



## Senate Bill 356

### *Local Government Tort Claims Act and Maryland Tort Claims Act – Statute of Limitations and Repeal of Certain Notice Requirements*

MACo Position: **OPPOSE**

To: Judicial Proceedings Committee

Date: February 16, 2016

From: Leslie Knapp Jr.

The Maryland Association of Counties (MACo) **OPPOSES** SB 356. This bill upends a carefully crafted compromise enacted just last year. MACo supported multiple reasonable changes to laws governing lawsuits against local governments, and urges the Committee to honor that resolution.

The bill would repeal the 1-year notice requirement for claims against local governments under the Local Government Tort Claims Act (LGTCAs). Under the Maryland Tort Claims Act, the bill would: (1) repeal a 1-year claim filing provision for claims against the State; and (2) provide that when a cause of action accrues in favor of a minor or mental incompetent, the claimant must file the action within 3 years after the disability is removed.

This Committee and the General Assembly considered and rejected the repeal of the LGTCAs notice provision last year. Instead, the General Assembly passed legislation (HB 113 of 2015) that extended the LGTCAs notice from 180 days to 1 year and increased its damage caps.<sup>1</sup> Both Houses put significant time and effort into reaching a final decision regarding the notice requirement and damage caps. MACo believes last year's carefully crafted compromise should stand.

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 a local government notice provision, which predates the LGTCAs 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

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<sup>1</sup> HB 113 increased the LGTCAs caps from \$200,000 to \$400,000 per individual claim and from \$500,000 to \$800,000 for all claims arising from the same incident or occurrence.

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 356 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, the bill’s fiscal note indicates the bill would impose a “[s]ignificant increase in expenditures for local governments to (1) litigate LGTCA cases that could otherwise be resolved through motions for summary judgment under existing statute; (2) pay judgments awarded in those cases; and (3) pay increased insurance premiums for liability coverage against LGTCA claims.” 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 356 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 356 an **UNFAVORABLE** report.