



## Senate Bill 934

### *Local Government Tort Claims Act – Notice Requirement - Exception*

MACo Position: **OPPOSE**

Date: March 3, 2016

To: Judicial Proceedings Committee

From: Leslie Knapp Jr. & Natasha Mehu

The Maryland Association of Counties (MACo) **OPPOSES** SB 934. The bill would create an unnecessary exception to the Local Government Tort Claims Act (LGTCA) notice requirement, upend a carefully crafted compromise enacted just last year, and potentially increase costs for local governments.

The bill would waive the notice requirement of the LGTCA for an alleged employment discrimination case filed with the Maryland Commission on Civil Rights (MCCR) in accordance with § 20-1004 of the State Government Article.

#### **2015 LGTCA Changes**

This Committee and the General Assembly considered and amended both the LGTCA notice provision and damage caps last year. MACo supported multiple reasonable changes to laws governing lawsuits against local governments, and urges the Committee to honor that resolution.

HB 113 of 2015 extended the LGTCA 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.

#### **Purpose of Notice Requirement and Precedent**

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

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<sup>1</sup> HB 113 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.

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.<sup>2</sup>

SB 934 would undermine the ability of a local government to properly conduct investigations in its defense and identify, and if necessary correct, potentially discriminatory employees or practices. As the bill's fiscal note indicates: "[i]t is unclear at what point a respondent local government is notified of an MCCR complaint (other than an MCCR complaint that corresponds to a complaint filed with a local human relations commission) prior to receiving the results of MCCR's investigation..."

The bill would also establish a precedent, however potentially narrow, that would allow for the adoption of other notice exceptions, undermining the inherent purpose of the requirement.

### **Increased Local Government Costs**

Finally, as the bill's fiscal note indicates, SB 934 would create a potential significant increase in local government expenditures, both in terms of increased potential litigation and increased insurance premiums. Local governments are already facing increased costs due to the raising of the damage caps in 2015 and this would further expand a local government's potential liability footprint.

### **Conclusion**

The LGTCA notice requirement serves the important role of alerting local governments to potential problems and providing them with adequate time to investigate. This system has worked well for decades. SB 934 would establish an unnecessary precedent that could undermine the purpose of the notice requirement, upset compromise changes to the LGTCA made just last year, and potentially increase costs for local governments. Accordingly, MACo urges the Committee to give SB 934 an **UNFAVORABLE** report.

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<sup>2</sup> 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 substantially comply by providing 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)).