

MUNICIPAL LIGHTING AUTHORITY ACT

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5688

Sponsor: Rep. Maureen L. Stapleton

Committee: Local, Intergovernmental, and Regional Affairs

Complete to 5-30-12

A SUMMARY OF HOUSE BILL 5688 AS INTRODUCED 5-29-12

House Bill 5688 would create a new act to be known as the Municipality Lighting Authority Act. A detailed description of the bill follows.

Intent. The bill's stated intent is to provide an equitable and reasonable method and means of financing, operating, and maintaining a lighting system to supply lighting in sufficient quantities to constituent local governments. The bill specifies "this act shall be liberally construed in the interest of the public health, safety, and welfare of the persons and property within an authority created under this act."

Incorporation of an authority. Under the bill, a city, village, or township, or any combination thereof, by majority vote of its respective governing body, may incorporate an authority composed of the territory within its respective limits for acquiring, constructing, consolidating, purchasing, operating, or maintaining a municipally owned lighting system. The authority is a public municipal corporation with the rights, powers, and duties as provided in this act. The bill specifies that the act cannot be construed as transferring the ownership of any lighting system assets to the authority, unless the transfer is specified in the authority's articles of incorporation. (A transfer of ownership or operational control of a lighting system to an authority would not be considered a sale, lease, or disposal of any kind of an asset by the local government under any state or local law.)

The bill specifies that nothing in the act would alter laws and regulations concerning utility franchises, unless explicitly stated. The creation of an authority would not create a new franchise as long as the authority did one of the following: (1) only provided service within its own territory (consisting of the territory within the constituent local governments and any area being served on the effective date of this legislation); or (2) provided service as specified in (1), and additionally provided service to constituent local governments that did not serve private customers under a contractual agreement.

Articles of incorporation. One or more local governments could adopt articles of incorporation by a majority vote of their governing bodies, and incorporate an authority for the purpose of acquiring, owning, improving, enlarging, extending, constructing, operating, or maintaining a light system and providing lighting services. The articles of incorporation would have to be signed by one of the following: for a city, by the mayor and clerk of that city; for a village, by the president and clerk of that village; for a

township, by the supervisor and clerk of the township. The bill describes in considerable detail the form and substance for the articles of incorporation.

Public municipal corporation. An authority would be a public municipal corporation, and a public body corporate with the power to sue and be sued, and possesses all the powers necessary to carry out the purposes of its incorporation. The bill describes in considerable detail the ways in which an authority can act, including (among other things) to issue bonds; to acquire, hold, lease, and dispose of real and personal property; and to engage engineering, legal, and other professional services.

The bill requires that the authority maintain its books and records and its funds on an enterprise fund basis. The authority would be prohibited from paying any net proceeds or profits to its constituent local governments, but could pay those governments for services provided.

Board of directors. An authority would be governed by a five-member board of directors. The members of the board would be appointed by local government officials, following protocols described in the bill; these protocols vary, depending upon the number of local governments creating the authority. Generally, terms of office would last six years, and appointments would be made within 70 days of any occurring vacancy. At least one board member must be a professional engineer; a second must be a certified public accountant; and a third must be a licensed attorney.

Conflict of interest. By January 31 each year, board members would have to certify to the state attorney general (signed under penalty of perjury), that (1) they were not currently employed by or receiving a pension or any other form of income from any entity that sought or received a contract with the authority; (2) did not own an interest in an entity seeking a contract with the authority; and (3) did not serve as an officer, director, or in a similar decision-making role in any entity that sought or received a contract with the authority, or that had a financial interest contrary to the authority in connection with any authority financing.

By the last day of February, the attorney general would have to publish a report stating whether each board member of an authority had filed the required certification.

Board meetings. Within 30 days following the last appointment, the board would be required to hold its first meeting, and select a chairperson, treasurer, and any other necessary officers. The board would require the treasurer to post a \$100,000 bond. The board also would select, employ, and fix the compensation for employees of the board, and contract for those engineering, legal, and other professional services that the board considered necessary.

A majority of the board members would constitute a quorum, and official action could be taken by a majority vote of those present (unless the articles of incorporation required a larger number).

Open meetings; accountability. The board would adopt rules and bylaws; a regular schedule of meetings; and designate an office or location as its principal place of business. The board's business would have to be conducted at public meetings in

compliance with the Open Meetings Act. Further, a written or printed record of each meeting would have to be kept, in compliance with the Freedom of Information Act.

