

# Legislative Analysis

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## MUNICIPAL LIGHTING AUTHORITY ACT

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

**House Bill 5688 (Substitute H-1)**  
**Sponsor: Rep. Maureen Stapleton**

**House Bill 5705 (Substitute H-2)**  
**Sponsor: Rep. John Walsh**

**Committee: Local, Intergovernmental, and Regional Affairs**  
**First Analysis (6-4-12)**

**BRIEF SUMMARY:** House Bill 5688 (H-1) would create a new act to be known as the Municipality Lighting Authority Act to allow for the creation of lighting authorities by the 41 communities in Michigan that own their own utility companies.

House Bill 5705 (H-2) would amend the City Utility Users Tax Act (MCL 141.1152) to require a portion of the revenue generated by the tax to be used to fund a public lighting authority in the City of Detroit if an authority is created, including as pledged revenue for bonds.

**FISCAL IMPACT:** House Bill 5705 would set aside \$12.5 million from the City Utility Users Tax if a lighting authority is created in Detroit.

### **THE APPARENT PROBLEM:**

In most cities, streetlights are owned, operated, and maintained by a private utility company or, along trunk lines, by the Michigan Department of Transportation. However, according to the Michigan Municipal Electric Association, there are 40 cities and one township in Michigan that own and operate their own power grids to light their neighborhoods and business centers—30 communities in the Lower Peninsula and 11 in the Upper Peninsula. See *Background Information* below for a complete list of city-owned electrical boards.

The City of Detroit (population: 713,777) is among the cities that owns and operates its lighting system—including an antiquated network of 88,000 streetlights. According to committee testimony, more than half of those streetlights (some estimate as many as 53,000) do not function: they have broken bulbs, missing coils, and faulty wiring. Consequently, many of the city's neighborhoods are unlit after sunset. Residents' safety fears increase without streetlights, and many stay indoors after dark. Some navigate their darkened neighborhoods with flashlights.

Some of the broken streetlights—all city owned—are on the city's power grid, while others are on the power grid of DTE (Detroit Energy, a private company). Detroit Mayor Dave Bing has proposed decommissioning about half of the streetlights (those located in

empty neighborhoods and blighted areas), and transferring all the remaining lights (working and not working) from the city's power grid to the power grid of DTE. According to the *Detroit Free Press*, the plan to decommission the lights would reduce the city lighting department's maintenance costs in half, to \$10 million. (See *Detroit Free Press*, "Legislation could help fix streetlights in Detroit," 5-29-12)

Among the remaining 46,000 streetlights, about 27,000 need to be repaired (including 7,000 that have missing coils, and 19,000 that have complicated wiring problems). The cost of the repairs is estimated at \$160 million, a sum that city officials propose to finance by creating an independent Lighting Authority that would sell bonds. To help repay the debt, the city would dedicate a portion of the city's revenue from the Utility Users Tax—\$12.5 million annually. (A third bill, to be introduced in the Senate, would earmark a portion of the city's income tax revenue for the same purpose.)

Legislation has been introduced in the House to enable (but not require) all cities that own and operate their lighting systems to create lighting authorities. Additionally, a bill has been introduced to amend the Detroit Utility Users Tax Act, to earmark a portion of its revenue for the five-member independent Lighting Authority that city officials would create to replace and maintain street lighting.

#### ***THE CONTENT OF THE BILLS:***

The bills would allow (but not require) the 41 communities in Michigan that own their own utility companies to create lighting authorities, and then require the City of Detroit to fund its lighting authority with a \$12.5 million annual allocation of revenue generated by the City Utility Users Tax Act (levied only in Detroit).

House Bill 5688 (H-1) would create a new act to be known as the Municipality Lighting Authority Act to allow for the creation of lighting authorities.

House Bill 5705 (H-2) would amend the City Utility Users Tax Act (MCL 141.1152) to allow a portion of the revenue generated by the tax to be used to fund a public lighting authority in the City of Detroit.

The bills are explained in more detail below.

#### ***House Bill 5705 (H-2)***

The bill would amend the City Utility Users Tax Act (MCL 141.1152) to allow a portion of the revenue generated by the tax to be used to fund a public lighting authority in the City of Detroit.

The City Utility Users Tax Act authorizes the City of Detroit (as a city with a population of 600,000 or more) to levy a tax of up to five percent on the amount paid for intrastate telephone communication services, electrical energy, steam, and natural and artificial gas provided by a public utility or a resale customer. The revenue from the tax is to be used to hire or retain police officers.

House Bill 5705 (H-2) specifies that notwithstanding the requirement that the revenue generated from this tax be placed directly in the budget of the police department, a city currently eligible to levy a tax under this act whose officials form a lighting authority must pay \$12,500,000 annually to that lighting authority from the proceeds of the City Utility Users Tax. Further, the bill specifies that if a city entered into a contract with a lighting authority, in which it pledged revenues from the taxes levied under this act, then the city would be authorized to levy the tax until all related outstanding bonds of the lighting authority had been paid, notwithstanding the population of that city.

Under the bill, if the lighting authority issued bonds under a contract with the city, and pledged revenue from taxes levied under the City Utility Users Tax Act, then those revenues would be deposited and used as provided by this amendment to the act.

