT OWNED BY AN ELECTRIC COMPANY USED TO LIGHT STREETS IN THE
 31 COUNTY OR MUNICIPALITY.

32 (II) “STREET LIGHTING EQUIPMENT” INCLUDES:

33 1. ALL CAPITAL EQUIPMENT AS DEFINED UNDER
 34 FERC ACCOUNTS 373;

1 2. LIGHTING BALLASTS, FIXTURES, MAST ARMS,
2 PHOTOCELLS, LOOPS, AND OTHER EQUIPMENT NECESSARY FOR THE
3 CONVERSION OF ELECTRIC ENERGY INTO STREET LIGHTING EQUIPMENT;

4 3. DECORATIVE STREET AND AREA LIGHTING;

5 4. SOLID-STATE LED LIGHTING TECHNOLOGIES;
6 AND

7 5. INDUCTION LIGHTING TECHNOLOGIES.

8 (III) “STREET LIGHTING EQUIPMENT” DOES NOT INCLUDE
9 JOINT USE UTILITY POLES ON WHICH THE EQUIPMENT IS FIXED.

10 (B) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

11 (1) TAXPAYERS ARE MANDATED TO PAY ELECTRIC COMPANIES
12 LARGE SUMS EVERY YEAR TO LIGHT STREETS IN COUNTIES AND
13 MUNICIPALITIES;

14 (2) COUNTIES AND MUNICIPALITIES ARE LIMITED IN HOW THIS
15 PUBLIC SAFETY RESOURCE CAN BE MANAGED BECAUSE THE COUNTIES AND
16 MUNICIPALITIES DO NOT OWN OR CONTROL THE STREET LIGHTING EQUIPMENT
17 WITHIN THEIR JURISDICTIONS;

18 (3) STREET LIGHTING IS A SIGNIFICANT ENERGY EXPENSE FOR
19 COUNTIES AND MUNICIPALITIES AND PRESENTS AN OPPORTUNITY FOR
20 COMMUNITIES TO REDUCE THEIR CARBON FOOTPRINT AND ADDRESS CLIMATE
21 CHANGE THROUGH EFFICIENCY UPGRADES;

22 (4) THERE IS NO INCENTIVE IN THE APPLICABLE ELECTRIC RATE
23 TARIFF FOR INSTALLING ENERGY EFFICIENT LIGHTING TECHNOLOGIES THAT
24 MAY REDUCE BOTH POWER AND MAINTENANCE EXPENSES;

25 (5) THERE IS NO PROVISION IN THE APPLICABLE ELECTRIC RATE
26 TARIFF FOR COUNTIES AND MUNICIPALITIES TO WORK COLLECTIVELY TO
27 MANAGE THE MAINTENANCE OF STREET LIGHTING EQUIPMENT;

28 (6) COUNTIES AND MUNICIPALITIES AROUND THE COUNTRY HAVE
29 SAVED CONSIDERABLE RESOURCES BY PURCHASING THEIR STREET LIGHTING
30 EQUIPMENT FROM ELECTRIC COMPANIES AND CONTRACTING FOR THE
31 MAINTENANCE INDEPENDENTLY; AND

1 **(7) STREET LIGHTING COSTS SHOULD BE REDUCED AND SERVICE**
2 **SHOULD BE IMPROVED BY:**

3 **(I) IMPROVING PUBLIC SAFETY WITH STREET LIGHTS THAT**
4 **PROVIDE BETTER ILLUMINATION;**

5 **(II) REDUCING MAINTENANCE COSTS BY ALLOWING**
6 **COUNTIES AND MUNICIPALITIES TO OWN THE STREET AND AREA LIGHTING**
7 **WITHIN THEIR JURISDICTIONS AND TO ENTER INTO REGIONAL MAINTENANCE**
8 **SERVICE CONTRACTS;**

9 **(III) REDUCING WHOLE SYSTEM COST THROUGH COUNTY OR**
10 **MUNICIPAL OWNERSHIP AND BY ADOPTING TARIFFS THAT INCLUDE ONLY THE**
11 **DISTRIBUTION ENERGY CONSUMED;**

12 **(IV) PROVIDING FOR THE USE OF INNOVATIVE**
13 **TECHNOLOGIES FOR MORE EFFICIENT LIGHTING; AND**

14 **(V) PROVIDING MORE RESPONSIVE SERVICE FOR LIGHTING**
15 **REPAIRS.**

16 **[(b)] (C)** This section applies to all counties and municipalities.

