

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 256

(Senator McFadden, *et al.*)

Judicial Proceedings

Baltimore City - Local Government Tort Claims Act - Baltimore Public Markets Corporation

This bill expands the definition of “local government” for purposes of the Local Government Tort Claims Act (LGTCA) to include the Baltimore Public Markets Corporation (BPMC) in Baltimore City.

The bill may not be applied to any cause of action arising before the bill’s October 1, 2006 effective date.

Fiscal Summary

State Effect: None.

Local Effect: Because Baltimore City has agreed to indemnify BPMC’s markets, city expenditures could decrease depending on the number and magnitude of tort claims filed against markets affected by this bill.

Small Business Effect: None. BPMC will cease to pay for its own private liability insurance upon finalization of its indemnification agreement with Baltimore City, regardless of this bill.

Analysis

Current Law: The LGTCA defines local government to include counties, municipal corporations, and Baltimore City, and 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. The definition includes Lexington Market, Inc., in Baltimore City, but does not include BPMC.

The 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 thus prevents local governments from asserting a common law claim of governmental immunity from liability for such acts of its employees.

The Maryland Associations, Organizations, and Agents Act limits the liability of nonprofit organizations that carry insurance meeting specified minimums. It provides that agents (directors, officers, trustees, employees, and volunteers) of those nonprofit organizations may not be held personally liable as long as the acts are made without malice or gross negligence. Liability is limited to the applicable limit of insurance coverage for acts or omissions made in the course of duties by the nonprofit entity or its agents.

Background: There are six public markets located in Baltimore City: Avenue Market, Broadway Market, Cross Street Market, Hollins Market, Lexington Market, and Northeast Market. While Baltimore City owns the land and buildings of the markets, the markets themselves (with the exception of Lexington Market) are operated by BPMC, a nonprofit organization.

Chapter 556 of 2000 added Lexington Market to the LGTCA. In March 2005, BPMC and Lexington Market entered into a Teaming Agreement. Per this agreement, BPMC and Lexington Market share the same management and board of directors. The agreement also gives these two entities an identical relationship with Baltimore City. Baltimore City has agreed to indemnify BPMC against all tort claims for all BPMC markets. Baltimore City advises that the agreement should be finalized within the next few weeks. Until the agreement is finalized, BPMC is paying for its private liability insurance. BPMC currently budgets \$211,137 for liability insurance. This represents a \$182,974 increase from the \$28,763 BPMC budgeted for liability insurance in 2000.

Local Expenditures: This bill could result in a potential significant decrease in expenditures to Baltimore City, since the city has decided to indemnify the markets against all tort claims. The extent of this decrease will depend on the number and magnitude of tort claims against the markets.

Small Business Effect: None. BPMC will pay for its own private liability insurance until the indemnification agreement with Baltimore City is finalized. The finalization of the indemnification agreement is expected to take place in the next few weeks, at which point BPMC will no longer have to pay for its own private liability insurance.

Additional Information

Prior Introductions: SB 302 of 2004, an identical bill, received a hearing in the Judicial Proceedings Committee, but no further action was taken. SB 21 of 2003, SB 360 of 2002, and SB 861 of 2001 all received an unfavorable report from the Judicial Proceedings Committee. SB 861 was cross filed as HB 1370 of 2001. HB 1370 received an unfavorable report from the Judiciary Committee.

Cross File: HB 362 (Delegate Rosenberg, *et al.*) – Judiciary.

Information Source(s): Maryland State Treasurer’s Office, Baltimore City, Department of Legislative Services

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