

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

House Bill 113
Judiciary

(Delegate Conaway)

Judicial Proceedings

Local Government Tort Claims Act - Notice Requirements and Limits on
Liability

This bill increases the liability limits under the Local Government Tort Claims Act (LGTCA) from \$200,000 to \$400,000 per individual claim and from \$500,000 to \$800,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions. The bill also extends the time limit for the notice requirement under LGTCA from 180 days to one year.

The bill applies prospectively to causes of action arising on or after the bill's October 1, 2015 effective date.

Fiscal Summary

State Effect: The bill does not materially affect State finances.

Local Effect: Potential significant increase in expenditures for local governments to (1) pay judgment awards that exceed the current liability limits under LGTCA; (2) pay increased insurance premiums for liability coverage against LGTCA claims; and (3) resolve/litigate claims brought as a result of the extended time limit for notice under the bill. Revenues are not affected.

Small Business Effect: Potential meaningful impact on small business law firms that are able to file LGTCA claims or secure higher judgment awards for their LGTCA clients as a result of the bill.

Analysis

Current Law/Background: 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.

Liability Limits: 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.

The liability limits under LGTCA have not been changed since 1987.

Notice Requirement: LGTCA 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.

Local Expenditures: The bill may result in a significant increase in expenditures for local governments to (1) pay judgment awards that exceed the current limits on liability under the LGTCA; (2) pay increased insurance premiums for coverage of LGTCA claims; and (3) resolve/litigate claims filed as a result of the bill's extension of the time period for required notice.

Increasing the Liability Limits Under LGTCA: 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's membership currently includes 17 counties, 142 municipalities, and 20 sponsored entities. LGIT operates a Primary Liability Pool (PLP) and a Property Pool. The PLP has five basic coverages – general liability, automobile liability, public officials' liability (includes errors and omissions), law enforcement liability, and automobile physical damage. The Property Pool covers multiple perils. The number of claims paid by LGIT for amounts at or above the LGTCA limits varies by year. Since 1989, LGIT has paid 25 claims at or above the LGTCA limits (excluding defense costs). In fiscal 2014, LGIT paid out approximately \$5.7 million in liability claims, excluding defense costs.

The bill increases indemnity, legal defense, and (for those who are not self-insured) insurance costs for counties and their insurers. LGIT assesses premiums based on the projected claims and losses of its members. If claims increase in volume or amount as a result of the bill, insurance premiums for its members also increase.

According to an informal analysis, LGIT estimates that, factoring in both indemnity and defense costs, LGIT could experience as much as a 6.2% increase in annual costs. If the increased liability limits under the bill discourage LGTCA plaintiffs from settling, members could face additional litigation costs.

As previously mentioned, not all counties have liability coverage under LGIT's PLP. Some larger jurisdictions, including the Baltimore City and Baltimore, Harford, Howard, and Prince George's counties, do not participate in PLP. Some of these larger jurisdictions pay liability claims out of a self-maintained fund, while others pay claims using general funds.

Baltimore City is self-insured and pays claims out of its taxpayer general funds. Baltimore City advises that during 2012, it paid out approximately \$1.4 million in claims that reached the liability limits under LGTCA.

Baltimore County also pays claims out of its general fund. Baltimore County advises that any increase in awards/claim payments above the current LGTCA liability limits results in additional expenditures for the county.

Prince George's County advises that the county's Risk Management Fund already has a significant deficit, and the bill's provisions may increase the amount and number of liability payments from the fund.

Extension of the Time Limit for Notice Under LGTCA: The alteration to the notice requirement under the bill may result in an increase in expenditures for local governments to (1) litigate LGTCA cases that otherwise would be resolved through motions for summary judgment under existing statute; (2) pay judgments awarded in those cases; and (3) pay increased insurance premiums for liability coverage against LGTCA claims. Alteration of the notice requirement under LGTCA may also impact the number of claims filed, the entire process of evaluating claims, the ability to assess liability at an earlier stage of the legal process, and budgeting for risk and loss. The extent of to which these potential effects will occur and the resulting increase in local expenditures cannot be reliably estimated at this time.

LGIT estimates that increasing the notice time period from 180 days to one year results in a 1% increase in costs.

Similar concerns apply to counties that self-insure. If the bill's alteration of the notice requirements reduces the proportion of claims that could be resolved prior to litigation, counties may not have the ability to make informed early resolution determinations. According to Montgomery County, one significant advantage of the LGTCA's notice requirement to the county and the party claiming injury is that the county can conduct an early evaluation of a claim and potentially resolve it at an earlier stage of the legal process. This also reduces litigation costs and the cost per LGTCA case, since pursuing litigation is costly. The county also advises that it has prevailed in a number of cases where notice was untimely or insufficient.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Baltimore, Calvert, Montgomery, and Prince George's counties; Maryland Association of Counties; City of Bowie; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Maryland State Treasurer's Office; Local Government Insurance Trust; Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510