

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

House Bill 628  
Economic Matters

(Delegate Carr, *et al.*)

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Street Lighting - Purchase of Equipment by Local Government and Tariffs

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This bill establishes procedures for condemnation of street lighting equipment by local governments. It also requires electric companies to develop service tariffs for street lighting equipment owned by local governments.

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Fiscal Summary

**State Effect:** None. The Public Service Commission (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.

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Analysis

**Bill Summary:** If a local government purchases street lighting equipment, it must pay the fair market value, as determined by an agreement between the local government and an electric company, or as determined in a condemnation proceeding. In a condemnation proceeding for street lighting equipment, in determining the fair market value, the jury must consider specified items, including the equipment's age, condition, and operability, among others. A local government may include all street lighting equipment it seeks to acquire within its jurisdiction from a single electric company in a single petition for condemnation.

PSC must require each electric company to develop one or more tariffs for street lighting when (1) the equipment is owned by a local government and attached to utility poles owned by a public service company; or (2) the equipment and utility poles are owned by the local government. The tariff must include specified pole attachment fees or agreements if required by the electric company, and unbundled reactive and preventative maintenance services which may be performed at the request of the local government.

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

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.

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 bills were approved for constitutionality, the bills 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 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 bills 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.

**Local Fiscal Effect:** In a condemnation proceeding, requiring a jury to consider the age, condition, type, equipment operability, local government maintenance obligations, and 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.

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### **Additional Information**

**Prior Introductions:** HB 905 of 2011, a similar bill, received an unfavorable report from the House Economic Matters Committee.

**Cross File:** SB 688 (Senator Madaleno) Education, Health, and Environmental Affairs.

**Information Source(s):** Garrett, Howard, and Montgomery counties; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Public Service Commission; Department of Legislative Services

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