

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 165
Judiciary

(Delegate Rosenberg, *et al.*)

Judicial Proceedings

Baltimore City - Local Government Tort Claims Act - Baltimore Public Markets Corporation and Lexington Market, Inc.

This bill expands the definition of “local government” for purposes of the Local Government Tort Claims Act (LGTCA) to include the Baltimore Public Markets Corporation (BPMC) in Baltimore City.

The bill also provides that a 180-day notice provision does not apply to actions brought against BPMC or Lexington Markets, Inc.

The bill may not be applied to any cause of action arising before the bill’s October 1, 2007 effective date.

Fiscal Summary

State Effect: None.

Local Effect: If this bill is adopted, Baltimore City will agree to indemnify BPMC’s markets under their self insurance program. This will decrease expenditures for liability coverage on the part of BPMC. BPMC will pay a fee to Baltimore City to be included in the program, and Baltimore City will then be liable to cover claims against BPMC. Although, the net effect on of this agreement is uncertain, Baltimore City does not expect net expenditures to increase significantly.

Small Business Effect: Potential meaningful.

Analysis

Current Law: The LGTCA defines local government to include counties, municipal corporations, and Baltimore City, and various agencies and authorities of local governments, such as community colleges, county public libraries, special taxing districts, nonprofit community service corporations, sanitary districts, housing authorities, and commercial district management authorities. The definition includes Lexington Market, Inc., in Baltimore City, but does not include BPMC.

The LGTCA limits the liability of a local government to \$200,000 per individual claim and \$500,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). It further provides that the local government is liable for tortious acts or omissions of its employees acting within the scope of employment. It thus prevents local governments from asserting a common law claim of governmental immunity from liability for such acts of its employees.

Generally, an action for unliquidated damages may not be brought against a local government or its employees unless notice of the claim is given within 180 days after the injury.

The Maryland Associations, Organizations, and Agents Act limits the liability of nonprofit organizations that carry insurance meeting specified minimums. It provides that agents (directors, officers, trustees, employees, and volunteers) of those nonprofit organizations may not be held personally liable as long as the acts are made without malice or gross negligence. Liability is limited to the applicable limit of insurance coverage for acts or omissions made in the course of duties by the nonprofit entity or its agents.

Background: There are six public markets located in Baltimore City: Avenue Market, Broadway Market, Cross Street Market, Hollins Market, Lexington Market, and Northeast Market. While Baltimore City owns the land and buildings of the markets, the markets themselves (with the exception of Lexington Market) are operated by BPMC, a nonprofit organization.

Chapter 556 of 2000 added Lexington Market to the LGTCA. In March 2005, BPMC and Lexington Market entered into a Teaming Agreement. Per this agreement, BPMC and Lexington Market share the same management and board of directors. The agreement also gives these two entities an identical relationship with Baltimore City. Baltimore City has agreed to indemnify BPMC against all tort claims for all BPMC markets. Baltimore City advises that the agreement will be finalized when and if this bill

is signed into law. Until the agreement is finalized, BPMC is paying for its private liability insurance.

BPMC currently expends approximately \$107,989 for liability insurance. This represents a \$70,685 decrease from the \$178,674 premium paid by BPMC for liability insurance in 2006, but a \$79,226 increase from the \$28,763 BPMC budgeted for liability insurance in 2000.

Local Effect: If this bill is adopted, BPMC will be rolled into Baltimore City's self-insurance program. As a result of this agreement, BPMC will pay a fee to Baltimore City, and Baltimore City will then be liable to cover claims against BPMC. This could result in a potential significant increase in expenditures for Baltimore City if claims against BPMC are unusually high, but Baltimore City expects that this scenario is unlikely. It is more likely that Baltimore City will experience no net effect from this bill, or a small increase in net revenue.

Small Business Effect: Potentially meaningful. Contingent of the passage of this bill, BPMC will be relieved of the need to purchase liability insurance. Instead, BPMC will pay a fee to Baltimore City. The exact amount of this fee is uncertain, but Baltimore County officials estimate the fee at around \$50,000, compared to the \$107,989 that BPMC currently expends for liability insurance.

Additional Information

Prior Introductions: Similar bills were introduced in the 2006 session. HB 362 of 2006 was passed by the House. SB 256 of 2006 received a hearing in the Senate Judicial Proceedings Committee but no further action was taken. SB 302 of 2004 also received a hearing in Judicial Proceedings but no further action was taken. SB 21 of 2003, SB 360 of 2002, and SB 861 of 2001 all received unfavorable reports from Judicial Proceedings.

Cross File: None designated, although SB 16 is identical.

Information Source(s): Maryland State Treasurer's Office, Baltimore City, Department of Legislative Services

Fiscal Note History: First Reader - February 2, 2007
ncs/jr Revised - House Third Reader - March 23, 2007

Analysis by: Nicholas M. Goedert

Direct Inquiries to:
(410) 946-5510
(301) 970-5510