

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 39
Judiciary

(Delegate Smigiel)

**State and Local Government - Officials and General Assembly Members -
Legislative Privilege Exception**

This bill includes a proposed constitutional amendment specifying that a provision establishing immunity for a Senator or Delegate from civil or criminal liability for words spoken in debate does not apply in a prosecution for demanding or receiving a bribe, fee, reward, or testimonial to either influence the performance of, or neglect or fail to perform, the official duties of a Senator or Delegate. The bill also specifies that a statutory provision establishing immunity from civil or criminal liability for a city or town councilman, county commissioner, county councilman, or similar official for words spoken at a meeting of the council or board of commissioners, or at a meeting of a committee or subcommittee, does not apply to an action involving the attempted bribery or bribery of a public employee.

The statutory change made by the bill takes effect June 1, 2012.

Fiscal Summary

State Effect: None. It is assumed that the potential for increased costs to include any constitutional amendments proposed by the General Assembly on the ballot at the next general election will have been anticipated in the State Board of Elections' budget.

Local Effect: None. It is assumed that the potential for increased costs to notify voters of any constitutional amendments proposed by the General Assembly, and to include any proposed constitutional amendments on the ballot at the next general election, will have been anticipated in local boards of elections' budgets.

Small Business Effect: None.

Analysis

Current Law/Background: The Maryland Constitution, under Article III, § 18, specifies that no Senator or Delegate may be liable in any civil action, or criminal prosecution, for words spoken in debate. Under the Courts and Judicial Proceedings Article, § 5-501, of the Annotated Code, a civil or criminal action may not be brought against a city or town councilman, county commissioner, county councilman, or similar official by whatever name known, for words spoken at a meeting of the council or board of commissioners or at a meeting of a committee or subcommittee.

In a recent decision, *State v. Holton*, 420 Md. 530 (2011), the Maryland Court of Appeals affirmed the dismissal of an indictment of a local elected official based on the immunity provided by § 5-501 of the Courts and Judicial Proceedings Article. The indictment, alleging that bribery and other crimes were committed by the official, included various assertions of legislative actions taken by the official. In its opinion, the Court of Special Appeals described the legislative immunity or privilege of federal, State, and local legislative officials:

“[M]embers of legislative bodies – whether Congress, State legislatures or local councils – may be prosecuted for criminal behavior, including offenses such as bribery, misfeasance in office and criminal corruption. These legislators have no general immunity from criminal prosecution. Under what are often referred to as the “speech and debate” clauses in the Federal Constitution (Art. I, § 6) and the Maryland Constitution (Md. Decl. Of Rts. Art. 10 and Art. III, § 18), there is a caveat to that principle, however. Members of those bodies generally may not be compelled to answer for or defend, in a non-legislative governmental forum, what they say or do in the legislative process. C.J.P. § 5-501 provides the same level of protection to members of local legislative bodies.” (*See State v. Holton*, 193 Md. App. 322 (2010))

State Fiscal Effect: State costs of printing absentee and provisional ballots may increase to the extent inclusion of the proposed constitutional amendment on the ballot at the next general election would result in a need for a larger ballot card size or an additional ballot card for a given ballot (the content of ballots varies across the State, depending on the offices, candidates, and questions being voted on). Any increase in costs, however, is expected to be relatively minimal, and it is assumed that the potential for such increased costs will have been anticipated in the State Board of Elections’ budget. Pursuant to Chapter 564 of 2001, the State Board of Elections shares the costs of printing paper ballots with the local boards of elections.

Local Fiscal Effect: Local boards of elections’ printing and mailing costs may increase to include information on the proposed constitutional amendment with specimen ballots

mailed to voters prior to the next general election and to include the proposed amendment on absentee and provisional ballots. It is assumed, however, that the potential for such increased costs will have been anticipated in local boards of elections' budgets.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Ethics Commission, Judiciary (Administrative Office of the Courts), State Prosecutor's Office, Maryland Association of Counties, Maryland Municipal League, Department of Legislative Services

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ncs/kdm

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