

SENATE BILL 210

L6, P1, D3

EMERGENCY BILL

3lr0513

By: **Senator Simonaire**

Introduced and read first time: January 18, 2013

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Elected Officials – Civil Cases – Liability for Costs, Judgments, and**
3 **Settlements**
4 **(Taxpayer Protection Act of 2013)**

5 FOR the purpose of requiring certain elected officials of a local government, under
6 certain circumstances, to reimburse the local government for certain costs
7 related to legal defenses provided by the local government; providing that,
8 under certain circumstances, certain elected officials of a local government are
9 fully liable for damages awarded in or for the amount of a settlement resulting
10 from certain actions; providing that, under certain circumstances, a local
11 government may not be held liable for judgments against certain elected
12 officials; altering the provisions to be included in a certain agreement to enable
13 the Attorney General to require, under certain circumstances, certain State
14 officers to reimburse the Attorney General for certain costs; providing that,
15 under certain circumstances, the State may not be held liable to certain State
16 officers for the reimbursement of certain costs under a certain provision of law;
17 prohibiting the Board of Public Works, under certain circumstances, from
18 paying a settlement or judgment under a certain provision of law; providing for
19 the application of this Act; making this Act an emergency measure; and
20 generally relating to liability for costs, judgments, and settlements related to
21 civil cases filed against elected officials.

22 BY repealing and reenacting, with amendments,
23 Article – Courts and Judicial Proceedings
24 Section 5–302 and 5–303
25 Annotated Code of Maryland
26 (2006 Replacement Volume and 2012 Supplement)

27 BY repealing and reenacting, with amendments,
28 Article – State Government
29 Section 12–305, 12–310, and 12–404

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2009 Replacement Volume and 2012 Supplement)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
4 MARYLAND, That the Laws of Maryland read as follows:

5 **Article – Courts and Judicial Proceedings**

6 5–302.

7 (a) (1) Each local government shall provide for its employees a legal
8 defense in any action that alleges damages resulting from tortious acts or omissions
9 committed by an employee within the scope of employment with the local government.

10 (2) AN ELECTED OFFICIAL SHALL REIMBURSE THE LOCAL
11 GOVERNMENT FOR ANY COSTS ASSOCIATED WITH A LEGAL DEFENSE PROVIDED
12 UNDER PARAGRAPH (1) OF THIS SUBSECTION IF THE ELECTED OFFICIAL:

13 (I) IS FOUND TO HAVE VIOLATED FEDERAL, STATE, OR
14 LOCAL LAW;

15 (II) ADMITTED TO VIOLATING FEDERAL, STATE, OR LOCAL
16 LAW; OR

17 (III) CONSENTS TO A SETTLEMENT AGREEMENT.

18 (b) (1) Except as provided in paragraph (2) of this subsection, a person
19 may not execute against an employee on a judgment rendered for tortious acts or
20 omissions committed by the employee within the scope of employment with a local
21 government.

22 (2) (i) An employee shall be fully liable for all damages awarded in
23 an action in which it is found that the employee acted with actual malice.

24 (II) AN ELECTED OFFICIAL SHALL BE FULLY LIABLE FOR
25 ALL DAMAGES AWARDED IN AN ACTION IN WHICH:

26 1. IT IS FOUND THAT THE ELECTED OFFICIAL
27 VIOLATED FEDERAL, STATE, OR LOCAL LAW; OR

28 2. THE ELECTED OFFICIAL ADMITTED TO VIOLATING
29 FEDERAL, STATE, OR LOCAL LAW.

1 [(ii)] (III) In such circumstances the judgment may be executed
2 against the employee and the local government may seek indemnification for any sums
3 it is required to pay under § 5–303(b)(1) of this subtitle.

4 (C) IF AN ELECTED OFFICIAL CONSENTS TO A SETTLEMENT IN AN
5 ACTION, THE ELECTED OFFICIAL SHALL BE FULLY LIABLE FOR THE AMOUNT OF
6 THE SETTLEMENT.

7 [(c)] (D) If the injury sustained is compensable under the Maryland
8 Workers' Compensation Act, an employee may not sue a fellow employee for tortious
9 acts or omissions committed within the scope of employment.

10 [(d)] (E) (1) The rights and immunities granted to an employee are
11 contingent on the employee's cooperation in the defense of any action.

12 (2) If the employee does not cooperate, the employee forfeits any and
13 all rights and immunities accruing to the employee under subsection (b) of this section.

