



Senate Bill 147

Local Government Tort Claims Act and Maryland Tort Claims Act – Repeal of Certain Notice Requirements

MACo Position: **OPPOSE**

To: Judicial Proceedings Committee

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From: Leslie Knapp Jr.

The Maryland Association of Counties (MACo) **OPPOSES** SB 147. The bill would repeal the 180-day notice requirement for claims against local governments under the Local Government Tort Claims Act (LGTCa). The bill would also repeal a 1-year claim filing provision under the Maryland Tort Claims Act for claims against the State.

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 a local government notice provision, which predates the LGTCa by decades, 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 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” 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)).

SB 147 would undermine the ability of a local government to properly conduct investigations in its defense. Local governments 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. For most claims, a lack

of a timely notice would impede a local government's ability to collect information about the alleged injury, putting the local government at an evidentiary disadvantage.

The Court of Appeals has acknowledged a similar rationale for the notice provision of the Maryland Government Tort Claims Act: "Requiring that notice be given to the State...obviously is designed to give the State early notice of claims against it. That early notice, in turn, affords the State the opportunity to investigate the claims while the facts are fresh and memories vivid, and, where appropriate, settle them at the earliest possible time." (*Haupt v. State*, 304 Md. 462, 470 (1995))

Additionally, 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.

The LGTCA has worked well for several decades, 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 investigate claims made against it. SB 147 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 SB 147 an **UNFAVORABLE** report.