

Department of Legislative Services  
Maryland General Assembly  
2014 Session

FISCAL AND POLICY NOTE

House Bill 809  
Judiciary

(Delegate Waldstreicher, *et al.*)

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Local Government Tort Claims Act and Maryland Tort Claims Act - Damages  
Sustained on Artificial or Synthetic Turf Playing Fields

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This bill specifies that a tort action for damages sustained by an individual on an artificial or synthetic turf playing field owned or operated by a local government is not subject to (1) the limits on liability under the Local Government Tort Claims Act (LGTCA) and (2) the notice requirement under LGTCA.

The bill also (1) prohibits the State, its officers, and its units from raising sovereign immunity in a tort action for damages sustained by an individual on a State-owned or State-operated artificial or synthetic turf playing field; (2) specifies that the Maryland Tort Claims Act's (MTCA) limits on liability do not apply to a judgment award in such a tort action; and (3) exempts these tort actions from provisions under MTCA that bar a claimant from instituting an MTCA action unless the claimant submits a written claim to the State Treasurer or a designee of the Treasurer within one year after the injury to person or property that is the basis for the claim, and the Treasurer or the Treasurer's designee denies the claim finally.

The bill applies prospectively to causes of action arising on or after the bill's October 1, 2014 effective date.

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Fiscal Summary

**State Effect:** Potential significant increase in special fund expenditures if the bill results in higher payments from the State Insurance Trust Fund (SITF) for claims filed under MTCA or increased litigation of MTCA cases. General fund expenditures increase for State agencies subject to higher SITF assessments if SITF incurs losses from MTCA payments. Increase in general fund expenditures for agencies not insured under SITF that are subject to more or higher judgment awards and increased insurance premiums as a

result of the bill. The magnitude of the increase depends on the number of cases brought under the bill and the damages awards in those cases, which cannot be reliably estimated at this time.

**Local Effect:** Potential significant increase in expenditures for local governments to (1) litigate LGTCA cases that would be resolved through motions for summary judgment for failure to comply with the LGTCA's notice requirement under existing statute; (2) pay judgments awarded in those cases; and (3) pay increased insurance premiums for liability coverage against LGTCA claims.

**Small Business Effect:** Potential meaningful impact on small business law firms that are able to litigate LGTCA or MTCA cases as a result of the bill or receive higher judgment awards in these cases as a result of the bill.

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## Analysis

**Current Law:** In general, a person must file a civil cause of action within three years after the cause of action accrues. However, a civil cause of action with a plaintiff who is a minor or who is mentally incompetent must be filed within the lesser of three years or the applicable period of limitations after the disability is removed. Thus, a plaintiff who was a minor at the time the statute of limitations began to accrue must file his/her cause of action before reaching age 21.

*Local Government Tort Claims Act:* 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 specifies that an action for unliquidated damages may not be brought unless notice of the claim is given within 180 days after the injury. The notice must be in writing and must state the time, place, and cause of the injury. The notice must also be given in person or by certified mail, return receipt requested, bearing a postmark from the

U.S. Postal Service, by the claimant or the representative of the claimant. If the defendant local government is Baltimore City, the notice must be given to the city solicitor. Notice of LGTCA actions against Howard or Montgomery counties must be given to the county executive. Notice of LGTCA actions against Anne Arundel, Baltimore, Harford, or Prince George's counties must be given to the county solicitor or the county attorney.

However, under case law, a plaintiff who does not strictly comply with the notice requirement may substantially comply with LGTCA's notice requirement by providing notice "in fact" which, while not strictly compliant with the statutory notice requirements, provides requisite and timely notice of the facts and circumstances giving rise to the plaintiff's claim and fulfills the purpose of the notice requirement – to apprise the local government of its potential liability at a time when it is still possible for the local government to conduct a proper investigation. *Faulk v. Ewing*, 371 Md. 284, at 298-99 (2002).