17 **[(c)** On written request by a county or municipality, an electric company shall
18 sell to the county or municipality some or all of the electric company's existing street
19 lighting equipment that is located in the county or municipality.]

20 **(D) AFTER GIVING 60 DAYS' WRITTEN NOTICE TO THE ELECTRIC**
21 **COMPANY AND THE PUBLIC SERVICE COMMISSION, A COUNTY OR**
22 **MUNICIPALITY THAT RECEIVES STREET LIGHTING SERVICE FROM AN ELECTRIC**
23 **COMPANY IN ACCORDANCE WITH A TARIFF PROVIDING FOR THE USE BY THE**
24 **COUNTY OR MUNICIPALITY OF STREET LIGHTING EQUIPMENT OWNED BY AN**
25 **ELECTRIC COMPANY MAY:**

26 **(1) CONVERT ITS STREET LIGHTING SERVICE TO AN**
27 **ALTERNATIVE ENERGY ONLY TARIFF SET IN ACCORDANCE WITH § 4-211 OF THE**
28 **PUBLIC UTILITIES ARTICLE;**

29 **(2) ACQUIRE THE STREET LIGHTING EQUIPMENT FROM THE**
30 **ELECTRIC COMPANY AT SOME OR ALL LOCATIONS WITHIN THE COUNTY OR**
31 **MUNICIPALITY; AND**

1 **(3) ENTER INTO AN AGREEMENT TO PURCHASE ELECTRICITY FOR**
2 **THE USE OF THE STREET LIGHTING EQUIPMENT FROM ANY AVAILABLE**
3 **ELECTRICITY SUPPLIER.**

4 **[(d)] (E) (1) If the county or municipality [purchases] EXERCISES ITS**
5 **OPTION TO PURCHASE** street lighting equipment from an electric company **AND**
6 **CONVERT THE STREET LIGHTING SERVICE TO AN ALTERNATE ENERGY ONLY**
7 **TARIFF IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION,** the county or
8 municipality shall pay to the electric company the fair market value of the street
9 lighting equipment.

10 **(2) (I) AFTER EXERCISING ITS OPTION IN ACCORDANCE WITH**
11 **SUBSECTION (D) OF THIS SECTION, THE COUNTY OR MUNICIPALITY MAY**
12 **REQUEST THAT THE ELECTRIC COMPANY REMOVE THE STREET LIGHTING**
13 **EQUIPMENT THAT IS LOCATED IN THE COUNTY'S OR MUNICIPALITY'S**
14 **JURISDICTION THAT HAS NOT BEEN ACQUIRED FROM THE ELECTRIC COMPANY.**

15 **(II) THE COUNTY OR MUNICIPALITY SHALL PAY TO THE**
16 **ELECTRIC COMPANY:**

17 **1. THE COST OF THE REMOVAL OF THE STREET**
18 **LIGHTING EQUIPMENT BY THE ELECTRIC COMPANY; AND**

19 **2. THE NET BOOK VALUE OF THE STREET LIGHTING**
20 **EQUIPMENT REMOVED.**

21 **(3) NET BOOK VALUE SHALL BE:**

22 **(I) CALCULATED AS THE ORIGINAL COST OF THE STREET**
23 **LIGHTING EQUIPMENT, LESS DEPRECIATION, NET OF ANY SALVAGE VALUE OF**
24 **ANY ACTIVE OR INACTIVE EXISTING STREET LIGHTING EQUIPMENT INSTALLED**
25 **IN THE COUNTY OR MUNICIPALITY AS OF THE DATE THE COUNTY OR**
26 **MUNICIPALITY EXERCISES ITS RIGHT OF ACQUISITION; OR**

27 **(II) DETERMINED IN A PROCEEDING BEFORE THE PUBLIC**
28 **SERVICE COMMISSION.**

29 **[(e)] (F) A county or municipality that [purchases street lighting**
30 **equipment] EXERCISES ITS OPTION** in accordance with **SUBSECTION (D) OF** this
31 section:

32 **(1) shall be responsible for the maintenance of the street lighting**
33 **equipment; [and]**

1 (2) may contract with an outside entity for the maintenance of the
2 street lighting equipment; AND

3 **(3) SHALL NOTIFY THE ELECTRIC COMPANY OF ANY ALTERATION**
4 **TO THE COUNTY'S OR MUNICIPALITY'S STREET LIGHTING EQUIPMENT**
5 **INVENTORY WITHIN 30 DAYS AFTER THE ALTERATION.**

6 **[(f)] (G) (1)** Any person who controls the right to use space on any pole,
7 lamppost, or other mounting surface previously used in the county or municipality by
8 the electric company for street lighting equipment shall allow a county or municipality
9 that has purchased the street lighting equipment to assume the rights and obligations
10 of the electric company with respect to the space for the unexpired term of any lease or
11 other agreement under which the electric company used the space.

