



## House Bill 568

### *Civil Actions – Award of Attorney's Fees and Expenses*

MACo Position: **OPPOSE**

To: Judiciary Committee

Date: February 12, 2013

From: Leslie Knapp Jr.

The Maryland Association of Counties (MACo) **OPPOSES** House Bill 568. The bill seeks to ensure there is adequate legal representation for low-income individuals asserting a State constitutional claim. In practice, the bill would likely lead to an increase in litigation and costs for the State and local governments and create an unbalanced system that favors plaintiff over defendants.

HB 568 would authorize a court to award a prevailing party reasonable attorney's fees and expenses in a civil action to enforce a right secured by the Maryland Constitution or Declaration of Rights. This includes claims such as due process, seizure of goods or property, and freedom of the press.

However, while a prevailing plaintiff can collect attorney's fees based on a variety of factors and considerations detailed in the bill, 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 for claims against the State do not count against the liability cap for the Maryland Tort Claims Act. Attorney fee awards in local government cases are subject to the liability cap of the Local Government Tort Claims Act (LGTCA).

MACo appreciates the efforts of both the bill's sponsor and key proponents to narrow the scope and impact this bill would have on county governments, and the bill is an improvement over last year's version (HB 130/SB 263 of 2013). However, MACo still believes the bill would lead to increased litigation and costs to local governments and unequal treatment between plaintiffs and defendants.

### **Increased Litigation**

The bill would result in an increase in claims brought against the State and local governments. While attorney fees in county government cases would be subject to the LGTCA cap, the bill still

incentivizes plaintiff attorneys to bring cases against county governments so long as they are not patently frivolous.

As the bill notes in its preamble, State constitutional and Declaration of Rights claims “are often for injunctive or nonmonetary relief and, without a monetary award.” In such circumstances, an attorney fee award is not “competing” with a plaintiff’s monetary award under the cap, making plaintiff attorneys more willing to take borderline cases that would not be accepted now.

### **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 568 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. Again, HB 568 encourages plaintiff attorneys to bring potentially weak but non-frivolous claims against a county with little downside if the county prevails.

### **Costs to Local Governments**

While the bill’s fiscal note correctly notes that an award of attorney fees is part of the liability cap under the LGTCA, it fails to account for increased county costs due to increased payouts under the LGTCA and ancillary costs.

Since many of the cases that would be brought under HB 568 involve nonmonetary damages, county costs would increase due to payment of attorney fees if the plaintiff prevails (where currently no fees would be paid). Additionally, counties will see increased costs to their law departments to defend against the additional claims and potentially higher assessments if the Local Government Insurance Trust (LGIT) incurs losses from payments authorized by the bill.

### **Conclusion**

HB 568 seeks to resolve the challenging issue of indigent individuals having full access to the justice system. However, the bill would vest additional power and opportunities in the hands of plaintiff attorneys at the expense of the State and local governments. Accordingly, MACo urges the Committee to give HB 568 an **UNFAVORABLE** report.