14 5–303.

15 (a) (1) Subject to paragraph (2) of this subsection, the liability of a local
16 government may not exceed \$200,000 per an individual claim, and \$500,000 per total
17 claims that arise from the same occurrence for damages resulting from tortious acts or
18 omissions, or liability arising under subsection (b) of this section and indemnification
19 under subsection (c) of this section.

20 (2) The limits on liability provided under paragraph (1) of this
21 subsection do not include interest accrued on a judgment.

22 (b) (1) Except as provided in [subsection (c)] **SUBSECTIONS (C) AND (D)**
23 of this section, a local government shall be liable for any judgment against its
24 employee for damages resulting from tortious acts or omissions committed by the
25 employee within the scope of employment with the local government.

26 (2) A local government may not assert governmental or sovereign
27 immunity to avoid the duty to defend or indemnify an employee established in this
28 subsection.

29 (c) (1) A local government may not be liable for punitive damages.

30 (2) (i) Subject to subsection (a) of this section and except as
31 provided in subparagraph (ii) of this paragraph, a local government may indemnify an
32 employee for a judgment for punitive damages entered against the employee.

33 (ii) A local government may not indemnify a law enforcement
34 officer for a judgment for punitive damages if the law enforcement officer has been

1 found guilty under § 3–108 of the Public Safety Article as a result of the act or
 2 omission giving rise to the judgment, if the act or omission would constitute a felony
 3 under the laws of this State.

4 (3) A local government may not enter into an agreement that requires
 5 indemnification for an act or omission of an employee that may result in liability for
 6 punitive damages.

7 **(D) A LOCAL GOVERNMENT MAY NOT BE LIABLE FOR A JUDGMENT**
 8 **AGAINST AN ELECTED OFFICIAL FOR DAMAGES IF THE ELECTED OFFICIAL:**

9 **(1) IS FOUND TO HAVE VIOLATED FEDERAL, STATE, OR LOCAL**
 10 **LAW; OR**

11 **(2) ADMITTED TO VIOLATING FEDERAL, STATE, OR LOCAL LAW.**

12 **[(d)] (E)** Notwithstanding the provisions of subsection (b) of this section,
 13 this subtitle does not waive any common law or statutory defense or immunity in
 14 existence as of June 30, 1987, and possessed by an employee of a local government.

15 **[(e)] (F)** A local government may assert on its own behalf any common law
 16 or statutory defense or immunity in existence as of June 30, 1987, and possessed by its
 17 employee for whose tortious act or omission the claim against the local government is
 18 premised and a local government may only be held liable to the extent that a judgment
 19 could have been rendered against such an employee under this subtitle.

20 **[(f)] (G)** (1) Lexington Market, Inc., in Baltimore City, and its
 21 employees, may not raise as a defense a limitation on liability described under § 5–406
 22 of this title.

23 (2) Baltimore Public Markets Corporation, in Baltimore City, and its
 24 employees, may not raise as a defense a limitation on liability described under § 5–406
 25 of this title.

26 **Article – State Government**

27 12–305.

28 Before a State officer or State employee may be represented under this Part II
 29 of this subtitle, the Attorney General shall have the officer or employee enter into an
 30 agreement that:

31 (1) enables the Attorney General to require, from the officer or
 32 employee, reimbursement of court costs, reasonable counsel fees, and other expenses
 33 in representing the officer or employee if:

1 (i) 1. it is determined judicially that:

2 [1.] A. the defense of sovereign immunity is not
3 available to the officer or employee;

4 [2.] B. the injuries arose out of an act or omission of
5 the officer or employee; and

6 [3.] C. the act or omission was malicious or grossly
7 negligent or, when the act or the omission was made, the officer or employee was not
8 performing a duty within the scope of the employment of the officer or employee; and

9 [(ii)] 2. the officer or employee did not give the Attorney
10 General complete information or gave the Attorney General information that is false
11 or misleading;

12 (II) THE STATE OFFICER IS A STATE ELECTED OFFICIAL
13 AND THE STATE OFFICER:

14 1. WAS FOUND TO HAVE VIOLATED FEDERAL, STATE,
15 OR LOCAL LAW;

16 2. ADMITTED TO VIOLATING FEDERAL, STATE, OR
17 LOCAL LAW; OR

18 3. CONSENTED TO A SETTLEMENT;

19 (2) authorizes collection of the reimbursement, as a debt due to the
20 State;

