

Department of Legislative Services  
Maryland General Assembly  
2021 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 602

(Senator Smith)

Judicial Proceedings

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Tort Claims Acts – Limits on Liability

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This bill increases the limits on liability under the Maryland Tort Claims Act (MTCA) and the Local Government Tort Claims Act (LGTCAs) and establishes separate limits on liability for a claim subject to these Acts that arises from the tortious acts or omissions committed by a law enforcement officer. **The bill applies retroactively and must be applied to and interpreted to affect any cause of action arising before the bill's October 1, 2021 effective date if the cause of action is filed on or after October 1, 2021.**

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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. Additional personnel expenditures may be incurred depending on the level of claims and litigation. Revenues are not affected.

**Local Effect:** Potential significant increase in expenditures for local governments to (1) pay judgment awards that exceed the current liability limits under the LGTCAs and (2) pay increased insurance premiums for liability coverage against LGTCAs claims. Revenues are not affected.

**Small Business Effect:** Potential meaningful.

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## Analysis

### Bill Summary/Current Law:

#### *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).

MTCA covers a multitude of personnel, including some local officials and nonprofit organizations. 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.

Under current law, MTCA limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. The bill increases this limit to \$600,000. Furthermore, the bill establishes that the monetary limit on liability under MTCA does not apply to economic damages if the liability of the State or its units arises from tortious acts or omissions committed by a law enforcement officer. With respect to noneconomic damages for such a claim, the liability limit must increase by \$15,000 on October 1 of each year beginning on October 1, 2021. The annual limit on noneconomic damages established under the bill applies to causes of action arising between October 1 of the year the increase occurs and September 30 of the following year, inclusive.

#### *Local Government Tort Claims Act*

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

Pursuant to Chapter 131 of 2015, for causes of action arising on or after October 1, 2015, LGTCA limits the liability of a local government to \$400,000 per individual claim and \$800,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts).

The bill increases these limits to \$600,000 and \$1,200,000, respectively. Furthermore, the bill establishes that the monetary limits on liability under LGTCA do not apply to economic damages if the liability of a local government arises from tortious acts or omissions committed by a law enforcement officer. With respect to noneconomic damages for such a claim, the liability limits apply, but must increase by \$15,000 for individual claims and by \$30,000 for total claims that arise from the same occurrence on October 1 of each year beginning on October 1, 2021. The annual limits on noneconomic damages established under the bill apply to causes of action arising between October 1 of the year the increase occurs and September 30 of the following year, inclusive.

**State Expenditures:** Special fund expenditures increase, perhaps 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. Additional personnel expenditures may be incurred by affected agencies to address additional or more complex claims and litigation under the bill.

Claims under MTCA are paid out of SITF, which is administered by the Treasurer's Office (STO). 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. An agency's loss history, consisting of settlements and judgments incurred since the last budget cycle, comprises part of the agency's annual premium.

STO's Insurance Division received 3,646 new claims during fiscal 2020 and projects that it will receive 3,875 new claims in fiscal 2021. To date, there are approximately 150 to 200 cases in litigation under MTCA each year. According to STO, payments above the threshold of \$50,000 totaled \$2.1 million in fiscal 2021. One-third of these cases involve actions of law enforcement officers; the bill increases overall payments associated with these types of claims.

STO estimates that it will receive 15% more claims (581) under the bill each year. Additional personnel expenditures may be incurred to handle the increased volume and complexity of cases expected under the bill, including claims adjusters in STO and assistant Attorneys General. Assistant Attorneys General assigned to State agencies and a supervising tort assistant Attorney General in the TSO litigate MTCA cases. Agencies pay the salaries of their assistant Attorneys General. The salary of the supervising tort assistant

Attorney General and all other litigation costs (*e.g.*, depositions, experts, *etc.*) are paid out of SITF. *For illustrative purposes only*, the cost of hiring one adjuster is \$58,949 in fiscal 2022 and increases to \$75,839 by fiscal 2026; the cost of hiring one assistant Attorney General is approximately \$120,000 in fiscal 2022 and a minimum of \$145,000 annually thereafter.

Furthermore, *additional* litigation costs may be incurred to the extent that litigation costs are proportionate to the value of the claim. STO advises that on average, in a case where MTCA's full \$400,000 liability is required, litigation costs (aside from costs associated with the time value of State personnel) amount to approximately 25% of the value of the claim, or \$100,000 per case. For example, the use of a police force expert in litigation costs approximately \$80,000 to \$120,000 per case.

**Local Expenditures:** The bill may result in a significant increase in expenditures for local governments to (1) pay claims that exceed the current limits on liability under LGTCA; (2) pay claims if higher liability caps increase the overall value of claims below the limits; (3) pay claims that are filed as a result of the increased liability caps; and (4) 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. 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 LGIT, increases in the liability caps likely encourage attorneys to file claims in marginal cases where, although a large judgment is unlikely, the local government may elect to settle in order to avoid the financial costs and other burdens associated with litigation. For instance, after the LGTCA tort caps increased in 2015, LGIT advises that between fiscal 2015 through 2020, it experienced a 40% increase in claims paid and reserves (total incurred); law enforcement claims experienced a 35% increase during that same time period. LGIT expects similar increases under the bill. The bill also creates exposure to liability above the tort caps for law enforcement claims. Due to a lack of similar experience and the unpredictability of judgments that may arise, LGIT is unable to project or estimate the effect of this component of the bill.

**Small Business Effect:** The bill may have a meaningful impact on small business law firms that secure higher judgment awards for their clients as a result of the bill.

## **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** HB 721 (Delegate Moon) - Judiciary.

**Information Source(s):** Baltimore County; City of Laurel; Treasurer's Office; Board of Public Works, Local Government Insurance Trust; Maryland Association of Counties; Judiciary (Administrative Office of the Courts); Department of Legislative Services

**Fiscal Note History:** First Reader - February 3, 2021  
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