

SENATE BILL 489

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2001 Regular Session
11r2201
CF 11r2198

By: **Senators Jimeno, Baker, Colburn, Ferguson, Forehand, Haines,
Mooney, and Sfikas**

Introduced and read first time: February 2, 2001

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Sheriffs' Office Liability - Apportionment of State and County**
3 **Responsibility**

4 FOR the purpose of clarifying certain State and county financial responsibilities for
5 defense and indemnification of judgments against sheriffs and deputy sheriffs
6 performing certain functions; limiting the authority of the Board of Public
7 Works to collect certain payments for certain judgments against sheriffs and
8 deputies from certain taxes; establishing State responsibility for defense and
9 payments of judgments arising from certain sheriff and deputy activities; and
10 generally relating to clarifying the apportionment of State and county
11 responsibility for defense and indemnification of judgments against sheriffs and
12 deputies.

13 BY repealing and reenacting, without amendments,
14 Article - State Government
15 Section 12-101(a)(6)
16 Annotated Code of Maryland
17 (1999 Replacement Volume and 2000 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article - State Government
20 Section 12-405 and 12-501
21 Annotated Code of Maryland
22 (1999 Replacement Volume and 2000 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article - State Finance and Procurement
25 Section 9-108
26 Annotated Code of Maryland
27 (1995 Replacement Volume and 2000 Supplement)

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

3 **Article - State Government**

4 12-101.

5 (a) In this subtitle, unless the context clearly requires otherwise, "State
6 personnel" means:

7 (6) a sheriff or deputy sheriff of a county or Baltimore City;

8 12-405.

9 (A) THE APPLICATION REQUIREMENTS ENUMERATED IN SUBSECTION (B)(5)
10 OF THIS SECTION DO NOT APPLY TO CLAIMS RELATING TO:

11 (1) COURTHOUSE SECURITY;

12 (2) SERVICE OF PROCESS;

13 (3) THE TRANSPORTATION OF INMATES TO OR FROM COURT
14 PROCEEDINGS;

15 (4) PERSONNEL AND OTHER ADMINISTRATIVE ACTIVITIES;

16 (5) ACTIVITIES, INCLUDING ACTIVITIES RELATING TO LAW
17 ENFORCEMENT FUNCTIONS, ARISING UNDER A MULTIJURISDICTIONAL AGREEMENT
18 UNDER THE SUPERVISION AND DIRECTION OF THE MARYLAND STATE POLICE OR
19 OTHER STATE AGENCY; OR

20 (6) ANY OTHER ACTIVITIES, EXCEPT FOR ACTIVITIES RELATING TO
21 PERFORMING LAW ENFORCEMENT FUNCTIONS OR DETENTION CENTER FUNCTIONS.

22 (B) The Board of Public Works may not pay a settlement or judgment against
23 State personnel unless:

24 (1) the State personnel submits to the Board a written application that
25 sets forth each reason of the State personnel for believing the settlement or judgment
26 is a responsibility of the State;

27 (2) the Board or a hearing officer that the Board appoints holds a
28 hearing on the application;

29 (3) as to a judgment, it was rendered by a court of competent
30 jurisdiction;

31 (4) as to an applicant for whom the Attorney General appeared under
32 Subtitle 3 of this title, the Attorney General files a written report and
33 recommendation;

1 (5) as to an application on behalf of a sheriff or deputy sheriff of a county
2 or Baltimore City for any claim [except those claims directly relating to courthouse
3 security, service of process, or the transportation of inmates to or from court
4 proceedings]:

5 (i) with respect to any settlement, the county solicitor or county
6 attorney files a written report and recommendation and the Attorney General files a
7 written report and recommendation; or

8 (ii) with respect to any judgment, the Attorney General files a
9 written report and recommendation;

10 (6) on the bases of the hearing and any report and recommendation, the
11 Board finds that:

12 (i) when the act or omission was made, the applicant was
13 performing a duty within the scope of the employment of the applicant;

14 (ii) the act or omission was not malicious; and

15 (iii) the act or omission was not grossly negligent; and

16 (7) if there is any question whether the applicant is State personnel for
17 purposes of this subtitle, the Board finds that, regardless of the method, source, or
18 amount of compensation, the applicant is State personnel.

19 12-501.

20 (a) (1) The Board of Public Works may approve payment of a settlement, a
21 judgment, or counsel fees under Subtitles 3 and 4 of this title with or without a
22 hearing, and direct payment from:

23 (i) money appropriated for that purpose in the State budget;

24 (ii) money appropriated to the State Insurance Trust Fund for that
25 purpose; OR

26 (iii) the General Emergency Fund[;or].

