

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

Senate Bill 546 (Senator Frosh, *et al.*)
 Judicial Proceedings

Judiciary

Immunity of Local Government Officials - Prosecutions for Bribery

This bill specifies that a provision establishing immunity from civil or criminal liability for a city or town councilman, county commissioner, county councilman, or similar official for words spoken at a meeting of the council or board of commissioners, or at a meeting of a committee or subcommittee, does not apply to an action involving the attempted bribery or bribery of a public employee.

Fiscal Summary

State Effect: General fund expenditures of the Office of the State Prosecutor (OSP) may increase by \$99,500 in FY 2014 to hire an investigator and a part-time prosecutor. Future years reflect annualization and inflation. Any resulting penalties from additional bribery prosecutions are not expected to materially affect State finances.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	99,500	125,400	131,300	137,400	143,800
Net Effect	(\$99,500)	(\$125,400)	(\$131,300)	(\$137,400)	(\$143,800)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Any resulting penalties from additional bribery prosecutions are not expected to materially affect local government finances.

Small Business Effect: None.

Analysis

Current Law/Background: The Maryland Constitution, under Article III, § 18, specifies that no Senator or Delegate may be liable in any civil action, or criminal prosecution, for words spoken in debate. Under the Courts and Judicial Proceedings Article, § 5-501, of the Annotated Code, a civil or criminal action may not be brought against a city or town councilman, county commissioner, county councilman, or similar official by whatever name known, for words spoken at a meeting of the council or board of commissioners or at a meeting of a committee or subcommittee.

In a recent decision, *State v. Holton*, 420 Md. 530 (2011), the Maryland Court of Appeals affirmed the dismissal of an indictment of a local elected official based on the immunity provided by § 5-501 of the Courts and Judicial Proceedings Article. The indictment, alleging that bribery and other crimes were committed by the official, included various assertions of legislative actions taken by the official. In its opinion, the Court of Special Appeals described the legislative immunity or privilege of federal, State, and local legislative officials:

“[M]embers of legislative bodies – whether Congress, State legislatures or local councils – may be prosecuted for criminal behavior, including offenses such as bribery, misfeasance in office and criminal corruption. These legislators have no general immunity from criminal prosecution. Under what are often referred to as the “speech and debate” clauses in the Federal Constitution (Art. I, § 6) and the Maryland Constitution (Md. Decl. Of Rts. Art. 10 and Art. III, § 18), there is a caveat to that principle, however. Members of those bodies generally may not be compelled to answer for or defend, in a non-legislative governmental forum, what they say or do in the legislative process. C.J.P. § 5-501 provides the same level of protection to members of local legislative bodies.” (*See State v. Holton*, 193 Md. App. 322 (2010)).

State Fiscal Effect: General fund expenditures of OSP may increase by \$99,479 in fiscal 2014, which accounts for the bill’s October 1, 2013 effective date. This estimate reflects the cost of hiring one investigator and one part-time prosecutor to investigate and prosecute allegations of bribery. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. OSP indicates that the bill allows the office to prosecute cases that would otherwise be closed after initial investigation because of the immunity of local officials. While bribery allegations may not arise frequently, OSP indicates that when they do arise, such investigations and prosecutions are very time-consuming and the office’s current staff cannot absorb the additional work.

Positions	1.5
Salaries and Fringe Benefits	\$89,602
Equipment	9,230
Supplies	<u>647</u>
Total FY 2014 State Expenditures	\$99,479

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Any resulting penalties from additional bribery prosecutions are not expected to materially affect State finances.

Additional Information

Prior Introductions: SB 285 of 2012 received an unfavorable report from the Senate Judicial Proceedings Committee. HB 39 of 2012, a similar bill applicable to members of the General Assembly and local officials, received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Office of the State Prosecutor, Judiciary (Administrative Office of the Courts), State Ethics Commission, Harford and Montgomery counties, Baltimore City, cities of Frederick and Havre de Grace, Maryland Association of Counties, Maryland Municipal League, Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2013
ncs/kdm

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