The board would also provide for a system of accounts, and obtain an annual audit of the authority by an independent certified public accountant. The board would be required to provide a quarterly progress report to the chief executive officer and governing body of each constituent local government, and also make that quarterly report available to the public on the authority's internet website.

Three-year plan updated every two-years; amendments. Before March 15 of every second year, the board would be required to prepare and submit to the governing bodies of the constituent local governments, a plan for the next three succeeding fiscal years. The bill describes in some detail the content of the development plan. For example, the plan would have to include, among other things, an inventory and map of the street lights; a budget; and the uses of any rate revenue (possibilities are explicitly noted in the law).

The governing body of each constituent local government could vote to accept or reject the plan, although no local government would have the power to amend the plan. Unless the local government(s) rejected the plan within 45 days, the plan would be considered to be approved. If rejected, revisions would be made following a very detailed process fully described in the proposed law.

Final adoption of a plan requires a two-thirds vote of the authority board members. An adopted plan can be amended by a vote of four out of five members of the board.

Fiscal year. An authority's fiscal year would begin on July 1, unless the board, by resolution, established a different fiscal year.

Bonding; limit. An authority could borrow money and issue revenue bonds and notes for the purposes of constructing, acquiring, improving, enlarging, or extending a lighting system, including the payment of engineering, legal, and financing expenses, and after the establishment of the initial service rates and the execution of contracts for the provision of construction services, purchase of power, and other related activities within the corporate limits of the authority.

The bill caps the aggregate principal amount of the bonds and notes at five percent of the total state equalized valuation of the property assessed in the local governments comprising the authority. The bill describes in some detail the content for the resolution that the board members must use to authorize the issuance of bonds. The bonds issued would not mature more than 30 years after the date of original issuance. Any bonds issued under the act would be sold to the Michigan Finance Authority as created by the Executive Reorganization Order No. 2012-2, MCL 12.194.

An authority could enter into, amend, or terminate any ancillary facility (1) to facilitate the issue, sale, purchase, or payment of bonds, or the making of performance of swap contracts including without limitation bond insurance, letters of credit, and liquidity facilities; and (2) to attempt to hedge risk or achieve a desirable effective interest rate or cash flow.

[Note: Under the bill, the term "ancillary facility" is defined to mean any revolving credit agreement, agreement establishing a line of credit, or a letter of credit, reimbursement agreement; interest rate exchange or similar agreement; currency exchange agreement; commodity exchange agreement; interest rate floor or cap; option, put, call, or similar agreement to hedge payment, currency, commodity, rate, spread, or similar exposure; investment agreement; float agreement; forward agreement or other investment arrangement; insurance contract; surety bond; commitment to purchase or sell securities; purchase or sale agreement or commitment; or other contract or agreement or other security agreement approved by an authority under this act, including without limitation any arrangement referred to in this act.]

Contracts; revenue pledges; bond repayment. An authority and any local government can enter into a contract providing for the construction, acquisition, improvement, enlargement, or extension of a lighting system, including the payment of engineering, legal, and financing expenses in connection with the lighting system, and after the establishment of the initial service rates and the execution of contracts for the provision of construction services, purchase of power, and other related activities within the corporate limits of the authority.

Contracts would have to provide for the rates and charges for each local government. Each local government could pledge its full faith and credit for the payment of the obligation in the manner and times specified in the contract. The bill describes in considerable detail, the ways in which a local government can provide and pledge funds to repay debt, including the levy of special assessments; the levy and collection of user charges; a revenue pledge; the receipt of money derived from state taxes; and the receipt of other funds.

Tax exemption. The bill specifies that an authority's property is public, and devoted to an essential public and governmental purpose. Its property and its income would be exempt from all taxes and special assessments of the state, or a political subdivision of the state.

Loans. The governing body of each local government composing an authority could advance or loan to the authority any money required for administrative expenses, or for the purpose of obtaining maps, plans, designs, specifications, and cost estimates of a proposed lighting system. An advance or loan could be included as a part of any bond issue by the authority, and repaid to the local government upon sale of the bonds.

Powers. The bill specifies that the powers granted under this act are to be in addition to those granted by any charter or statute.

FISCAL IMPACT:

A fiscal analysis is in process.

Legislative Analyst: J. Hunault
Fiscal Analyst: Jim Stansell

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.