

SB 602 Position Paper.pdf

Uploaded by: Hansel, Cary

Position: FAV

**SB 602 POSITION PAPER: STRONG SUPPORT**

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SB 602 amends the damages caps under the State and Local Government Tort Claims Acts by allowing victims of law enforcement misconduct to recover their economic damages, modestly increasing caps on non-economic damages for all claims, and providing for future automatic increases in the cap by a small amount each year. This change in the law will deter future misconduct, provide more reasonable compensation for victims, and bring these caps more in line with other comparable caps while keeping them affordable for government.

Under current law, governmental liability in tort actions is limited, or “capped,” at \$400,000 and the same cap applies to both economic damages and non-economic damages. In the most violent cases, however, the actual out-of-pocket expenses, like lost wages, property damages and medical bills, exceed that cap. In this way, the most seriously-injured people are victimized twice – by the underlying misconduct, and by laws limiting fair compensation.

No other cap statute operates this way – other caps exclude economic damages from the cap as a matter of simple fairness. The purpose of the civil justice system is to make victims whole. This is not accomplished if actual, proven out-of-pocket damages are not fully compensated.

The current caps are too low to incentivize change. The City of Baltimore has an annual budget of about \$3.55 Billion; the current cap of \$400,000 is equivalent to a typical Marylander paying a fine of about \$9.40. Against a State budget of about \$43.6 Billion, the current cap equates to less than a dollar out of a typical Marylander’s personal household budget. Smaller jurisdictions have below-market-rate insurance through the Local Government Insurance Trust. State and local governments can afford more justice – and the goal is to avoid misconduct and the need for any compensation at all by incentivizing change.

Even with these changes, the *new* \$600,000 cap would be lower than any comparable caps in Maryland by hundreds of thousands of dollars. The caps on personal injury pain and suffering (\$875,000), medical malpractice (\$830,000) and wrongful death (\$1,037,500.00) in cases which are not against the government are all much higher than the new proposed caps. In addition to being significantly higher, *none* of these other caps limit economic damages.

SB 602 brings governmental liability into line with other caps by allowing full recovery of economic damages (such as lost wages and medical expenses) in cases of police misconduct and by modestly increasing the cap, to an amount still far below other comparable caps. In further keeping with other cap statutes, SB 603 also increases caps on non-economic damages each year, lessening the legislative burden of revising the caps and increasing fairness.

MAJ strongly supports SB 603 as a top legislative priority.

SB 602_FAV_ACLU_Spielberger.pdf

Uploaded by: Spielberg, Joe

Position: FAV



**Testimony for the Senate Judicial Proceedings Committee
February 4, 2021**

SB 602 – Tort Claims Act – Limits on Liability

FAVORABLE

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The ACLU of Maryland supports SB 602, which would increase the limits on liability of a local government for tort claims committed by their employees to \$600,000 for an individual claim, and \$1,200,000 for total claims. It would increase the state tort claim cap to \$600,000.

One of the fundamental protections against abuses of power is the right to obtain redress when wronged. However, the cap on tort claims has shielded jurisdictions that have escaped liability and avoided responsibility for wrongdoing. This low level of financial liability empowers jurisdictions to ignore repeated violations, and there is simply little deterrence for wrongdoing without a meaningful financial impact. SB 602 seeks to remedy this.

This bill is especially important amid the state and national reckoning on police reform, to help individuals and their families who have been harmed by police violence and misconduct, and send a powerful message to State and county officials that they must take seriously allegations of misconduct. Without the potential magnitude of a verdict in court, officials and their agencies have little incentive to take meaningful action and change abusive practices that result in harm. And there have been countless examples of officers across Maryland who have brutalized and violated people's rights, and been supported and promoted by their departments. There must be more incentive to change the culture of policing, and ensuring that those in power feel the financial constraint will take a strong step to compel them to change the culture of policing.

For the foregoing reasons, the ACLU of Maryland urges a favorable report on SB 602.

SB 602 APCIA Opposes February 4 2021 FINAL .pdf

Uploaded by: Egan, Nancy

Position: UNF

Testimony of American Property Casualty Insurance Association (APCIA)

Senate Judicial Proceedings Committee &

Senate Bill 602

Tort Claims Acts – Limits on Liability

February 4, 2021

Letter of Opposition

The American Property Casualty Insurance Association (APCIA) represents more than 1,200 insurers and reinsurers that provide critically important insurance protection throughout the U.S. and world. In combination, our members write 60% of the U.S. property and casualty market policies. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe. In Maryland, our members write 66.6% of all written premium. APCIA appreciates the opportunity to provide comments in opposition of Senate Bill 602.

