

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1083 (Delegate Carr, *et al.*)
 Economic Matters

County and Municipal Street Lighting Investment Act

This bill authorizes a local government, subject to specified requirements, to (1) convert its street lighting service to a customer-owned street lighting tariff established under the bill; (2) submit a request to acquire “street lighting equipment,” as defined, from the electric company at some or all locations within the county or municipality; and (3) enter into an agreement to purchase electricity. If the county or municipality and the electric company fail to agree to the purchase price or conditions of purchase of the street lighting equipment, the county or municipality may acquire the equipment by condemnation, subject to specified requirements. The bill also specifies several related findings by the General Assembly. **The bill takes effect June 1, 2022.**

Fiscal Summary

State Effect: No effect in FY 2022. Special fund expenditures increase by \$199,100 in FY 2023; future years reflect inflation and ongoing costs. Special fund revenues increase correspondingly from assessments imposed on public service companies. General fund expenditures may increase in FY 2023 and 2024, as discussed below.

| (in dollars) | FY 2022 | FY 2023 | FY 2024 | FY 2025 | FY 2026 |
|----------------|---------|-----------|-----------|-----------|-----------|
| SF Revenue | \$0 | \$199,100 | \$193,400 | \$198,700 | \$203,700 |
| GF Expenditure | \$0 | - | - | \$0 | \$0 |
| SF Expenditure | \$0 | \$199,100 | \$193,400 | \$198,700 | \$203,700 |
| Net Effect | \$0 | (-) | (-) | \$0 | \$0 |

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential meaningful benefit for local governments that acquire street lighting equipment under the bill. The effect of any change in service tariffs for local governments cannot be reliably estimated at this time.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Definitions and Applicability

“Street lighting equipment” means all equipment owned by an electric company used to light streets in a county or municipality, including specified types of lighting and technologies. It does not include joint use utility poles on which the equipment is fixed.

“Fair market value” means the net book value of the property, calculated using Federal Energy Regulatory Commission accounting methods, and not using methods other than those used for standard rate setting, as the original cost of property, less depreciation, of any active or inactive existing street lighting equipment installed in the county or municipality as of the date the local government enters into an agreement to purchase the property, exercises its right of condemnation, or requests the removal of the equipment.

The bill’s requirements and authorizations do not apply to street lighting equipment owned by a municipal electric utility.

Process for Acquiring Street Lighting Equipment

After giving 60 days’ written notice to the electric company and the Public Service Commission (PSC), a local government that receives street lighting service from an electric company in accordance with a tariff providing for the use by the local government of street lighting equipment owned by the electric company may:

- convert its street lighting service to a customer-owned street lighting tariff established under the bill;
- submit a request to acquire the street lighting equipment from the electric company at some or all locations within the county or municipality; and
- enter into an agreement to purchase electricity.

If the local government and the electric company fail to agree to the purchase price or conditions of purchase of the street lighting equipment, the county or municipality may acquire the equipment by condemnation.

If a local government acquires street lighting equipment from an electric company and converts the service to a customer-owned street lighting tariff in accordance with the bill, the county or municipality must pay the fair market value for the equipment.

After acquiring street lighting equipment under the bill, a local government may request that the electric company remove the street lighting equipment that is located in the local government's jurisdiction that has not been acquired from the electric company. The local government must pay the electric company for the cost of the removal of the street lighting equipment and the fair market value of the equipment removed.

Any agreement or contract for sale of or license agreement that applies to equipment mounted on joint use poles may not include any fees or other costs not included in the customer-owned street lighting tariff established under the bill. An electric company may not require from a local government exercising its option to acquire street lighting equipment under the bill (1) any protections or indemnifications or (2) any standards the electric company does not currently provide or require of itself in the operation and maintenance of street lighting equipment.

Responsibilities of Local Governments after Acquisition

A local government that acquires street lighting equipment under the bill is responsible for maintaining the equipment, may contract with an outside entity for the maintenance, and must notify the electric company of any alteration to the local government's street lighting equipment inventory within 30 days after the alteration.

All workers employed by the local government to operate and maintain street lighting equipment must be fully qualified and meet any federal and State requirements.

Dispute Resolution

Except for condemnation proceedings, any dispute between a local government and an electric company related to the acquisition of street lighting equipment under the bill may be submitted to PSC for resolution. PSC then has 75 days to issue a determination. In a condemnation proceeding, a jury in the proceeding must determine the fair market value as provided for in the bill. PSC must also issue a determination on a dispute regarding the terms of a customer-owned street lighting tariff within 75 days.

