

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 94
Judiciary

(Delegate Eckardt, *et al.*)

**Dorchester County - Local Government Tort Claims Act - Inclusion of Specified
Nonprofit Entity**

This bill limits the liability of Delmarva Community Services (DCS) by expanding the definition of “local government” for purposes of the Local Government Tort Claims Act (LGTCA) to include DCS’s function as the nonprofit corporation serving as the local public transportation authority for Dorchester County pursuant to a contract or memorandum of understanding with Dorchester County. The limitation on actions for unliquidated damages to only those brought within 180 days of the injury does not apply to DCS.

The bill may not be applied to any cause of action arising before the bill’s October 1, 2011 effective date.

Fiscal Summary

State Effect: Potential minimal revenue decrease beginning in FY 2012 for the Insurance Regulation Fund within the Maryland Insurance Administration as a result of a reduced insurance premiums for DCS. Annual expenditures by DCS are expected to decrease due to reduced insurance premiums. DCS is currently funded by a combination of federal, State, and local grants, and direct revenue. A portion of these savings may be passed on to the federal government and the State.

Local Effect: Annual expenditures for Dorchester County will decrease by an undetermined amount beginning in FY 2012 due to reduced insurance premiums for DCS.

Small Business Effect: None.

Analysis

Current Law: LGTCA defines local government to include counties, municipal corporations, 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.

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

LGTCA also requires that an action for unliquidated damages be brought within 180 days after the injury. However, this notice requirement does not apply to actions against specified nonprofit corporations covered under LGTCA, including the Carroll Area Transit System and the Garrett County Community Action Committee, Inc. Both of these nonprofit corporations serve as the local public transportation authority in their jurisdictions. They were included in the definition of “local government” under LGTCA pursuant to Chapter 186 of 2006 and Chapter 315 of 2007, respectively.

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: DCS is the umbrella nonprofit organization for Delmarva Community Transit, which serves as the public transportation provider for Caroline, Dorchester, Kent, and Talbot counties. While DCS’s transportation program originally provided transportation to senior citizens and participants in its parent organization’s disability program, DCS has provided transportation to the general public since 1985. With a fleet of over 60 vehicles, DCS provides public transportation as well as specialized services, including medical assistance transportation, kidney dialysis transportation, and door-to-door service for individuals meeting certain criteria.

State Revenue: The Insurance Regulation Fund within the Maryland Insurance Administration is funded in part by premium taxes assessed on insurance companies at a

rate of 2% of the gross or renewal insurance premiums. Inclusion in LGTCA will allow DCS to obtain less costly insurance coverage. Thus, assuming all other variables remain constant, the annual revenues for the Insurance Regulation Fund will decrease annually by a minimal amount beginning in fiscal 2012 as a result of DCS's reduced insurance premiums.

State and Local Expenditures: DCS expects its insurance premium expenditures to decrease annually as a result of the liability ceiling provided by LGTCA and the ability to obtain less costly insurance coverage available to entities covered by LGTCA. The exact amount of this annual decrease has not been determined at this time. DCS currently spends approximately \$237,000 per year on automobile insurance and \$26,000 on liability insurance. Inclusion under LGTCA would allow DCS to obtain insurance through an alternative carrier, like a self-insurer. One example of an applicable self-insurer is the Local Government Insurance Trust (LGIT). According to LGIT, obtaining coverage through LGIT is often less expensive than coverage through a private insurance provider.

DCS is funded through a combination of federal and State grants administered by the Maryland Department of Transportation, local grants, as well as fee revenue. Accordingly, a portion of these savings may be passed on to the federal government, the State, and Dorchester County.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, SB 3 (Senator Colburn) - Judicial Proceedings, is not identical.

Information Source(s): Dorchester County, Judiciary (Administrative Office of the Courts), Maryland State Treasurer's Office, Delmarva Community Transit, Department of Legislative Services

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