21 (3) states that:

22 (i) this representation of the officer or employee does not
23 constitute an obligation for the State to pay a settlement, if the claim is settled, or a
24 judgment, if judgment is rendered against the officer or employee;

25 (ii) the State and its units are not responsible for payment of
26 the judgment; and

27 (iii) the officer or employee is entitled to submit to the Board of
28 Public Works an application for payment of a settlement or judgment;

29 (4) provides that:

1 (i) the Attorney General may not compromise or settle the
2 claim against the officer or employee without the written consent of the officer or
3 employee;

4 (ii) if the officer or employee will not consent, the Attorney
5 General may withdraw the appearance in accordance with the appropriate court rules;
6 and

7 (iii) the State is not responsible for any costs after the
8 withdrawal; and

9 (5) includes any other provisions that the Attorney General considers
10 necessary.

11 12–310.

12 (a) This section does not apply to the extent that a State officer or State
13 employee is reimbursed under § 12–309 of this subtitle.

14 (b) **[The] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION,**
15 **THE** State is liable to a State officer or State employee for reimbursement of court
16 costs, counsel fees, and other reasonable expenses that the officer or employee incurs
17 in defending an action or proceeding if:

18 (1) the Attorney General declined representation under § 12–304(b)(1)
19 of this subtitle; and

20 (2) it is determined judicially that:

21 (i) the defense of sovereign immunity is available to the officer
22 or employee; or

23 (ii) injuries arose from an act or omission of the officer or
24 employee and, when the act or the omission was made, the officer or employee was
25 acting within the scope of employment and the act or omission was not malicious and
26 was not grossly negligent.

27 **(C) THE STATE MAY NOT BE HELD LIABLE TO A STATE OFFICER WHO IS**
28 **A STATE ELECTED OFFICIAL FOR REIMBURSEMENT UNDER SUBSECTION (B) OF**
29 **THIS SECTION IF THE STATE OFFICER:**

30 **(1) WAS FOUND TO HAVE VIOLATED FEDERAL, STATE, OR LOCAL**
31 **LAW;**

32 **(2) ADMITTED TO VIOLATING FEDERAL, STATE, OR LOCAL LAW;**
33 **OR**

1 **(3) CONSENTED TO A SETTLEMENT.**

2 **[(c)] (D)** Reimbursement under this section shall be subject to the
3 provisions of Subtitle 5 of this title.

4 12-404.

5 **(A)** Subject to the limitations in this subtitle **AND EXCEPT AS PROVIDED IN**
6 **SUBSECTION (B) OF THIS SECTION**, the Board of Public Works may:

7 (1) pay wholly or partly a settlement or judgment against the State or
8 any State personnel; and

9 (2) include, in the payment, counsel fees and costs.

10 **(B) (1) THE BOARD OF PUBLIC WORKS MAY NOT PAY WHOLLY OR**
11 **PARTLY A SETTLEMENT UNDER SUBSECTION (A) OF THIS SECTION IF:**

12 **(I) THE SETTLEMENT RESULTED FROM AN ACTION AGAINST**
13 **A STATE OFFICER WHO IS A STATE ELECTED OFFICIAL; AND**

14 **(II) THE STATE OFFICER CONSENTED TO THE SETTLEMENT.**

15 **(2) THE BOARD OF PUBLIC WORKS MAY NOT PAY WHOLLY OR**
16 **PARTLY A JUDGMENT UNDER SUBSECTION (A) OF THIS SECTION IF:**

17 **(I) THE JUDGMENT RESULTED FROM AN ACTION AGAINST A**
18 **STATE OFFICER WHO IS A STATE ELECTED OFFICIAL; AND**

19 **(II) THE STATE OFFICER:**

20 1. WAS FOUND IN VIOLATION OF FEDERAL, STATE,
21 **OR LOCAL LAW; OR**

22 2. ADMITTED TO VIOLATING FEDERAL, STATE, OR
23 **LOCAL LAW.**

24 SECTION 2. AN BE IT FURTHER ENACTED, That this Act shall be construed
25 to apply only to causes of action that result in a judgment or settlement after the
26 effective date of this Act.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency
28 measure, is necessary for the immediate preservation of the public health or safety,
29 has been passed by a ye and nay vote supported by three-fifths of all the members

1 elected to each of the two Houses of the General Assembly, and shall take effect from
2 the date it is enacted.