27 [(iv)] (2) THE BOARD OF PUBLIC WORKS MAY APPROVE PAYMENT
28 OF A SETTLEMENT, A JUDGMENT, OR COUNSEL FEES UNDER SUBTITLES 3 AND 4 OF
29 THIS TITLE WITH OR WITHOUT A HEARING, AND DIRECT PAYMENT FROM ANY TAX
30 WHICH HAS BEEN APPROPRIATED IN THE STATE BUDGET TO THE SUBDIVISION
31 REPRESENTED BY THE SHERIFF OR DEPUTY SHERIFF ON WHOSE BEHALF THE
32 PAYMENT IS TO BE MADE, OR DIRECT PAYMENT FROM THE SUBDIVISION'S SHARE OF
33 ANY INCOME TAX COLLECTED BY THE STATE COMPTROLLER, in connection with any
34 settlement or judgment paid on behalf of any sheriff or deputy sheriff for any claim
35 except those claims [directly] relating to [courthouse security, service of process, or
36 the transportation of inmates to or from court proceedings]:

1 (I) COURTHOUSE SECURITY;
2 (II) TRANSPORTATION OF PRISONERS;
3 (III) SERVICE OF PROCESS;
4 (IV) PERSONNEL AND OTHER ADMINISTRATIVE ACTIVITIES;
5 (V) ACTIVITIES, INCLUDING ACTIVITIES RELATING TO
6 PERFORMING LAW ENFORCEMENT FUNCTIONS, ARISING UNDER
7 MULTIJURISDICTIONAL AGREEMENTS UNDER THE SUPERVISION AND DIRECTION OF
8 THE MARYLAND STATE POLICE OR OTHER STATE AGENCY; OR

9 (VI) ANY OTHER ACTIVITIES, EXCEPT ACTIVITIES RELATING TO
10 PERFORMING LAW ENFORCEMENT FUNCTIONS OR DETENTION CENTER FUNCTIONS

11 [1. any tax which has been appropriated in the State budget
12 to the subdivision represented by the sheriff or deputy sheriff on whose behalf the
13 payment is to be made; or

14 2. the subdivision's share of any income tax collected by the
15 State Comptroller].

16 [(2)] (3) The Board may direct that payment be made in lump sum or in
17 installments.

18 [(3)] (4) If the Board disapproves payment in whole or in part, the Board
19 shall state in writing its reasons for disapproval.

20 [(4)] (5) Decisions under this title are not subject to judicial review.

21 [(5)] (6) Nothing in this section shall be construed as a waiver of
22 sovereign immunity of the State, any of its units, or State personnel.

23 [(6)] (7) If the Board directs payment under paragraph (1)(iv) of this
24 subsection, such payment shall be collected in the manner provided by § 7-222 of the
25 State Finance and Procurement Article.

26 (b) The Board of Public Works may delegate to affected units, in consultation
27 with the Attorney General, authority to pay, from the funds of that unit available for
28 the purpose, settlements, judgments, and counsel fees that do not exceed \$2,000 in a
29 particular case.

30 **Article - State Finance and Procurement**

31 9-108.

32 (a) This section applies to any sheriff or deputy sheriff engaged in any activity
33 other than those activities [directly] relating to:

34 (1) courthouse security[.];

- 1 (2) service of process[, or];
- 2 (3) the transportation of inmates to and from court proceedings;
- 3 (4) PERSONNEL AND OTHER ADMINISTRATIVE ACTIVITIES;
- 4 (5) ACTIVITIES, INCLUDING ACTIVITIES RELATING TO PERFORMING
- 5 LAW ENFORCEMENT FUNCTIONS, ARISING UNDER A MULTIJURISDICTIONAL
- 6 AGREEMENT UNDER THE SUPERVISION AND DIRECTION OF THE MARYLAND STATE
- 7 POLICE OR OTHER STATE AGENCY; OR
- 8 (6) ANY OTHER ACTIVITIES, EXCEPT ACTIVITIES RELATING TO
- 9 PERFORMING LAW ENFORCEMENT FUNCTIONS OR DETENTION CENTER FUNCTIONS.

10 (b) A county or Baltimore City may obtain insurance to provide the coverage

11 and defense necessary under the Maryland Tort Claims Act for personnel covered by

12 this section.

13 (c) (1) If a county or Baltimore City does not obtain adequate insurance

14 coverage to satisfy the coverage and defense necessary under the Maryland Tort

15 Claims Act, an assessment for coverage and for payment of any litigation expenses,

16 other than for compensation for the time spent by any State employee working for the

17 Attorney General, shall be set off from:

18 (i) any tax which has been appropriated in the State budget to the

19 county or Baltimore City; or

20 (ii) the subdivision's share of any income tax collected by the State

21 Comptroller.

22 (2) Any amount due under this subsection shall be collected in the

23 manner provided by § 7-222 of this article.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect

25 October 1, 2001.