

Department of Legislative Services  
Maryland General Assembly  
2002 Session

FISCAL NOTE

House Bill 784  
Economic Matters

(Delegate Minnick)

---

**Workers' Compensation - Exclusivity of Compensation - Principal Contractor**

---

This bill authorizes a covered employee of a subcontractor, or in the case of death, a specified representative or dependent, to bring a claim for compensation or an action for damages against the principal contractor if an injury or death occurs as a result of the principal contractor's negligence. If a claim is filed and compensation is awarded, a self-insured employer, an insurer, the Subsequent Injury Fund (SIF), or the Uninsured Employers' Fund (UEF) may bring an action for damages against a principal contractor who is liable for the injury or death of the covered employee.

---

**Fiscal Summary**

**State Effect:** Potential increase in workers' compensation costs to the extent the State, as employer or contractor, would be subject to additional lawsuits and increased workers' compensation premiums.

**Local Effect:** Potential increase in workers' compensation costs to the extent self-insuring local governments, as employers or contractors, would be subject to additional lawsuits. For non-self-insured governments, potential increase in workers' compensation premiums.

**Small Business Effect:** Potential meaningful.

---

**Analysis**

**Current Law:** Under specified conditions, a principal contractor is liable to pay to a covered employee or the dependents of a covered employee any compensation that the principal contractor would have been liable to pay had the covered employee been

employed directly by the principal contractor. If the principal contractor is established as the statutory employer of a subcontracted worker, then the principal contractor may not be sued under third-party provisions (*Brady v. Ralph Parsons Co*, 308 Md. 486, 520 A.2d 717 (1987), *aff'd*, 327 A.2d 275, 609 A.2d 297 (1992)).

In return for providing workers' compensation coverage, the principal contractor is immune from civil liability for injuries suffered by covered employees (*Para v. Richards Group of Wash. Ltd. Partnership*, 339 Md. 241, 661 A.2d 737 (1995)).

If a principal contractor is liable to pay compensation under Section 9-508 of the Labor and Employment Article, the principal contractor is entitled to indemnity from any employer who would have been liable to pay compensation independent of Section 9-508.

Section 9-509 of the Labor and Employment Article establishes that, unless otherwise provided for, the compensation provided under workers' compensation provisions is exclusive and in place of any right of action against any person. The same section limits an employer's defense in specified cases, and provides that a covered employee, or specified representative, may bring a claim or an action for deliberate intent in the injury or death of the covered employee.

**State Fiscal Effect:** The Injured Workers' Insurance Fund (IWIF), the State's workers' compensation provider and insurer of last resort, reports that while impossible to estimate, the State could experience increased costs associated with the ability to sue for negligence, and overall increased costs that would be passed on through policyholders' premiums.

Under the Maryland Tort Claims Act (MTCA), State employees are immune from liability for acts or omissions performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. The State essentially waives its own common law immunity for its employees' actions. This Act limits the liability of the State to \$200,000 to a single claimant for injuries arising from a single incident.

The State Uninsured Employers' Fund and Subsequent Injury Fund report no operational impact, but advise that the bill would have a positive fiscal impact to the funds to the extent that they are able to collect third party damages from contractors.

**Local Fiscal Effect:** The Local Government Tort Claims Act (LGTCA) limits the liability of a local government to \$200,000 per individual claim and \$500,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). It further provides that the local

government is liable for tortious acts or omissions of its employees acting within the scope of employment; it prevents local governments from asserting a common law claim of governmental immunity from liability for such acts of its employees.

LGTCGA defines local government to include counties, municipal corporations, and Baltimore City, as well as various agencies and authorities of local governments, such as community colleges, county public libraries, special taxing districts, nonprofit community service corporations, sanitary districts, housing authorities, and commercial district management authorities.

**Small Business Effect:** To the extent that small businesses act as principal contractors, they would be subject to additional lawsuits for negligence and increased premiums for workers' compensation coverage.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 745 (Senator Della) – Finance.

**Information Source(s):** Uninsured Employers' Fund, Workers' Compensation Commission, Injured Workers' Insurance Fund, Subsequent Injury Fund, Department of Legislative Services

**Fiscal Note History:** First Reader - March 5, 2002  
ncs/cer

---

Analysis by: Mitchell J. McCalmon

Direct Inquiries to:  
John Rixey, Coordinating Analyst  
(410) 946-5510  
(301) 970-5510