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FISCAL AND POLICY NOTE
First Reader

House Bill 1373
Judiciary

(Delegate Wilkins, *et al.*)

Maryland Tort Claims Act - Certain Claim Requirement

This bill requires a court to entertain a cause of action under the Maryland Tort Claims Act (MTCA) even if the claimant fails to submit a written claim to the Treasurer or a designee of the Treasurer within one year after the injury to person or property that is the basis of the claim, as required under MTCA. The bill retains the statutory provision that a court is not required to entertain the cause of action if the State can affirmatively show that its defense has been prejudiced by the claimant's failure to submit a claim.

The bill repeals the statutory requirement that a plaintiff who did not meet the written claim requirement under MTCA must make a motion for the court to entertain the lawsuit and show good cause why the court should entertain the lawsuit.

The bill applies prospectively to causes of action arising on or after the bill's October 1, 2017 effective date.

Fiscal Summary

State Effect: Potential significant increase in State Insurance Trust Fund (SITF) expenditures beginning in FY 2019, if the bill results in higher SITF payments and increased litigation costs, as discussed below. Revenues are not affected.

Local Effect: The bill does not materially impact local finances.

Small Business Effect: Potential meaningful impact on small business law firms that are able to litigate or proceed with MTCA lawsuits as a result of the bill.

Analysis

Current Law: In general, the State is immune from tort liability for the acts of its employees and cannot be sued in tort without its consent. Under MTCA, the State statutorily waives its own common law (sovereign) immunity on a limited basis. MTCA applies to tortious acts or omissions, including State constitutional torts, by “State personnel” performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. Under MTCA, the State essentially “...waives sovereign or governmental immunity and substitutes the liability of the State for the liability of the state employee committing the tort.” *Lee v. Cline*, 384 Md. 245, 262 (2004).

However, MTCA limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. (Chapter 132 of 2015 increased the liability limit under MTCA from \$200,000 to \$400,000 for causes of action arising on or after October 1, 2015.)

In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State’s color of authority or sovereign immunity and may be held personally liable.

MTCA also contains specific notice and procedural requirements. A claimant is prohibited from instituting an action under MTCA unless (1) the claimant submits a written claim to the State Treasurer or the Treasurer’s designee within one year after the injury to person or property that is the basis of the claim; (2) the State Treasurer/designee denies the claim finally; and (3) the action is filed within three years after the cause of action arises.

Pursuant to Chapter 623 of 2016, the submission of a written claim and denial of claim requirements do not apply if, within one year after the injury to person or property that is the basis of the claim, the State has actual or constructive notice of (1) the claimant’s injury or (2) the defect or circumstances giving rise to the claimant’s injury.

The claim must (1) contain a concise statement of facts that sets forth the nature of the claim, including the date and place of the alleged tort; (2) demand specific damages; (3) state the name and address of each party; (4) state the name, address, and telephone number of counsel for the claimant, if any; and (5) be signed by the claimant or the legal representative or counsel for the claimant.

The purpose of the written claim provision is “...to give the State early notice of claims against it. That early notice, in turn, affords the State the opportunity to investigate the claims while the facts are fresh and memories vivid, and, where appropriate, settle them at the earliest time.” *Haupt v. State*, 340 Md. 462, 470 (1995).

However, pursuant to Chapter 132 of 2015, a court, upon motion of a claimant who failed to submit a written claim to the State Treasurer or the Treasurer's designee within the one-year time period under MTCA, and for good cause shown, may entertain the claimant's action unless the State can affirmatively show that its defense has been prejudiced by the claimant's failure to submit the claim.

As previously stated, the "good cause" requirement under MTCA is a result of legislation enacted in 2015. However, the Local Government Tort Claims Act (LGTCA) has contained a good cause requirement for several years. A claimant in an LGTCA lawsuit demonstrates "good cause" when he/she prosecutes a claim "...with that degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances." *Heron v. Strader*, 361 Md. 258, 271(2000) quoting *Westfarm Association v. Washington Suburban Sanitary Commission*, 66 F.3d 669, 676-77(4th Cir. 1995).

State Expenditures: Special fund expenditures may increase beginning in fiscal 2019, perhaps significantly, depending on litigation costs and the monetary value of SITF payments for claims affected by the bill.

The bill (1) repeals the requirement that an MTCA claimant make a motion and show good cause why a court should entertain his/her lawsuit when the claimant did not submit a written claim as required under MTCA and (2) requires a court (rather than authorizes a court under current law) to entertain an MTCA lawsuit from such a plaintiff/claimant unless the State can affirmatively show that its defense was prejudiced by the failure of the defendant to submit a written claim.

Thus, the bill may result in (1) an increase in MTCA lawsuits for claims that would be dismissed under current law because the claimant failed to make a motion and show good cause for the court to entertain the claimant's lawsuit and (2) an increase in litigation of lawsuits involving older claims.

Both of these factors may result in (1) an increase in expenditures to investigate older claims; (2) a decrease in the ability of the State to properly investigate claims and resolve claims before litigation; and (3) an increase in litigation costs and costs for payments of claims from MTCA lawsuits brought under the bill. The extent of the bill's fiscal impact depends on the volume of claims filed as a result of the bill, the costs associated with litigating and paying claims in applicable cases, and the ability of the State to successfully show that its defense has been prejudiced by the defendant's failure to submit a written claim.

Chapter 623 of 2016 exempts MTCA claimants from the requirements for submission of a written claim and denial of claim as they apply to claims for which the State has actual or constructive notice of the claimant's injury or the defect or circumstances giving rise to the

claimant's injury. Since Chapter 623 took effect on October 1, 2016, the magnitude of Chapter 623's effect on the pool of claimants affected by the bill is unclear at this time.

Claims under MTCA are paid out of SITF, which is administered by the Treasurer's Office. The Treasurer's Insurance Division handles approximately 5,000 MTCA claims each year. SITF paid the following amounts in tort claims under MTCA: \$5.8 million in fiscal 2014; \$7.3 million in fiscal 2015; \$5.6 million in fiscal 2016; and \$9.0 million in fiscal 2017 (projected). The Governor's proposed fiscal 2018 budget includes a \$10.5 million appropriation for tort claims (including motor vehicle torts) under MTCA. The funds are to be transferred to SITF.

According to the Treasurer's Office, one-third of the estimated 5,000 claims received each year are denied on the basis of untimely notice.

Depending on the extent to which the bill increases SITF payments, the bill may result in higher premium assessments against relevant State agencies. Agencies pay premiums to SITF that are comprised of an assessment for each employee covered and SITF payments for torts committed by the agency's employees. The portion of the assessment attributable to losses is allocated over five years. The Treasurer is charged with setting premiums "so as to produce funds that approximate the payments from the fund." (*See* Md. State Fin. & Proc. Code Ann. § 9-106(b).) The actuary assesses SITF's reserves and each agency's loss experience for the various risk categories, which include tort claims and constitutional claims. An agency's loss history, consisting of settlements and judgments incurred since the last budget cycle, comprises part of the agency's annual premium. That amount is electronically transferred to SITF from the appropriations in an agency's budget.

Additional Information

Prior Introductions: SB 935 of 2016, a similar bill as amended by the Senate, received a favorable with amendments report by the House Judiciary Committee. No further action was taken on the bill.

Cross File: SB 336 (Senator Manno) - Judicial Proceedings.

Information Source(s): Maryland Commission on Civil Rights; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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