



House Bill 1271

Local Government Tort Claims Act – Injury From Lead-Based Paint – Application of Notice Requirement

MACo Position: **OPPOSE**

To: Environmental Matters and Judiciary Committees

Date: February 26, 2014

From: Leslie Knapp Jr.

The Maryland Association of Counties (MACo) **OPPOSES** House Bill 1271. HB 1271 would create an exception to the 180-day notice requirement under the Local Government Tort Claims Act (LGTCa) for a claim arising from exposure to lead-based paint that occurred on or after January 1, 1988.

The LGTCa balances the ability of a plaintiff to assert a potential claim against a local government while providing reasonable protections to a 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.

The purpose of the LGTCa 180-day notice provision is to allow local governments to investigate the facts surrounding a potential claim in a timely manner. The notice requirement is not absolute – if a potential plaintiff shows good cause and the potential defendant cannot show that its defense has been prejudiced by the lack of required notice, then the court may entertain the suit even if the required notice was not given. Furthermore, case law provides that a plaintiff does not have to strictly comply with the notice provisions but only has to provide notice “in fact.” Meaning that the local government is apprised of its potential liability when the local government can still conduct a proper investigation - *Faulk v. Ewing*, 371 Md. 284, at 298-99 (2002).

HB 1271 would undermine the ability of a local government to properly conduct investigations in its defense, set a precedent for the creation of other notice exceptions, and subject local governments that manage housing stock to new and significant liabilities and costs. First, HB 1271 would significantly impede the ability of a local government to conduct a proper investigation regarding the facts and circumstances of the case. The bill would allow claims arising from lead paint going back to January 1, 1988, putting a local government at a substantial evidentiary disadvantage.

Second, by creating an exception to the LGTCA notice provision, the bill sets a precedent that will undoubtedly give rise to other proposed exceptions. Besides this bill, the General Assembly is also currently considering an exception to the notice requirement for claims involving injuries from playing on synthetic turf fields (HB 809). Once one exception is granted, it becomes very easy to grant a second or a third.

Finally, as the bill's fiscal note indicates, the bill would result in a "significant increase in expenditures for local governments" to litigate lead paint cases allowed under the bill's provisions and pay any judgments awarded in those cases. The fiscal note estimates that the Housing Authority for Baltimore City could incur over \$27 million in additional legal fees (not counting potential judgments) to defend against pending claims that might otherwise be dismissed for lack of proper notice.

In conclusion, the 180-day LGTCA notice provision gives local governments the ability gather facts and evidence about alleged claims in a timely and reasonable manner. HB 1271 would undermine the existing balance of the LGTCA and expose county governments to potentially significant liability and litigation costs. Accordingly, MACo urges the Committee to give HB 1271 an **UNFAVORABLE** report.