Senate Bill 602 expands increases the liability of both local governments and the State for claims arising from acts committed by an employee within the scope of employment. This bill dramatically increases the cap on damages for local governments from \$800,000 to \$1,200,000 for each occurrence and from \$400,000 to \$600,00 for each individual claim under the cap. The current cap, increased just four years ago in 2015, already provides a high level of compensation in response to any claims brought against municipalities, while protecting the ability of Maryland's counties and cities to provide the wide range of services that are crucial to their residents. This is a particularly bad time for this change considering the current health and economic crisis Maryland's municipalities are navigating. This is certainly not a time to be putting municipal budgets at risk from mega lawsuits.

Notably, while the bill does not address contractors specifically in this language, but it may be presumed that local governments and the State will require contractors to insure up to their occurrence damage cap, as the "maximum" becomes the "minimum" liability requirement for purposes of projecting potential liability. This will cause any project being conducted for a municipal government to be substantially more expensive. This 50% increase in liability will put undue pressure on local governments and cause contracting costs to increase, at a time of great fiscal pressure.

Also, another complication with this abrupt increase in liability is that contractors with current contracts with municipalities have not built this additional cost into their contracts. Cities and counties may need to revisit their municipal contracts. The retroactive liability provided for in this legislation compounds the disruption and unpredictability of the proposal.

For these reasons, the APCIA urges the Committee to provide an unfavorable report on Senate Bill 602.

SB 602_UNF_MML.pdf

Uploaded by: Jorch, Bill

Position: UNF



Maryland Municipal League

The Association of Maryland's Cities and Towns

TESTIMONY

February 4, 2021

Committee: Senate Judicial Proceedings

Bill: SB 602 – Tort Claims Acts – Limits on Liability

Position: Oppose

Reason for Position:

The Maryland Municipal League strongly oppose SB 602. The primary purpose of this bill is to increase the limit on liability of a local government and the State for claims arising from tortious acts committed by an employee. This would significantly increase the liability exposure for local governments for all civil lawsuits. The increased costs to local governments would deplete already-limited resources which could otherwise be spent on necessary public services.

When the Local Government Tort Claims Act (LGTCA) was established, county and municipal governments relinquished long-held sovereign immunities from tort actions, balanced by the installation of certain parameters to protect taxpayers. The limit on liability payment is one of these important parameters. Local governments provide legal defense for their employees for tortious actions committed within the scope of government employment, which includes potential actions by law enforcement officers. The LGTCA strikes an appropriate balance between plaintiffs' rights and protections for local governments and local taxpayers against exorbitant court awards. Tort actions against local governments are capped because taxpayer dollars are used to litigate claims brought against them.

This is appropriate for traditional causes of action like slip-and-falls where the goal is to make the plaintiff whole, not punish bad acts like police misconduct. Widespread increased awareness of social justice issues has inspired us all to take a closer look at how our institutional policies permit, or even encourage, police misconduct. But the LGTCA is not the vehicle to address this challenge. Police misconduct cases are issues of constitutional law, and thereby belong in federal court rather than state court. Further, local governments pay the plaintiff; there is not a sufficient connection between the financial judgment and the individual actor to disincentivize future bad acts. Indeed, increasing the cap will require



Maryland Municipal League

The Association of Maryland's Cities and Towns

local governments, many of whom have done everything in their power to prevent police misconduct through trainings, screenings, and personnel evaluations, to pay a higher premium using taxpayer revenue.

We understand the need for reform within the realm of law enforcement in the State, and we appreciate being a part of the discussion to determine how LGTCA caps play a role in an appropriate balance between the need to award plaintiffs and the need to provide essential services to our local governments. However, this bill is not the appropriate vehicle. We respectfully request the Committee give SB 602 an unfavorable report.

FOR MORE INFORMATION CONTACT:

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Executive Director
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Director, Research and Policy Analysis
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SB0602 - JP- OPP.doc.pdf

Uploaded by: Mehu, Natasha

Position: UNF



BRANDON M. SCOTT
MAYOR

*Office of Government Relations
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Annapolis, Maryland 21401*

SB 602

February 4, 2021

TO: Members of the Senate Judicial Proceedings Committee
FROM: Natasha Mehu, Director of Government Relations
RE: Senate Bill 602 – Torts Claims Act – Limits on Liabilities
POSITION: OPPOSE

Chair Smith, Vice Chair Waldstreicher, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **opposes** Senate Bill SB 602.

SB 602 would remove the cap on economic damages and create an escalating cap on noneconomic damages under the Local Government Tort Claims Act (LGTCA) for the tortious acts or omissions of law enforcement officers. This would impose a significant burden on local government finances and operations and upend longstanding balancing of needs.

The LGTCA strikes a necessary balance between the interests of plaintiffs on one hand and local governments and their taxpayers on another. Under the LGTCA local governments do not have sovereign immunity which would block a plaintiff from receiving any compensation for tortious action committed by an employee of local government. As claims against local governments are paid by taxpayer dollars, the caps provided under the LGTCA ensure that plaintiffs can receive such compensation without over burdening local government finances by diverting limited tax payer dollars from the many essential city operations and needs those dollars fund.

