



House Bill 113

Local Government Tort Claims Act – Limits on Liability

MACo Position: **OPPOSE**

Date: April 2, 2015

To: Judicial Proceedings Committee

From: Leslie Knapp, Jr.

The Maryland Association of Counties (MACo) **OPPOSES** HB 113. The bill would increase the civil liability caps under the Local Government Tort Claims Act (LGTCA) from \$200,000 to \$300,000 per individual claim and from \$500,000 to \$600,000 for all claims arising out of the same occurrence. MACo believes that these changes would trigger substantially greater costs for judgments, settlements, and litigation – draining scarce public resources away from education, law enforcement, roadways, and public health services.

The LGTCA was created in 1987 in recognition of the unique role that local governments occupy in the provision of public services. It balances the ability of a plaintiff to assert a potential claim against a local government while providing reasonable protections to the local government in the form of damage caps and notice requirements. It also specifies that a local government is liable for the tortious conduct of its employees if they are acting within the scope of employment, meaning that a local government cannot assert governmental immunity in such cases.

The purpose of the local government damage caps is to provide local governments with a certain level of liability certainty so that they can properly budget for both risk management and other key services. Unlike most private defendants, local governments are liable for significant amounts of geography and provide a wide range of public services that can give rise to injury claims, including law enforcement, corrections, and firefighting services; road, sidewalk, and storm drain maintenance; local public transportation; solid waste collection; building inspection; animal control; recreation and park facilities; and water and sewer services. Without a reasonable cap on liability damages, it would be challenging or impossible to budget for and provide these important services.

As the bill's fiscal note indicates, increasing these caps would expose local governments to "[p]otential significant increase in expenditures for local governments to (1) pay judgment awards that exceed the current liability limits under LGTCA and (2) pay increased insurance premiums for liability coverage against LGTCA claims." Additionally, MACo believes that the

volume of litigated cases could increase, as the higher damage requirements may encourage the continuation of cases that would otherwise settle, and could encourage more marginal cases to appear largely in pursuit of a settlement.

Baltimore City estimates that it paid out approximately \$1.4 million in claims in 2012 that reached the LGTCA liability cap. Had the limit been the amended levels in HB 113, the City estimates its payments would have been approximately \$2.1 million. An informal analysis by the Local Government Insurance Trust estimates that liability insurance premiums could increase by approximately 3% annually.

The LGTCA has worked well, successfully balancing the ability of plaintiffs to assert claims and recover damages against local governments versus recognizing the unique role of local governments in providing public services and preserving a local government's ability to adequately budget for risk. HB 113 would upset that successful balance, increasing its litigation and liability costs and potentially reducing its ability to provide vital public services. Accordingly, MACo urges the Committee to give HB 113 an **UNFAVORABLE** report.