Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 363   (Senator Raskin)

Judicial Proceedings

Civil Actions - Cases Challenging Constitutionality of Statutes

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This bill specifies that if a party in a civil action commenced in the District Court or a circuit court alleges in a pleading, motion, or other paper that a State law violates the State or federal constitution, the party must immediately serve the Attorney General by certified mail with the pleading, motion, or other paper alleging the unconstitutionality of the State law. The notice requirement only applies if the State is not a party to the case.

The bill also authorizes the Attorney General to be heard in the case and take certain actions and extends this notice requirement and these rights to counties and municipalities in cases alleging that a county or municipal law, ordinance, or resolution is unconstitutional.

Fiscal Summary

State Effect: None. The bill is procedural and does not materially affect State finances.

Local Effect: None. The bill is procedural and does not materially affect local finances.

Small Business Effect: None.

Analysis

Bill Summary: After receiving the appropriate notice, the Attorney General has the right to (1) be heard in court regarding the constitutionality of the statute at issue; (2) submit the views of the Attorney General in writing to the court within a reasonable time period, as determined by the court; or (3) seek intervention in the action in accordance with the Maryland Rules.

The same notice requirement applies in a civil case in which a pleading, motion, or other paper alleges that county or municipal law, ordinance, or resolution violates the State or federal constitution. The notice requirement applies if the State or a county or municipality is not a party to the case. In such cases, the Attorney General and the chief legal officer of the county or municipality must receive the notice and have the same rights specified above.

The bill repeals a statutory provision that a municipality or county (1) must be made a party to an action involving the validity of a municipal or county ordinance or franchise and (2) has the right to be heard in such cases.

Current Law: A municipality or county must be made a party to and is entitled to be heard in any declaratory judgment proceeding involving the validity of a municipal or county ordinance or franchise. If the statute, municipal or county ordinance, or franchise is alleged to be unconstitutional, the Attorney General does not need to be made a party to the case; however, immediately after the suit has been filed the Attorney General must be served with a copy of the proceedings by certified mail. The Attorney General is entitled to be heard, submit views in writing within a time deemed reasonable by the court, or seek intervention pursuant to the Maryland Rules.

The Maryland Rules authorize the federal government, the State, a political subdivision of the State, or any officer or agency of those entities to intervene in an action in the District Court or a circuit court in which the validity of any of the following is drawn into question or relied upon as grounds for a claim or defense: a constitutional provision, charter provision, statute, ordinance, regulation, executive order, requirement, or agreement.

The court must consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and a person desiring to intervene must file and serve a timely motion to intervene.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Kent, Montgomery, and Worcester counties; City of Salisbury; Towns of Bel Air and Leonardtown; Maryland Association of

Counties; Maryland-National Capital Park and Planning Commission; Department of Legislative Services

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ncs/kdm

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