The notice requirement does not apply to actions against specified nonprofit corporations covered under LGTCA. Unless the defendant (the local government) in an LGTCA suit can affirmatively show that its defense has been prejudiced by lack of required notice, the court, upon motion and for good cause shown, may entertain the suit even though the notice was not given.

*Maryland Tort Claims Act:* In general, the State is immune from tort liability for the acts of its employees and cannot be sued in tort without its consent. Under MTCA, the State statutorily waives its own common law (sovereign) immunity on a limited basis. MTCA applies to tortious acts or omissions, including State constitutional torts, by "State personnel" performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. Under MTCA, the State essentially "...waives sovereign or governmental immunity and substitutes the liability of the State for the liability of the state employee committing the tort." (*Lee v. Cline*, 384 Md. 245, 262 (2004)).

However, MTCA limits State liability to \$200,000 to a single claimant for injuries arising from a single incident. Attorney's fees are included in the liability cap under MTCA. Under MTCA, attorneys may not charge or receive a fee that exceeds 20% of a settlement or 25% of a judgment. MTCA claims are typically paid out of SITF, which is administered by the State Treasurer. The liability for an MTCA tort claim may not exceed the insurance coverage granted to units of State government under SITF.

In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State's color of authority or sovereign immunity and may be held personally liable.

MTCA also contains specific notice and procedural requirements. A claimant is prohibited from instituting an action under MTCA unless (1) the claimant submits a written claim to the State Treasurer or the Treasurer's designee within one year after the injury to person or property that is the basis of the claim; (2) the State Treasurer/designee denies the claim finally; and (3) the action is filed within three years after the cause of action arises.

The purpose of the notice provision is "...to give the State early notice of claims against it. That early notice, in turn, affords the State the opportunity to investigate the claims while the facts are fresh and memories vivid, and, where appropriate, settle them at the earliest time." *Haupt v. State*, 340 Md. 462, 470 (1995).

**Background:** Artificial turf fields are made of synthetic "blades" that are made to look like grass. "Crumb rubber," which is derived from shredded scrap tires or from the retreading process, is frequently used as infill between the turf fibers to provide stability, uniformity, and resiliency. The Synthetic Turf Council, a Georgia-based nonprofit association that represents the industry, reports that more than 8,000 synthetic turf sport fields are in use in the United States. The Department of Natural Resources advises that to date, 41 local projects involving artificial turf (in Anne Arundel, Baltimore, Howard, Montgomery, and Prince George's counties and Baltimore City) have been completed with or approved for Program Open Space funding.

Artificial turf fields have advantages and disadvantages compared with natural grass fields. Artificial turf fields tend to have significantly lower maintenance costs compared with grass fields. Turf fields are also better suited to year-round use. However, in recent years, the public has become increasingly concerned about public health risks from infill materials. In 2008, the U.S. Centers for Disease Control and Prevention (CDC) issued a statement regarding testing conducted by the New Jersey Department of Health and Senior Services that revealed potentially unhealthy levels of lead dust in some artificial turf playing fields in New Jersey. CDC advised that the risk for harmful lead exposure is low from new fields with elevated lead levels in their turf fibers because the fibers are still intact; however, as the turf ages and weathers, lead is released in dust and the risk for harmful exposure increases.

Regarding injuries, a 2012 study published in the *American Journal of Sports Medicine* found that college football players were 1.39 times more likely to suffer knee injuries on artificial turf than on natural grass fields. However, the level of injuries on natural grass fields likely increases if they are poorly maintained, which is often the case with high school fields.

The Synthetic Turf Council states that many studies and independent sources have confirmed that synthetic turf is safe and that no one has ever reported ill effects from

synthetic turf or crumb rubber. Further, the Synthetic Turf Council asserts that after the 2008 tests in New Jersey found elevated lead levels on synthetic turf fields, the industry switched to a nonlead pigment.

