

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 32

(Chair, Judicial Proceedings Committee)(By Request -
Departmental - Transportation)

Judicial Proceedings

Maryland Transit Administration - Limitation of Liability

This departmental bill limits the liability of the Maryland Transit Administration (MTA) in a tort action to \$800,000 to a single claimant for injuries arising from a single incident or occurrence. The bill applies prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the bill's October 1, 2021 effective date.

Fiscal Summary

State Effect: Significant decrease in Transportation Trust Fund (TTF) expenditures on tort liability awards, as discussed below. Revenues are not affected.

Local Effect: Potential decrease in liability premiums by local government agencies contracting with MTA, as discussed below. Revenues are not affected.

Small Business Effect: The Maryland Department of Transportation has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Current Law: MTA's tort liability is governed by the Transportation Article. Unlike the Maryland Tort Claims Act, which limits the State's liability to \$400,000 to a single claimant, the Transportation Article does not include a limit on liability.

Background: MTA advises that the bill is needed to provide MTA with tort liability limits that are consistent with those afforded to all other State and local agencies. MTA was not made subject to the limits of the Maryland Tort Claims Act when it was created because it

was the successor of the Baltimore Transit Company, a private business that would not been subject to the Act. MTA recognizes that its services carry more risk than those provided by other State agencies, and as a result, wishes to set the liability limits at \$800,000 instead of the \$400,000 mandated by the Maryland Tort Claims Act.

MTA advises that it self-insures for approximately \$10.0 million per bus accident and \$5 million per rail accident. MTA also carries excess liability coverage totaling \$295 million for bus accidents and \$500 million for rail accidents. Furthermore, any company that contracts with MTA is required to hold a \$5 million liability insurance policy.

State Fiscal Effect: The bill significantly decreases TTF expenditures for MTA in three ways; however, each impact depends on MTA's future experiences with contracts and tort claims and, therefore, cannot be precisely estimated at this time.

First, TTF expenditures decrease directly in future years due to lower liability awards. *For illustrative purposes*, MTA advises that in fiscal 2019 and 2020, it paid out five liability awards in excess of \$800,000. If the limitations established by the bill were in effect for these claims, MTA's expenditures would have decreased by \$10.4 million for those claims. Second, MTA advises that the bill's liability cap may allow it to decrease expenditures on procurements from third-party vendors. Without the \$5.0 million liability insurance coverage requirement, these vendors may be able to provide services to MTA at lower prices. Third, the liability cap in the bill may allow MTA to reduce its excess liability insurance policies; the policies it currently carries exceed those required by federal transportation laws and regulations.

Local Fiscal Effect: The bill may facilitate collaborative projects between MTA and local governments that might have been stymied due to high insurance coverage requirements.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Transportation; Maryland State Treasurer's Office; Department of Legislative Services

Fiscal Note History: First Reader - January 11, 2021
rh/lgc

Analysis by: Richard L. Duncan

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

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Maryland Transit Administration – Limitation of Liability

BILL NUMBER: SB 32

PREPARED BY: Jurise Carter, Manager – MDOT MTA Transit Insurance Group

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON
MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON
MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

Transportation Trust Fund expenditures by MTA will decrease significantly in future years, reflecting lower liability awards. Because MTA self-insures, it is difficult to estimate the amount by which expenditures decrease as a result of the bill. Since 2011, four liability awards in excess of \$1 million have been awarded to single claimants, while two of those awards were in excess of \$4.5 million.

MTA has historically advised that a liability cap may also allow it to decrease expenditure on procurements from third-party vendors. Without the \$5.0 million liability insurance coverage requirement, these vendors may be able to provide services to MTA at lower prices. The possible savings to MTA with respect to procurement costs cannot be estimated at this time.

This proposal will also potentially allow for more small businesses to bid on MTA business. Current MTA policy requires any entity that contracts with MTA to obtain a \$5 million insurance policy to limit MTA's exposure. The cost of obtaining this excess coverage creates a significant financial burden for MTA's contracting parties and may reduce the number of bidders. Small and minority businesses in the Baltimore metropolitan area may be cost prohibited by this insurance requirement from conducting activities that could provide services to the citizens of the State and generate revenue for MTA as a lessor, such as operating a news stand at a Metro station. If this proposal passes, then this requirement could be reduced and allow expanded contracting opportunities for Minority Business Enterprises and small businesses.