



## House Bill 1353

### *Local Government Tort Claims Act and Maryland Tort Claims Act – Damages Sustained on Artificial or Synthetic Turf Playing Fields*

MACo Position: **OPPOSE**

To: Judiciary Committee

Date: March 8, 2017

From: Leslie Knapp Jr.

The Maryland Association of Counties (MACo) **OPPOSES** HB 1353. The bill would create an unwarranted legal exception for artificial or synthetic turf playing fields and increase litigation and liability exposure for local governments.

HB 1353 would exempt injury claims caused by artificial or synthetic turf playing fields from the 1-year notice requirement and damage caps under the Local Government Tort Claims Act (LGTCAs). The bill also creates similar exceptions for the State under the Maryland Tort Claims Act.

County governments occupy a large amount of geographic space and provide a wide range of services for the public good that can give rise to injury claims. Such services include: 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.

The LGTCAs 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 LGTCAs's 1-year 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 – statute provides that: (1) 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; and (2) the 1-year notice does not apply if the local government had actual or constructive notice of the claimant's injury or the defect or circumstances giving rise to the claimant's injury.

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” which means that the local government is apprised of its potential liability at a time when the local government can still conduct a proper investigation (*Faulk v. Ewing*, 371 Md. 284, at 298-99 (2002)).

HB1353 would hinder the ability of a local government to properly conduct investigations in its defense. For most claims, a lack of timely notice would impede a local government’s ability to collect information about the alleged injury, putting the local government at an evidentiary disadvantage.

By creating a unique exception to the LGTCA’s provisions, the bill establishes a precedent that would invite the creation of additional exceptions in the future. Such a “slippery slope” undermines the entire purpose of the LGTCA.

The bill also exposes a local government to increased financial risk and uncertainty by excepting artificial and synthetic turf field injury claims from both the notice requirement and the damage caps. As the bill’s fiscal note indicates, the bill would likely result in a potential significant increase in local government expenditures to cover the costs of increased litigation, number of awarded judgments, and liability insurance premiums through insurers like the Local Government Insurance Trust (LGIT). Such increases could also result in a local government curtailing or restricting certain services it currently provides in order to meet heightened risk management requirements.

Additionally, MACo believes that an exception for artificial or synthetic turf fields is both unnecessary and unwarranted. The Maryland Association of County Park and Recreation Administrators conservatively estimates that more than 3.5 million individuals play on artificial or synthetic turf fields in Maryland every year and that research has countered claims that the fields increase the risk of injuries or cause other health concerns. The fields reduce exposure to pesticides and herbicides.

The LGTCA has worked well for several decades. It successfully balances the ability of plaintiffs to assert claims and recover damages against local governments while recognizing the unique role of local governments in providing public services and preserving a local government’s ability to adequately investigate claims made against it. By creating a dubious and unnecessary exception for artificial or synthetic turf fields, HB 1353 would upset that successful balance, reducing the ability of a local government to defend itself and increasing its litigation and liability costs. Accordingly, MACo urges the Committee to give HB 1353 an **UNFAVORABLE** report.