



House Bill 728

Governmental Tort Claims – Excessive Force or Misuse of Force by Law Enforcement Officer

MACo Position: **OPPOSE**

To: Judiciary Committee

Date: March 12, 2015

From: Leslie Knapp, Jr.

The Maryland Association of Counties (MACo) **OPPOSES** HB 728. While seeking to address a serious public policy issue, the bill would undermine the delicate equilibrium established by the Local Government Tort Claims Act (LGTCa) that allows local governments to manage risk and liability costs and create a precedent that would encourage other exceptions to the LGTCa caps.

HB 728 would increase the civil liability caps under the LGTCa for claims based on excessive force or misuse of force by a law enforcement officer. The limit for individual claims would increase from \$200,000 to \$1 million and the limit for all claims arising out of the same occurrence would increase from \$500,000 to \$1.5 million. Identical increases are made for the State under the Maryland Tort Claims Act.

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 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 states, the bill would create a "[p]otential significant increase in expenditures for local governments to (1) pay judgment awards that exceed the current liability limits under LGTCA; (2) pay increased insurance premiums for liability coverage against LGTCA claims; and (3) litigate additional claims filed as a result of the bill." MACo also 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.

Both large and small counties cite valid concerns about an increase in claims in the fiscal note. They also note that such cases are usually filed at liability limit and are among the most costly and time-consuming type of case to litigate.

Additionally, by creating a separate damage cap for a specific type of claim, the bill would invite future legislation establishing unique limits for other types of claims. This would further erode the purpose and functionality of the LGTCA.

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. While the intentions of HB 728 are laudable, the bill would ultimately 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 728 an **UNFAVORABLE** report.