

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 535 (Senator Astle)
Judicial Proceedings

State Government - Judicial Appointees - Representation by Attorney General

This bill includes a judicial appointee (including a master, an examiner, an auditor, a referee, a commissioner, a receiver, a personal representative, a guardian, and a guardian *ad litem*) who is appointed for the limited purpose of investigating, testifying, and making a report and recommendation to the court in a particular case in the definition of “State personnel” entitled to tort immunity for acts or omissions that are within the scope of their public duties under the Maryland Tort Claims Act. The bill also includes these judicial appointees in the category of a “State officer or State employee” entitled to representation by the Attorney General in a civil action or special proceeding.

Fiscal Summary

State Effect: Assuming very few suits in which the Attorney General would be required to provide representation would be brought, any increase in workload could be handled with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Under the Maryland Tort Claims Act, the term “State personnel” includes, among others, State employees or officials paid by the Central Payroll Bureau, a circuit court judge or employee of a circuit court, and an orphans’ court judge or employee of an orphans’ court. Under the Act, State personnel are immune from suit in

State court and from liability in tort for a tortious act or omission that is within the scope of the personnel's public duties and is made without malice or gross negligence, and for which the State or its units have waived immunity under the Act, even if the damages exceed the limits of the State's waiver of sovereign immunity. Also under the Act, the liability of the State and its units may not exceed \$200,000 to a single claimant for injuries arising from a single incident or occurrence.

In *Fox v. Wills*, 151 Md. App. 31 (2003), the Court of Special Appeals held that a guardian *ad litem* was at least entitled to qualified judicial immunity from suit in tort for acts or omissions committed in the course of executing the duties of a guardian *ad litem*. The *Fox* court noted that a guardian *ad litem*, in executing those duties, acts as an arm of the court and performs a judicial function.

Generally, the Attorney General must appear in a civil action or special proceeding against a State officer or State employee to represent the officer or employee if: (1) the action or proceeding is in a court of the State or the U.S.; (2) the officer or employee submits a written request for representation to the Attorney General; (3) the Attorney General investigates the facts on which the action or proceeding is based; (4) the Attorney General does not find that the officer or employee is ineligible for representation; and (5) the officer or employee enters into an agreement for the representation.

State Expenditures: The Office of the Attorney General (OAG) advises that it already offers representation to individuals acting in most of the capacities covered by the bill. On average, there are approximately 23,000 cases annually in which a personal representative is appointed. Assuming a suit in which the Attorney General would be required to provide representation would be brought in very few of these cases, any increase in workload could be handled with existing resources. OAG however, advises that the bill would require three additional Assistant Attorneys General and one additional legal secretary at a total cost in fiscal 2005 of approximately \$260,400.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland State Treasurer's Office, Office of the Attorney General, Department of Legislative Services

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