MARYLAND Association of COUNTIES

Senate Bill 356

Local Government Tort Claims Act and Maryland Tort Claims Act – Statute of Limitations and Notice Requirements

MACo Position: **OPPOSE**

Date: March 29, 2016

To: Judiciary Committee

From: Leslie Knapp Jr.

The Maryland Association of Counties (MACo) **OPPOSES** SB 356. This bill would limit the ability of the State or a local government facing a lawsuit to receive timely notice to correct a deficiency and prepare an adequate defense. The bill also 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.

As amended, the bill would repeal the 1-year notice requirement under the Local Government Tort Claims Act (LGTCA) for claims made by minors or mental incompetents. Such claimants must file the action within 3 years after the disability is removed (meaning a minor would have until he or she reaches 21 years of age). The bill contains an identical provision applicable to the Maryland Tort Claims Act.

This Committee and the General Assembly considered and rejected the repeal of the LGTCA notice provision last year. Instead, the General Assembly passed legislation (HB 113 of 2015) that extended the LGTCA notice from 180 days to 1 year and increased its damage caps.[1] 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 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.

[1] HB 113 of 2015 increased the LGTCA 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.

169 Conduit Street, Annapolis, MD 21401
410.269.0043 BALT/ANNAP ◆ 301.261.1140 WASH DC ◆ 410.268.1775 FAX
www.mdcounties.org

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 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 – especially since those claims can now be filed over 20 years after the alleged harm.

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 lack of notice limits the ability of a local government to identify and remedy a potential harm. If a local government is not made aware of a potential harmful condition or employee, the harm could needlessly affect other individuals. The sooner a local government is made aware of the potential harm, the sooner the government can address it for the benefit of the broader public and prevent other people from being injured in a similar manner.

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 address potential harms. Accordingly, MACo urges the Committee to give SB 356 an **UNFAVORABLE** report.