**State Expenditures:** Special fund expenditures for SITF may increase significantly if the bill results in higher payments from SITF for claims filed under MTCA or increased litigation costs for MTCA cases. General fund expenditures increase for State agencies subject to higher SITF premiums/assessments if SITF incurs losses from MTCA payments as a result of the bill.

*State Insurance Trust Fund:* The Treasurer's Office advises that there are nine artificial playing fields which the State Treasurer self-insures. The fields are located on public lands, and access to the fields is not restricted. Because of this access, the Treasurer advises that there are "an incalculable number of persons" who may incur damages covered by the bill's provisions. The Treasurer's Office further advises that of the colleges and universities that have installed artificial playing fields, there are approximately 3,366 "student-athletes" who make use of the fields. This figure does not include any fields or students at the University of Maryland – College Park (UMCP), as UMCP privately insures its fields.

According to the Treasurer's Office, the unlimited exposure to liability resulting from the bill makes it impossible to adequately reserve against the loss and creates the potential for significant underfunding of SITF, which could result in no available funds for claimants.

Claims under MTCA are paid out of SITF, which is administered by the Treasurer's Office. Approximately 4,000 MTCA claims are handled in the Treasurer's Insurance Division each year. In fiscal 2012, SITF paid \$9.7 million for tort claims under MTCA. The Governor's proposed fiscal 2015 budget includes a \$7.36 million appropriation for tort claims (including motor vehicle torts) under MTCA. The funds are to be transferred to SITF.

Agencies pay premiums to SITF that are comprised of an assessment for each employee covered and SITF payments for torts committed by the agency's employees. The portion of the assessment attributable to losses is allocated over five years. The Treasurer is charged with setting premiums "so as to produce funds that approximate the payments from the fund." (See Md. State Fin. & Proc. Code Ann. § 9-106(b).) The actuary assesses SITF's reserves and each agency's loss experience for the various risk categories, which include tort claims and constitutional claims. An agency's loss history, consisting of settlements and judgments incurred since the last budget cycle, comprises part of the agency's annual premium. That amount is electronically transferred to SITF from the appropriations in an agency's budget.

*University System of Maryland:* The University System of Maryland (USM) advises that while it cannot determine the exact amount of the bill's fiscal impact, the bill's removal of the liability cap under MTCA could result in several million dollars in verdicts against USM if liability is proven.

*Litigation Costs:* Assistant Attorneys General assigned to State agencies and a supervising tort assistant Attorney General in the Treasurer's Office litigate MTCA cases. Agencies pay the salaries of their assistant Attorneys General. The salary of the supervising assistant Attorney General and all other litigation costs (*e.g.*, depositions, experts, etc.) are paid out of SITF.

**Local Expenditures:** The bill may result in a significant increase in expenditures for local governments to litigate artificial turf field cases, pay judgments awarded in those cases, and pay increased insurance premiums for coverage of LGTCA claims. Some local governments covered under LGTCA obtain insurance coverage through the Local Government Insurance Trust (LGIT), a self-insurer that is wholly owned by its member local governments. LGIT assesses premiums based on the projected claims and losses of its members.

The extent of the bill's fiscal impact on a jurisdiction depends on the number of artificial turf playing fields in the jurisdiction and how frequently those fields are used.

Montgomery County advises that it is difficult for its risk management division to quantify the bill's fiscal impact as a result of claims that have not been filed. The county further advises that the immediate impact of the bill could be the removal of artificial turf playing fields to avoid future liability, which could result in increased costs for removal of the artificial turf, replacement of artificial turf with natural grass, and maintenance of the natural grass.

Garrett County does not foresee a fiscal impact from the bill.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Garrett and Montgomery counties; Department of Natural Resources; Maryland State Department of Education; Judiciary (Administrative Office of the Courts); Maryland State Treasurer's Office; University System of Maryland; Synthetic Turf Council; Department of Legislative Services

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