12 (2) Notwithstanding paragraph (1) of this subsection, the county or
13 municipality may not restrict or prohibit universal access for electricity or any other
14 service by assuming the rights and obligations of an electric company as to space on
15 any pole, lamppost, or other mounting surface used for street lighting equipment.

16 **(H) ANY AGREEMENT OR CONTRACT FOR SALE OF OR LICENSE**
17 **AGREEMENT THAT APPLIES TO EQUIPMENT MOUNTED ON JOINT USE POLES MAY**
18 **NOT INCLUDE ANY FEES OR OTHER COSTS NOT INCLUDED IN THE ALTERNATIVE**
19 **ENERGY ONLY TARIFF UNDER § 4-211 OF THE PUBLIC UTILITIES ARTICLE.**

20 **(I) AN ELECTRIC COMPANY MAY NOT REQUIRE FROM A COUNTY OR**
21 **MUNICIPALITY EXERCISING ITS OPTION UNDER SUBSECTION (D) OF THIS**
22 **SECTION:**

23 **(1) ANY PROTECTIONS OR INDEMNIFICATIONS; OR**

24 **(2) ANY STANDARDS THE ELECTRIC COMPANY DOES NOT**
25 **CURRENTLY PROVIDE OR REQUIRE OF THEMSELVES IN THE OPERATION AND**
26 **MAINTENANCE OF STREET LIGHTING EQUIPMENT.**

27 **(J) ALL WORKERS EMPLOYED BY A COUNTY OR MUNICIPALITY TO**
28 **OPERATE AND MAINTAIN STREET LIGHTING EQUIPMENT MUST BE FULLY**
29 **QUALIFIED AND MEET ANY FEDERAL AND STATE REQUIREMENTS.**

30 **[(3)] (K) (1)** Any dispute between an electric company and a
31 county or municipality [arising under this subsection] **REGARDING THE**
32 **COMPENSATION TO BE PAID TO THE ELECTRIC COMPANY OR ANY OTHER**
33 **MATTER ARISING IN CONNECTION WITH THE EXERCISE OF THE OPTION IN**
34 **ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION** shall be submitted to the
35 Public Service Commission for resolution.

1 **(2) WITHIN 60 DAYS AFTER RECEIPT OF A REQUEST FOR**
2 **RESOLUTION, THE PUBLIC SERVICE COMMISSION SHALL ISSUE A**
3 **DETERMINATION ON A DISPUTE SUBMITTED IN ACCORDANCE WITH PARAGRAPH**
4 **(1) OF THIS SUBSECTION.**

5 **Article – Public Utilities**

6 **4-211.**

7 **(A) IN THIS SECTION, “STREET LIGHTING EQUIPMENT” HAS THE**
8 **MEANING STATED IN § 1-1309 OF THE LOCAL GOVERNMENT ARTICLE.**

9 **(B) (1) ON OR BEFORE DECEMBER 1, 2014, EACH ELECTRIC**
10 **COMPANY, IN CONSULTATION WITH THE MARYLAND ENERGY ADMINISTRATION,**
11 **SHALL FILE WITH THE COMMISSION AN ALTERNATE ENERGY ONLY TARIFF FOR**
12 **STREET LIGHTING THAT INCLUDES ONLY ELECTRIC DISTRIBUTION FEES.**

13 **(2) (I) THE ALTERNATIVE ENERGY ONLY TARIFF SHALL**
14 **PROVIDE FOR MONTHLY BILLS FOR STREET LIGHTING THAT SHALL INCLUDE A**
15 **SCHEDULE OF ELECTRICITY CHARGES BASED ON A DETERMINATION OF ANNUAL**
16 **KILOWATT-HOUR USAGE PER LUMEN RATING OR NOMINAL WATTAGE OF ALL**
17 **TYPES OF STREET LIGHTING EQUIPMENT BUT MAY NOT INCLUDE FACILITY,**
18 **SUPPORT, REACTIVE OR PREVENTATIVE MAINTENANCE, FIXED MAINTENANCE,**
19 **OR ACCESSORY CHARGES.**

