

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 905 (Delegate Carr, *et al.*)
Economic Matters

Street Lighting - Purchase of Equipment by Local Government and Tariff

This bill specifies items that a jury must consider in a condemnation proceeding brought forth by a local government to acquire street lighting equipment. In determining the amount of an award, jurors must consider the age, condition, type, and operability of the equipment; any payment made by a local government for the construction of the equipment; comparable sales or other appropriate indication of value; any obligation by the local government to pay for maintenance under certain circumstances; and the expert valuation advise of the Public Service Commission (PSC). On written request by a local government, PSC must act as the agent of the local government in a condemnation proceeding. PSC must require each electric company to develop a tariff for street lighting when the equipment is owned by a local government and attached to the utility pole owned by a public service company. A tariff established must include pole attachment fees or agreements if the fees or agreements are required by the electric company. The bill also clarifies that a local government may acquire street lighting equipment either at a price agreed upon between a local government and an electric company or at a price as awarded by a jury in a condemnation proceeding. A local government may seek to acquire all street lighting equipment in its jurisdiction through a single petition.

Fiscal Summary

State Effect: None. PSC can implement the bill with existing budgeted resources.

Local Effect: Potential meaningful benefit for local governments that seek to acquire street lighting equipment through condemnation proceedings.

Small Business Effect: Minimal.

Analysis

Current Law: Upon request from a local government, an electric company is required to sell some or all of its street lighting equipment located within the local jurisdiction at a price equal to fair market value. Any dispute between a local government and an electric company regarding the purchase of street light equipment must be submitted to PSC for resolution.

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 federal 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.

Background: Chapters 554 and 555 of 2007 authorized local governments to purchase and maintain street lighting equipment. A May 2007 letter from the Attorney General indicated that although the bill was approved for constitutionality, it was noted that the bill must be administered properly to ensure the right to just compensation protected by the United States and Maryland Constitutions. Just compensation must be provided before the government can take private property. The Act provided for compensation based on fair market value, which is usually construed to mean just compensation. If a dispute arises as to the value paid by the government, the Attorney General notes that local governments may use their condemnation power to obtain control of the necessary equipment if they cannot come to an agreement with the electric company.

The Maryland Municipal League (MML) notes that although some local governments have attempted to negotiate with electric companies to purchase street lighting equipment none have been able to reach an agreement on the terms of sale or an appropriate price. In 2010, the Village of Chevy Chase Section 3 requested PSC assistance to resolve a dispute regarding the purchase of street lighting equipment. The village has been trying to purchase street lighting equipment from Potomac Electric Power Company (Pepco) and replace the brackets and bulbs with induction lights in an effort to reduce electricity consumption and reduce maintenance expenses. The village currently spends one-third of its monthly utility bill on a maintenance charge imposed by Pepco. The PSC Office of External Relations conducted a mediation session between Chevy Chase Section 3 and Pepco, but a resolution was not reached. If the village is unable to agree on a purchase

price with Pepco, the village may seek to acquire street lighting equipment through condemnation.

Through Case Number 9217, PSC is investigating rates and charges associated with Pepco street lighting services. Through the proceeding, PSC has been considering the fair market value of street lighting equipment owned by Pepco. Municipalities in Montgomery and Prince George's counties have expressed interest in purchasing street lighting equipment and are now parties to the case.

Local Fiscal Effect: MML advises that for metered street lights on metal poles without overhead high voltage lines attached, maintenance is competitive and local governments have a choice of the maintenance service provider. This competition allows the municipality to save money on maintenance costs, select from a wide array of choices for lamp and luminaire, and facilitate potentially faster response to reports of street light outages. Because of distance restrictions regarding high voltage lines, this option is not currently available in the case of street lights on wooden poles with overhead high voltage lines attached that are owned by electric companies. Requiring a jury to consider the age, condition, type, equipment operability, PSC expert advice, as well as any payment made by a local government for the construction of the equipment when considering a price may result in a price being determined that is more favorable to a local government.

Legislative Services advises that the bill may not have an impact on the price awarded by a jury, as an electric company must receive just compensation; however, if an award provided by a jury is lower than the price which would otherwise be negotiated, a local government may recognize some savings when purchasing street lighting equipment.

Small Business Effect: If a local government purchases street lighting equipment and contracts with a small business for the maintenance of the street lighting equipment, small businesses may be positively impacted.

Additional Information

Prior Introductions: HB 1549 of 2010 was referred to the House Rules and Executive Nominations Committee. No further action was taken.

Cross File: None.

Information Source(s): Baltimore, Montgomery, and Worcester counties; Judiciary (Administrative Office of the Courts); Office of People's Counsel; Public Service Commission; Department of Legislative Services

Fiscal Note History: First Reader - March 7, 2011
mlm/hlb

Analysis by: Erik P. Timme

Direct Inquiries to:
(410) 946-5510
(301) 970-5510