



House Bill 130

Civil Actions – Award of Attorney's Fees and Expenses

MACo Position: **OPPOSE**

To: Judiciary Committee

Date: February 6, 2013

From: Leslie Knapp Jr.

The Maryland Association of Counties (MACo) OPPOSES House Bill 130 (HB 130). The bill would lead to an increase in litigation and costs for local governments and create an unequal legal system where a plaintiff is placed in a tactically better position than a defendant.

HB 130 would authorize a court to award a prevailing party reasonable attorney's fees and expenses in a civil action: (1) to enforce a right secured by the Maryland Constitution or Declaration of Rights; or (2) that has resulted in the enforcement of an important right affecting the public interest.

However, while a prevailing plaintiff can collect attorney's fees based on a variety of factors and considerations, a prevailing defendant is only allowed to recover fees if the court determines that the plaintiff's suit was frivolous. The bill also specifies that any attorney fees awarded under the bill's provisions do not count against the liability cap for the Maryland Tort Claims Act (MTCA) and the Local Government Tort Claims Act (LGTCA).

Increased Litigation

The bill would result in an increase in claims brought against the State and local governments. In addition to the potential award of attorney's fees for a prevailing plaintiff, the bill's provisions would apply to a broad and poorly-defined range of potential claims. Besides rights under the Maryland Constitution or Declaration of Rights, the bill authorizes a court to award attorney's fees in a civil action "that has resulted in the enforcement of an important right affecting the public interest."¹

¹ HB 130 of 2013, page 3, lines 13-14.

This nebulous provision vests significant (and potentially unconstitutional²) power in the hands of the court and will encourage plaintiff's attorneys to file more litigation and argue that their case would meet the bill's expansive criteria.

Unequal Treatment of Plaintiffs and Defendants

A balanced justice system is arguably premised on the equal treatment of plaintiffs and defendants as they argue their case before a court or jury. But while HB 130 is purportedly attempting to establish a more level "playing field" for low-income plaintiffs, in reality it will create an unlevel playing field where defendants are put at a disadvantage.

As mentioned previously, a prevailing defendant can only be awarded attorney's fees if the court finds that a plaintiff's lawsuit was frivolous. But prior court holdings have shown that the standards for such a finding are high. Thus a defendant is placed at a disadvantage which could become critical when discussing a settlement.

Because of the potential high costs of attorney's fees, defendant local governments may well have to consider settling with a plaintiff who is seeking unreasonably high damages rather than risk both liability and attorney's fees in an otherwise weak case. Again, HB 130 tilts the system in favor of a plaintiff.

Costs to Local Governments

HB 130 would increase the cost and liabilities of counties and municipalities. As the fiscal note for HB 130 indicates, the bill would increase local expenditures for "(1) payments for claims filed under the [LGTC] and other eligible claims; and (2) higher assessments for local governments if the Local Government Insurance Trust (LGIT) incurs losses from payments authorized by the bill."

In addition, like the Office of the Attorney General, local government law departments will likely see a potentially significant increase in expenditures as a result of additional claims being made under the bill. Costs could further increase if a local government must consider paying a previously unreasonably high settlement rather than risk an award of attorney's fees.

² In *Sugarloaf Citizens Association, Inc. v. Gudis*, 319 Md. 558, 572, the Court of Appeals reaffirmed that "unguided discretion, involving...questions of policy and expediency, is legislative, not judicial, discretion. It is the sort of discretion that may not, consistent with Article 8 of the Declaration of Rights, be vested in a court."

Conclusion

While HB 130 purports to address the access of low-income individuals to the justice system, the bill's provisions seem designed to vest additional power and opportunities in the hands of plaintiff attorneys. Many of the bill's provisions are flawed and the bill would require significant amendments to achieve its stated goal while minimizing the potential for abuse. Accordingly, MACo urges the Committee to give HB 130 an UNFAVORABLE report.