20 **(II) THE DETERMINATION IN PARAGRAPH (I) OF THIS**
21 **PARAGRAPH SHALL BE IN ACCORDANCE WITH:**

22 **1. APPROVED METHODS OF DETERMINATION FOR**
23 **UNMETERED STREET LIGHTS; OR**

24 **2. BASED ON INFORMATION RECEIVED FROM**
25 **LIGHTING CONTROLS THAT MEASURE USAGE AND COMPLY WITH ANSI C12.20.5**
26 **STANDARDS FOR ACCURACY.**

27 **(3) (I) FOR STREET LIGHTING EQUIPMENT IN USE IN A COUNTY**
28 **OR MUNICIPALITY ON OCTOBER 1, 2014, THE ALTERNATIVE ENERGY ONLY**
29 **TARIFF SHALL USE CALCULATION METHODS AND RATES THAT EXISTED ON**
30 **OCTOBER 1, 2014.**

31 **(II) THE ALTERNATIVE ENERGY ONLY TARIFF SHALL**
32 **PROVIDE FOR REASONABLE RATES FOR STREET LIGHTING EQUIPMENT THAT IS**
33 **ADOPTED AFTER OCTOBER 1, 2014.**

1 **(4) THE ALTERNATIVE ENERGY ONLY TARIFF SHALL PROVIDE**
2 **FOR OPTIONS FOR VARIOUS STREET LIGHTING CONTROLS, INCLUDING:**

3 **(I) CONVENTIONAL DUSK/DAWN OPERATION USING**
4 **PHOTOCELL TECHNOLOGY OR SCHEDULING CONTROLS;**

5 **(II) SCHEDULE-BASED DIMMING OR ON/OFF CONTROLS**
6 **THAT DIM OR TURN OFF STREET LIGHTS DURING PERIODS OF LOW ACTIVITY;**
7 **AND**

8 **(III) ACTUAL USAGE AS PROVIDED BY CONTROLS THAT**
9 **PROVIDE THAT INFORMATION AND COMPLY WITH ANSI C12.20.5 FOR**
10 **ACCURACY.**

11 **(C) WITHIN 60 DAYS AFTER RECEIVING AN ALTERNATIVE ENERGY ONLY**
12 **TARIFF FROM AN ELECTRIC COMPANY, THE COMMISSION SHALL ISSUE A**
13 **DECISION REGARDING THE ADOPTION OF THE ALTERNATIVE ENERGY ONLY**
14 **TARIFF.**

15 **(D) WITHIN 60 DAYS AFTER RECEIPT OF A REQUEST FOR RESOLUTION,**
16 **THE COMMISSION SHALL ISSUE A DETERMINATION ON A DISPUTE REGARDING**
17 **THE TERMS OF AN ALTERNATIVE ENERGY ONLY TARIFF ADOPTED IN**
18 **ACCORDANCE WITH THIS SECTION.**

19 SECTION 3. AND BE IT FURTHER ENACTED, That the General Assembly
20 determines that the amendment to the Maryland Constitution proposed by Section 1
21 of this Act affects multiple jurisdictions and that the provisions of Article XIV, § 1 of
22 the Maryland Constitution concerning local approval of constitutional amendments do
23 not apply.

24 SECTION 4. AND BE IT FURTHER ENACTED, That the amendment to the
25 Maryland Constitution proposed by Section 1 of this Act shall be submitted to the
26 qualified voters of the State at the next general election to be held in November 2014
27 for their adoption or rejection pursuant to Article XIV of the Maryland Constitution.
28 At that general election, the vote on this proposed amendment to the Constitution
29 shall be by ballot, and upon each ballot there shall be printed the words "For the
30 Constitutional Amendment" and "Against the Constitutional Amendment," as now
31 provided by law. Immediately after the election, all returns shall be made to the
32 Governor of the vote for and against the proposed amendment, as directed by Article
33 XIV of the Maryland Constitution, and further proceedings had in accordance with
34 Article XIV.

35 SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act is
36 contingent on the passage of Section 1 of this Act, a constitutional amendment, and its
37 ratification by the voters of the State.

1 SECTION 6. AND BE IT FURTHER ENACTED, That, subject to the provisions
2 of Section 5 of this Act, this Act shall take effect on the proclamation of the Governor
3 that the constitutional amendment, having received a majority of the votes cast at the
4 general election, has been adopted by the people of Maryland.