

Department of Legislative Services  
Maryland General Assembly  
2023 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 459

(Delegate Kaufman, *et al.*)

Economic Matters

Education, Energy, and the Environment

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Public Utilities - Street Lighting Equipment - Acquisitions and Reporting  
(County and Municipal Street Lighting Investment Act)

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This bill authorizes a local government, subject to specified requirements, to (1) submit a request to acquire “street lighting equipment,” as defined, from the electric company at some or all locations within the county or municipality; (2) after acquisition, convert its street lighting service to a customer-owned street lighting tariff established under the bill; and (3) enter into an agreement to purchase electricity. If the local government and the electric company fail to agree on the fair market value of the equipment, each entity must hire a utility valuation expert to conduct an appraisal, based in part on an assessment by a licensed engineer. If the local government and the electric company fail to agree on the purchase price or conditions of purchase of the equipment, the local government may acquire the equipment by condemnation, subject to specified requirements. The bill also specifies several related findings by the General Assembly and contains a related reporting requirement for investor-owned electric companies. **The bill takes effect June 1, 2023, and provisions requiring a one-time report terminate September 30, 2024.**

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Fiscal Summary

**State Effect:** The Public Service Commission (PSC) can handle the bill’s requirements with existing budgeted resources. The bill does not otherwise materially affect State finances or operations.

**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.

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## Analysis

### Bill Summary:

#### *Definitions and Applicability*

“Street lighting equipment” means all equipment owned by an electric company used solely 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 fair market value of the property, calculated using Federal Energy Regulatory Commission accounting methods, and not using methods other than those used for standard rate setting.

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 written notice to the electric company and 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:

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

If the local government and the electric company fail to agree on the fair market value of the street lighting equipment, the local government and the electric company are each responsible for hiring a utility valuation expert to conduct an appraisal of the equipment to determine its fair market value, subject to specified requirements. The local government and the electric company must also engage the services of the same licensed engineer to conduct an assessment of the tangible assets of the equipment, which must be incorporated into the appraisal.

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

acquire the equipment by condemnation, in accordance with Title 12 of the Real Property Article.

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 of the equipment and the cost of all make-ready work, as defined, performed by the electric company.

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 unless required by State law or regulation.

#### *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 the electric company or an outside entity for the maintenance, and must notify the electric company of any change 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 must then consider the dispute in accordance with existing complaint procedures. 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 final determination on a dispute regarding the terms of a customer-owned street lighting tariff that is submitted in accordance with existing complaint procedures.

#### *Customer-owned Street Lighting Tariff*

By October 1, 2023, each electric company must file with PSC a customer-owned street lighting tariff for street lighting that includes electric distribution service costs and the costs

of any applicable make-ready work performed by the electric company, as specified. The bill establishes requirements for such a tariff and PSC must issue a decision regarding the adoption of the tariff.

### *Reporting Requirement*

By July 1, 2024, each investor-owned electric company must submit a report to PSC on streetlights it owns or maintains that includes the total number of streetlights and the total number of streetlights that use LED technology.

### **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.

**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 streetlights 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 streetlights, as these streetlights will no longer be maintained by an electric company. Local governments may choose to contract with small businesses for street light maintenance. Some small engineering and appraisal businesses may also benefit from additional demand for their services under the bill’s processes for streetlight ownership conversion.

**Additional Comments:** A 2020 [report](#) procured by the Maryland Energy Administration contains additional background and context on the issue of LED street lighting equipment conversions.

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## **Additional Information**

**Prior Introductions:** Similar legislation has been introduced within the last three years. See SB 376 and HB 1083 of 2022; and SB 835 and HB 1034 of 2020.

**Designated Cross File:** None.

**Information Source(s):** Public Service Commission; Judiciary (Administrative Office of the Courts); Office of the Attorney General (Consumer Protection Division); Maryland Energy Administration; Harford County; Cities of College Park and Frostburg; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

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