The bill also specifies that after a contract is entered into, the trustee, after setting aside funds as required by the trust indenture, must pay to the lighting authority \$12,500,000, less the amount set aside. The trust indenture would be required to provide that the remaining revenues be returned to the city.

The bill specifies that any utility, resale customer, other entity, or person that collects a tax or any money represented to be a tax authorized under this act, holds the amount collected in trust for the benefit of the city, or for bondholders secured by a pledge with a lighting authority.

Further and under the bill, when a city levying a tax authorized by this act enters into a contract with a lighting authority, then all of the following would apply:

- The city must send a notice to each public utility and resale customer to remit taxes collected under this act to a trustee until notified by that trustee to return the funds to the city; and
- After receiving a notice, each public utility and resale customer must remit taxes as directed to the trustee until notified by the trustee to remit taxes to the city.
- The trustee must notify each public utility and resale customer to remit taxes collected under the act to the city within 45 days of the retirement of debt service on the bonds issued by the lighting authority.

***House Bill 5688 (H-1)***

The bill 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 would possess 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 monthly progress report to the chief executive officer and governing body of each constituent local government, and also make that monthly 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; a plan to implement "best value practices"\*; and the uses of any rate revenue (possibilities are explicitly noted in the law).

\*Note: "Best value" is defined under the bill to mean "a contract and procurement process that encourages and considers bids from locally headquartered companies and that consider uses of the local workforce."

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.

**BACKGROUND INFORMATION:**

According to the Michigan Municipal Electric Association, there are 41 communities in Michigan that own and operate their streetlights, 11 in the Upper Peninsula, and 29 in the Lower Peninsula. For a map see:

<http://www.freep.com/article/20120529/NEWS01/205290353/Legislation-could-help-fix>

In the Upper Peninsula, there are city-owned electrical boards in:

Baraga	L'Anse	Norway
Crystal Falls	Marquette	Stephenson
Escanaba	Negaunee	Wakefield
Gladstone	Newberry	

In the Lower Peninsula, there are city-owned electrical boards in:

Ann Arbor	Chelsea	Dowagiac
Bay City	Coldwater	Grand Haven
Charlevoix	Detroit	Harbor Springs

Hart	Marshall	St. Louis
Highland Park	Niles	Sturgis
Hillsdale	Paw Paw	Traverse City
Holland	Petoskey	Union City
Jackson	Portland	Wyandotte
Lansing	Sebewaing	Zeeland
Lowell	South Haven	

In addition, Clinton Township owns and operates a lighting system.

***ARGUMENTS:***

***For:***

Proponents of the bills say House Bill 5688 will give 41 communities, statewide, the option of setting up lighting authorities, so they can reduce their streetlight maintenance and replacement costs. In Detroit, alone, the savings will be an estimated \$10 million each year. And those savings will come at a time when Michigan's largest city faces many financial challenges.

Proponents of the bills also say the chief reason for the bills is to increase public health and safety in Detroit where fully half of the city's 88,000 street lights are broken. As a result, citizens use flashlights to navigate their neighborhoods after sunset. Proponents of the bills argue that the many public and private efforts to reverse blight, downsize city operations, reduce crime, and increase the livability of once-beautiful neighborhoods and city center will be further jeopardized, if city officials cannot ensure well-lit neighborhoods that promise the city's residents safety after dark.

***Against:***

Some who oppose the bills say that while the plan is a good one, it should be carefully examined to ensure that the remaining 56 workers in the Detroit Lighting Department (a reduction from 150 workers) are not harmed. The spokesman for the American Federation of State, County, and Municipal Employees (AFSCME) suggested that House Bill 5688 be amended to provide protections to workers that are similar to those found in other laws, such as the Urban Cooperation Act. AFSCME also notes that the Municipal Finance Act may need to be amended, in order to allow the creation of Lighting Authorities.

Others who express reservations with the plan note that currently the Detroit Utility Users Tax generates revenue that funds the city police department. Further, recently the revenue from the utility tax has been declining about \$10 million a year, and currently generates about \$44 million annually. These opponents of the bills worry that city public safety services will be diminished, and they question the wisdom of the tradeoff: more neighborhood lighting but fewer law enforcement officials.

***Response:***

Proponents of the bills note that the Detroit Utility Users Tax generates the most stable source of revenue (despite its decline) for bond repayment. They argue that the \$12.5



million annual allocation to the Lighting Authority will be modest enough to ensure continued police funding and protection.

***POSITIONS:***

The City of Detroit supports the bills. (5-31-12)

The Michigan Municipal League supports House Bill 5688. (5-31-12)

The Building Owners and Management Association of Metro Detroit supports House Bill 5688. (5-31-12)

The Michigan Municipal Electric Association supports House Bill 5688. (5-31-12)

The Association of Federal, State, County, and Municipal Employees (AFSCME) opposes House Bill 5688 as written. (5-31-12)

The AFL-CIO opposes House Bill 5688 as written. (5-31-12)

Legislative Analyst: J. Hunault  
Fiscal Analyst: Jim Stansell

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■ 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.