HOUSE BILL 147

L2, D3 4lr0711
CF 4lr1760

By: **Montgomery County Delegation**
Introduced and read first time: January 13, 2014
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Montgomery County – Maryland Tort Claims Act – Human Services Torts

MC 13–14

FOR the purpose of clarifying that, under certain circumstances, Montgomery County acts as a unit of the State and, for the purposes of certain tort claims, the State shall be named as the proper defendant; altering certain procedures; altering a certain definition; providing for the application of this Act; and generally relating to the Maryland Tort Claims Act and claims arising out of human services administered by Montgomery County.

BY repealing and reenacting, with amendments,
Article – State Government
Section 12–103.2 and 12–106
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 5–304
Annotated Code of Maryland
(2013 Replacement Volume and 2013 Supplement)

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

Article – State Government

12–103.2.

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

(a) In this section, "tort claim" means a tort claim**, INCLUDING STATE AND CONSTITUTIONAL TORTS,** filed in **[**State court against the Montgomery County government relating to**] COURT ARISING OUT OF** the administration of a State program under Title 3, Subtitle 4 of the Human Services Article **BY THE MONTGOMERY COUNTY GOVERNMENT**.

(b) **(1)** A tort claim shall be considered, defended, settled, and paid in the same manner as any other claim covered by the Montgomery County Self–Insurance Fund.

(2) UNDER THIS SECTION, WHENEVER MONTGOMERY COUNTY ADMINISTERS A STATE PROGRAM UNDER TITLE 3, SUBTITLE 4 OF THE HUMAN SERVICES ARTICLE, MONTGOMERY COUNTY ACTS AS A UNIT OF THE STATE, AND ANY TORT CLAIM SHALL NAME THE STATE OF MARYLAND AS THE PROPER DEFENDANT.

(c) Liability for a tort claim may not exceed the insurance coverage granted to units of State government under Title 9 of the State Finance and Procurement Article.

(d) (1) The State Treasurer is not liable under § 9–107(c) of the State Finance and Procurement Article for a tort claim.

(2) For tort claims, the duties, responsibilities, and liabilities of the Treasurer under this subtitle shall be assumed by the Montgomery County Self–Insurance Fund **WITH DAMAGES LIMITED IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION**.

(E) THE NOTICE REQUIREMENTS UNDER § 12–106 OF THIS SUBTITLE SHALL APPLY TO ALL TORT CLAIMS MADE UNDER THIS SECTION.

12–106.

(a) This section does not apply to a claim that is asserted by cross–claim, counterclaim, or third–party claim.

(b) A claimant may not institute an action under this subtitle unless:

(1) the claimant submits a written claim to the Treasurer or a designee of the Treasurer **AND, IN THE CASE OF A TORT CLAIM UNDER § 12–103.2 OF THIS SUBTITLE, THE COUNTY EXECUTIVE OF MONTGOMERY COUNTY** within 1 year after the injury to person or property that is the basis of the claim;

(2) the Treasurer or designee **AND, IN THE CASE OF A TORT CLAIM UNDER § 12–103.2 OF THIS SUBTITLE, THE COUNTY EXECUTIVE OF MONTGOMERY COUNTY** denies the claim finally; and

(3) the action is filed within 3 years after the cause of action arises.

Article – Courts and Judicial Proceedings

5–304.

(a) This section does not apply to an action against a nonprofit corporation described in § 5–301(d)(23), (24), (25), (26), or (28) of this subtitle or its employees.

(b) (1) Except as provided in subsections (a) and (d) of this section **AND AS OTHERWISE PROVIDED IN §§ 12–103.2 AND 12–106 OF THE STATE GOVERNMENT ARTICLE**, an action for unliquidated damages may not be brought against a local government or its employees unless the notice of the claim required by this section is given within 180 days after the injury.

(2) The notice shall be in writing and shall state the time, place, and cause of the injury.

(c) (1) The notice required under this section shall be given in person or by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, by the claimant or the representative of the claimant.

(2) Except as otherwise provided, if the defendant local government is a county, the notice required under this section shall be given to the county commissioners or county council of the defendant local government.

(3) If the defendant local government is:

(i) Baltimore City, the notice shall be given to the City Solicitor;

(ii) Howard County or Montgomery County, the notice shall be given to the County Executive; and

(iii) Anne Arundel County, Baltimore County, Harford County, or Prince George's County, the notice shall be given to the county solicitor or county attorney.

(4) For any other local government, the notice shall be given to the corporate authorities of the defendant local government.

(d) Notwithstanding the other provisions of this section, unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, upon motion and for good cause shown the court may entertain the suit even though the required notice was not given.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.