Customer-owned Street Lighting Tariff

By October 1, 2022, each electric company, in consultation with the Maryland Energy Administration (MEA), must file with PSC a customer-owned street lighting tariff for street lighting that includes only electric distribution fees, as specified. The bill establishes requirements for such a tariff.

Within 75 days after receiving a customer-owned street lighting tariff from an electric company, PSC must issue a decision regarding the adoption of the tariff.

Current Law:

Ownership of Street Lighting

“Electric company” means a person who physically transmits or distributes electricity in the State to a retail electric customer.

Chapters 554 and 555 of 2007 authorized local governments to purchase and maintain street lighting equipment. Specifically, an electric company, on written request by a local government, must sell to the local government some or all of the company’s street lighting equipment that is located within the local jurisdiction at a price equal to fair market value. A local government that purchases street lighting is responsible for ongoing maintenance and may contract with an outside entity for maintenance services. Any dispute between a local government and an electric company regarding the purchase of street lighting equipment must be submitted to PSC for resolution.

A May 2007 letter from the Attorney General indicated that although the Acts were approved for constitutionality, the Acts must be administered properly to ensure the right to just compensation protected by the U.S. and Maryland constitutions. Just compensation must be provided before the government can take private property. The Acts provided for compensation based on fair market value, which is usually construed to mean just compensation. However, the Acts do not expressly provide for the amount of compensation to be determined by a jury, as required in the Maryland Constitution. The Attorney General noted that this does not render the Acts invalid and that the Acts may be implemented in a constitutional manner by use of the local governments’ condemnation powers to obtain possession of street lighting equipment when the electric company objects to a sale.

Eminent Domain

The power to take, or condemn, private property for public use is one of the inherent powers of state government. Courts have long held that this power, known as “eminent domain,” is derived from the sovereignty of the state. Both the U.S. and State constitutions limit the condemnation authority and establish two requirements for taking property through the power of eminent domain. First, the property taken must be for a “public use.” Second, the party whose property is being taken must receive “just compensation.” In either event, the party whose property is being taken is generally entitled to a judicial proceeding prior to the taking of the property. However, the Maryland Constitution does authorize “quick-take” condemnations in limited circumstances prior to a court proceeding.

State Fiscal Effect: The bill requires PSC to analyze and approve (or reject) a new class of street lighting tariff filings from electric companies within a restricted period of time outside of base rate cases, which are when new tariff classes are typically established. Additionally, PSC may be required to rule on submitted disputes regarding these tariff filings and/or any county or municipal government acquisition of utility street lighting, also within a restricted period of time.

Accordingly, special fund expenditures for PSC increase by \$199,065 in fiscal 2023, which assumes an implementation date of July 1, 2022. This estimate reflects the cost of hiring one regulatory economist and one staff attorney to handle the additional workload related to the new tariffs and dispute resolution anticipated under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | |
|---------------------------------------|------------------|
| Positions | 2.0 |
| Salaries and Fringe Benefits | \$178,338 |
| Other Operating Expenses | <u>20,727</u> |
| Total FY 2023 PSC Expenditures | \$199,065 |

Future year special fund expenditures reflect salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Special fund revenues increase correspondingly from assessments imposed on public service companies as authorized under current law.

The bill also requires MEA to consult with each electric company in the State when the electric company files a customer-owned street lighting tariff in accordance with the bill. Tariff filings are complex, addressing utility cost recovery, essentiality, and ratemaking. MEA advises that it does not typically get involved in ratemaking cases and that its existing staff are not qualified to do so. As a result, to the extent MEA must hire a consultant to meet its obligations under the bill, general fund expenditures increase. While any such impact is speculative, MEA advises that costs for consultant services could total approximately \$245,000 over a two-year period.

Local Expenditures: Local government expenditures for street lighting equipment may increase in the short term as local governments exercise their authority to purchase street lighting equipment. Local government expenditures for electricity and street lighting equipment and maintenance may subsequently decline to the extent that local governments install low-energy bulbs, switch to customer-owned street lighting tariffs, and pay separately for street lighting equipment maintenance. The amount cannot be reliably estimated at this time but is potentially significant for local governments that currently do not own some or all of the street lights located in their jurisdictions.

Small Business Effect: Small businesses involved in the maintenance of street lighting equipment benefit to the extent that local governments exercise the option to purchase and maintain street lights, as these street lights will no longer be maintained by an electric company. Local governments may choose to contract with small businesses for street light maintenance.

Additional Information

Prior Introductions: SB 835 of 2020, a similar bill, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 1034, received an unfavorable report from the House Economic Matters Committee.

Designated Cross File: SB 376 (Senator Lee) - Finance.

Information Source(s): Public Service Commission; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Maryland Energy Administration; Office of People's Counsel; Howard, Montgomery, and Prince George's counties; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2022
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