Passage of this bill could result in claims alleging millions in additional liability against the City each year. By way of example, in the last 12-18 months, Litigation has dealt/is dealing with about 14 cases (not involving police civil rights abuses) where there is very real potential liability for the current \$400k cap to be reached. These cases include 4 death cases (e.g., pedestrian struck and killed by City truck), 4 cases involving traumatic brain or other very serious injuries (e.g., motorist crashes car into a house as a result of ice in the road), and 1 police pursuit case where a criminal was eluding police and killed

an innocent motorist. The potential liability of each case under this bill would likely increase \$200k a piece.

In the police pursuit case, that number is more, potentially into the millions. A reasonable estimate is that the City gets one of these types of case a year. An important difference in this bill is that it does not distinguish with respect to the type of torts committed by law enforcement officers. An auto tort is treated no differently than a brutality or false arrest case. In a situation where a suspected violator of the law is eluding the police causes injuries that are so serious the claimant/plaintiff would require medical and other assistance for the remainder of his/her life (e.g., quadriplegic), the economic damages would NOT be capped at all.

We respectfully request an **unfavorable** report on Senate Bill 602.

SB_602_Oppose_City of Havre de Grace.pdf

Uploaded by: Rybczynski, Adam

Position: UNF



City of Havre de Grace

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February 4, 2021

The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

RE: Oppose - SB 602 – Tort Claims Acts – Limits on Liability

Chairman Smith and The Honorable Members of the Judicial Proceedings Committee

The City of Havre de Grace opposes Senate Bill 602. If passed, the legislation would create an unfunded mandate that increases the limits on the liability of a local government, from \$400,000 for an individual claim and \$800,000 for total claims to \$600,000 for an individual claim and \$1,200,000 for total claims as well as increase damages for individual claims by \$15,000 each year and would increase total claims that arise from the same occurrence, by \$30,000 each year in perpetuity.

Even more concerning is that the liability limits for law enforcement officers would be increased by economic damages without limit. In effect, this would be limited by the amount of insurance the City could afford. While the State is self-insured, most local governments must procure liability insurance. The City already must procure special insurance for law enforcement officers beyond that for our elected officials and civilian employees.

The City of Havre de Grace is considered one of the safest cities in the United States and does not compromise public safety. However, small municipalities struggle to balance budgets, and such a mandate as proposed by SB 602 will result in substantial additional insurance costs that cannot be measured.

If the Maryland General Assembly passes SB 602, the City could be put in a position to either raise taxes or reduce essential services to fund the additional insurance. The City of Havre de Grace suspects most large agencies will be able to redirect current spending to accommodate the

additional cost. The increase in liability, however, could very well force smaller municipalities to eliminate local law enforcement and seek County-level police protection.

For comparison's sake, out of the 157 municipal governments in Maryland, the City of Havre de Grace is the 18th largest, with Baltimore City considered the largest.

Havre de Grace Police Department has a force of 45 sworn and civilian staff. Baltimore City Police Department has a force of 3,100 sworn and civilian staff.

The Havre de Grace Police Department has a budget of five million dollars. In comparison, Baltimore City Police Department has a budget of five hundred million dollars.

It usually would not be realistic to compare these two police departments; however, if passed, SB 602 would apply the same unfunded mandate to both police agencies. The same unfunded mandate, even though the Baltimore City PD is the 8th largest municipal police force in the United States and has a budget that is a hundred times greater than Havre de Grace PD's.

It is not realistic to ask small municipal police forces to comply with a piece of legislation that will lead them scrambling to find ways to cut their budget and reduce public safety services to simply comply with the bill.

The City of Havre de Grace urges the committee to give SB 602 an unfavorable report.

SB0602-JPR_MACo_OPP.pdf

Uploaded by: Sanderson, Michael

Position: UNF



Senate Bill 602

Tort Claims Acts – Limits on Liability

MACo Position: **OPPOSE**

To: Judicial Proceedings Committee

Date: February 4, 2021

From: Michael Sanderson

The Maryland Association of Counties (MACo) **OPPOSES** SB 602. The bill dramatically increases the liability exposure for local governments for all civil lawsuits, and even further extends liability for police torts far beyond the scope of recently revised State laws. The principal effect of the bill will be to drain public resources away from needed services, and instead increase the flow of funds to plaintiffs and settlements – an unnecessary and costly shift that will not actually solve the problem this bill ultimately seeks to address.

Accidents, oversights, and police misconduct do not arise from a lack of penalties. Governments and their employees follow a wide range of safety protocols and risk management to limit such incidents. Law enforcement agencies engage in screening, training, and ongoing personnel evaluations to avoid misconduct. Other pending legislation would specify new measures for law enforcement training and screening, and may be warranted. But, merely increasing liability exposure to taxpayers will not spur “best practices” to reduce unfortunate torts – those practices already exist. And the heightened liability exposure in SB 602 would remain, even for governments that follow every available best practice.

