



Senate Bill 210

*Elected Officials – Civil Cases – Liability for Costs, Judgments, and Settlements
(Taxpayer Protection Act of 2013)*

MACo Position: **SUPPORT WITH
AMENDMENTS**

To: Judicial Proceedings Committee

Date: March 13, 2013

From: Leslie Knapp Jr.

The Maryland Association of Counties (MACo) **SUPPORTS** SB 210 **WITH AMENDMENTS**. The bill would protect taxpayers from civil liability when an elected official operates outside of the bounds of the office.

SB 210 requires a local or State elected official to reimburse a local government or the State if the official is found to have violated or admits to violating a federal, State, or local law in a civil action. The same reimbursement requirement also applies if the elected official consents to a settlement agreement. Additionally the elected official, as opposed to the local government or the State, would be liable for any awarded damages in such an action.

MACo supports the bill's underlying proposition that a local government should not have to bear legal or liability costs for an elected official who is acting outside of the bounds of office. However, MACo believes the bill's provisions are drafted too broadly and would also apply to a situation where an elected official may be acting in good faith and with the support of the official's local government. In such instances, a local government would want to retain the ability to cover the elected official's potential civil liability.

Hence, MACo is offering the attached amendments that would authorize a local government to require an elected official to reimburse the local government for legal expenses in a civil action where the official has knowingly or recklessly violated the law. Similarly, it would be a local government's choice whether to assume liability in such a circumstance.

With the proposed amendments, SB 210 would provide additional liability protections for local governments for the improper actions of an elected official while still allowing a local government to assume the responsibility where an official either makes an unintentional mistake that does not rise to the level of recklessness or the county believes the official is acting in good faith. Accordingly, MACo recommends the Committee issue a report of **FAVORABLE WITH AMENDMENTS** for SB 210.

MACo Proposed Amendments for SB 210

Article – Courts and Judicial Proceedings

§5-302.

(a) (1) Each local government shall provide for its employees a legal defense in any action that alleges damages resulting from tortious acts or omissions committed by an employee within the scope of employment with the local government.

(2) ~~AN ELECTED OFFICIAL SHALL~~ A LOCAL GOVERNMENT MAY REQUIRE AN ELECTED OFFICIAL TO REIMBURSE THE LOCAL GOVERNMENT FOR ANY COSTS ASSOCIATED WITH A LEGAL DEFENSE PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION IF THE ELECTED OFFICIAL:

(i) IS FOUND TO HAVE KNOWINGLY OR RECKLESSLY VIOLATED FEDERAL, STATE, OR LOCAL LAW;

(ii) ADMITTED TO KNOWINGLY OR RECKLESSLY VIOLATING FEDERAL, STATE OR LOCAL LAW; OR

(iii) CONSENTS TO A SETTLEMENT AGREEMENT IN AN ACTION INVOLVING A KNOWING OR RECKLESS VIOLATION OF LAW.

(b) (1) Except as provided in paragraph (2) of this subsection, a person may not execute against an employee on a judgment rendered for tortious acts or omissions committed by the employee within the scope of employment with a local government.

(2) (i) An employee shall be fully liable for all damages awarded in an action in which it is found that the employee acted with actual malice.

(ii) ~~AN UNLESS A LOCAL GOVERNMENT AGREES TO ASSUME LIABILITY, AN~~ ELECTED OFFICIAL SHALL BE FULLY LIABLE FOR ALL DAMAGES IN AN ACTION WHICH:

1. IT IS FOUND THAT THE ELECTED OFFICIAL KNOWINGLY OR RECKLESSLY VIOLATED FEDERAL, STATE, OR LOCAL LAW; OR

2. THE ELECTED OFFICIAL ADMITTED TO KNOWINGLY OR RECKLESSLY VIOLATING FEDERAL, STATE, OR LOCAL LAW.

~~[(ii)] (iii)~~ In such circumstances the judgment may be executed against the employee and the local government may seek indemnification for any sums it is required to pay under § 5-303(b)(1) of this subtitle.

(C) IF AN ELECTED OFFICIAL CONSENTS TO A SETTLEMENT IN AN ACTION INVOLVING A KNOWING OR RECKLESS VIOLATION OF LAW, THE ELECTED OFFICIAL SHALL BE FULLY LIABLE FOR THE AMOUNT OF THE SETTLEMENT UNLESS A LOCAL GOVERNMENT AGREES TO ASSUME THE LIABILITY.

~~[(c)] (D)~~ If the injury sustained is compensable under the Maryland Workers' Compensation Act, an employee may not sue a fellow employee for tortious acts or omissions committed within the scope of employment.

~~[(d)] (E)~~ (1) The rights and immunities granted to an employee are contingent on the employee's cooperation in the defense of any action.

(2) If the employee does not cooperate, the employee forfeits any and all rights and immunities accruing to the employee under subsection (b) of this section.

§5-303.

(a) (1) Subject to paragraph (2) of this subsection, the liability of a local government may not exceed \$200,000 per an individual claim, and \$500,000 per total claims that arise from the same occurrence for damages resulting from tortious acts or omissions, or liability arising under subsection (b) of this section and indemnification under subsection (c) of this section.

(2) The limits on liability provided under paragraph (1) of this subsection do not include interest accrued on a judgment.

(b) (1) Except as provided in subsection (c) of this section, a local government shall be liable for any judgment against its employee for damages resulting from tortious acts or omissions committed by the employee within the scope of employment with the local government.

(2) A local government may not assert governmental or sovereign immunity to avoid the duty to defend or indemnify an employee established in this subsection.

(c) (1) A local government may not be liable for punitive damages.

(2) (i) Subject to subsection (a) of this section and except as provided in subparagraph (ii) of this paragraph, a local government may indemnify an employee for a judgment for punitive damages entered against the employee.

(ii) A local government may not indemnify a law enforcement officer for a judgment for punitive damages if the law enforcement officer has been found guilty under § 3-108 of the Public Safety Article as a result of the act or omission giving rise to the judgment, if the act or omission would constitute a felony under the laws of this State.

(3) A local government may not enter into an agreement that requires indemnification for an act or omission of an employee that may result in liability for punitive damages.

(D) ~~A-UNLESS A LOCAL GOVERNMENT AGREES TO ASSUME THE LIABILITY, THE LOCAL GOVERNMENT MAY NOT BE LIABLE FOR A JUDGMENT AGAINST AN ELECTED OFFICIAL FOR DAMAGES IF THE ELECTED OFFICIAL:~~

(1) IS FOUND TO HAVE KNOWINGLY OR RECKLESSLY VIOLATED FEDERAL, STATE, OR LOCAL LAW; OR

(2) ADMITTED TO KNOWINGLY OR RECKLESSLY VIOLATING FEDERAL, STATE, OR LOCAL LAW.

[(d)] (E) Notwithstanding the provisions of subsection (b) of this section, this subtitle does not waive any common law or statutory defense or immunity in existence as of June 30, 1987, and possessed by an employee of a local government.

[(e)] (F) A local government may assert on its own behalf any common law or statutory defense or immunity in existence as of June 30, 1987, and possessed by its employee for whose tortious act or omission the claim against the local government is premised and a local government may only be held liable to the extent that a judgment could have been rendered against such an employee under this subtitle.

[(f)] (G) (1) Lexington Market, Inc., in Baltimore City, and its employees, may not raise as a defense a limitation on liability described under § 5-406 of this title.

(2) Baltimore Public Markets Corporation, in Baltimore City, and its employees, may not raise as a defense a limitation on liability described under § 5-406 of this title.