

**Department of Legislative Services**  
Maryland General Assembly  
2021 Session

**FISCAL AND POLICY NOTE**  
**Third Reader**

House Bill 378  
Judiciary

(Delegate D.M. Davis)

Judicial Proceedings

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**Local Government Tort Claims Act – Definition of Local Government**

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This bill alters the definition of “local government” under the Local Government Tort Claims Act (LGTCA) to include the Maryland Association of Counties (MACo) Pooled OPEB Trust Fund.

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**Fiscal Summary**

**State Effect:** The bill is not expected to materially affect State finances or operations.

**Local Effect:** Minimal decrease in local expenditures. Revenues are not affected.

**Small Business Effect:** None.

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**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. 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). 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, LGTCA prevents local governments from asserting a common law claim of governmental immunity from liability for such acts or omissions of its employees.

**Local Expenditures:** Local expenditures for local governments that are members of the MACo Pooled OPEB Trust Fund decrease minimally due to reduced costs for insurance coverage.

State law allows governments to invest funds toward their long-term retiree health care liabilities when those funds are withdrawn from the ordinary annual budgeting process and placed into a trust. MACo created the Pooled OPEB Trust Fund to assist and serve its members who may not have sufficient investments to merit establishing their own trusts with the necessary investment advisors and other associated personnel, services, and requirements. Current members of the trust include various smaller local governments and affiliated entities, such as libraries and sanitary commissions. The trustees of the fund are local government employees and oversee the investment strategy for the pooled funds.

Pooling funds in the trust allows its members to share overhead costs and receive more favorable investment rates. One of the overhead costs is insurance costs for the trustees (primarily “errors and omissions” insurance). MACo advises that the private market charges thousands of dollars each year for this insurance, and the trust will be able to obtain less expensive coverage, with savings of a few thousand dollars annually, through the Local Government Insurance Trust (LGIT). However, in order to obtain coverage through LGIT, the trust must be a “local government” under LGTCA.

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### **Additional Information**

**Prior Introductions:** HB 1617 of 2020 was referred to the House Rules and Executive Nominations Committee, but no further action was taken.

**Designated Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Department of Legislative Services

**Fiscal Note History:** First Reader - January 12, 2021  
rh/jkb Third Reader - February 24, 2021

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