Widespread concern over social justice matters has understandably prompted Maryland to re-evaluate a wide swath of laws governing law enforcement agencies, their policies, and officer protections. SB 602, however, despite being conceptually incorporated under this umbrella, does not advance these goals. SB 602 will merely enrich specific plaintiffs, and will promote and encourage more marginal cases to be brought to the courts in search of more lucrative settlements.

Maryland very recently doubled the tort limits on State and local governments. Under the Tort Claims Acts, this balanced law affords plaintiffs a reliable source to receive actual compensation for acts of a public employee performing work duties. The substantial dollar values allowed provide a proper avenue and remedy for meritorious cases in State courts. There is no policy reason to relocate these constitutional claims from federal courts to State courts (the likely practical outcome of this bill), other than to enable greater dollar values for local jury decisions.

SB 602 is introduced among a wave of legislation promoting police reform, but instead will merely trigger greater fiscal liability for taxpayers, siphoning public funds away from needed services – education, public health, and transportation. Accordingly, MACo requests the Committee give SB 602 an **UNFAVORABLE** report.

sb 602 - bryson popham on behalf of MAMIC - Letter

Uploaded by: Popham, Bryson

Position: INFO

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February 2, 2021

The Honorable William C. Smith
Chairman, Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, Maryland 21401

RE: Senate Bill 602 - Tort Claims Acts – Limits on Liability – Letter of Information

Dear Chairman Smith and Members of the Committee,

I am writing on behalf of the Maryland Association of Mutual Insurance Companies (MAMIC), and respectfully submit this letter of information on Senate Bill 602.

MAMIC is comprised of 12 mutual insurance companies that are headquartered in Maryland and neighboring states. Approximately one-half of MAMIC members are domiciled in Maryland and are key contributors and employers in their local communities. Together, MAMIC members offer a wide variety of insurance products and services and provide coverage for thousands of Maryland citizens.

MAMIC understands that the General Assembly, and your Committee in particular, is considering the broad subject of legislation addressing police conduct in our State. That subject is clearly a central focus of SB 602; however, MAMIC is not taking a position or offering comments on that subject.

Instead, MAMIC wishes to narrowly address specific provisions of SB 602 found on page 2, lines 1-5 of the bill. These provisions increase the liability of a local government for damages caused by tortious acts from the current statutory level of \$400,000 per claim and \$800,000 per occurrence to \$600,000 per claim and \$1,200,000 per occurrence. Our comments are focused solely on the new proposed limit of \$1,200,000 per occurrence.

Local governments often contract with private businesses for goods and services, and in so doing, a universal requirement of the contractor is to secure a certificate of insurance with limits of liability established by the local government. Liability insurance policies, whether for motor vehicle liability, general liability or other forms of liability, are typically available in different amounts. To offer these amounts, insurers must contract with reinsurance companies, and must also make required filings with the Maryland Insurance Administration.

It is not uncommon for insurers to offer liability limits of \$500,000 per occurrence, or \$1,000,000 per occurrence. For motor vehicle liability insurance subject to federal Department of Transportation requirements, a limit of \$750,000 is also typical.

While some larger insurers may also offer limits in excess of \$1,000,000 per occurrence, many do not. To our knowledge, no insurer offers the specific “per occurrence” limit required by SB 602 of \$1,200,000. Furthermore, requiring a limit in excess of \$1,000,000 may eliminate the availability of liability insurance from many small and medium-sized insurers that provide this coverage today. In any event, imposing a limit of \$1,200,000 would likely require a renegotiation of a substantial number of reinsurance treaties, and would require the re-filing of these products with the Maryland Insurance Administration. There are substantial cost and availability issues associated

with both of those requirements.

To avoid inevitable market disruption and the potential inability of insurers to provide the unusual liability limit of \$1,200,000, MAMIC offers the Committee a suggestion. MAMIC believes that the better approach is to adopt limits of \$500,000 per claim and \$1,000,000 per occurrence. We note that the current statutory limit for tort claims is \$400,000 and \$800,000 per occurrence. MAMIC further notes that such a change would constitute a 25% increase in the current statutory minimum limit of liability. Such limits, as noted above, are already widely available, and therefore would not be disruptive to the liability insurance market available to local governments through the contractors they employ. These limits constitute a substantial increase over the limits under current law.

We respectfully request the Committee's consideration of these comments as it deliberates the provisions of SB 602.

Respectfully submitted,

A handwritten signature in black ink that reads "Bryson Popham". The signature is written in a cursive style with a long, sweeping tail on the letter "m".

Bryson F. Popham, Esq.

cc: Jill Showalter, MAMIC President