

HB0378-JPR_MACo_SUP.pdf

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Position: FAV



House Bill 378

Local Government Tort Claims Act – Definition of Local Government

MACo Position: **SUPPORT**

To: Judicial Proceedings Committee

Date: April 8, 2021

From: Michael Sanderson

The Maryland Association of Counties (MACo) **SUPPORTS** HB 378. This bill adds one additional entity to a list of those performing governmental services outside the formal local government structure, to be covered under the Local Government Tort Claims Act.

The MACo Pooled OPEB Trust is a vehicle designed and formed by and for local governments to collaborate in their effort to invest current funds toward long term liabilities, specifically for employee health insurance coverage. For counties and other local governmental units, such a financial plan is widely viewed positively as a best practice, and the pooled Trust enables Maryland local governments to do so while sharing overhead costs. In essence, this Trust serves the same function that an investment committee of a larger government might accomplish on its own.

HB 378 seeks to specify that this Pooled Trust, clearly performing a governmental function on behalf of its member units, is itself a covered entity under Maryland's Local Government Tort Claims Act. This would ensure that the government employees are insured by the Trust for their actions in this specific capacity, and that the entity receives the same treatment as other governments and comparable entities under the State's tort laws.

The more immediate case for HB 378 is that this clarification would allow the Pooled Trust to receive its insurance through yet another instrument of Maryland local governments, the Local Government Insurance Trust (LGIT). Under LGIT's forming documents, it may only serve members that are under the Local Government Tort Claims Act, as its underwriting and rate-setting structure is wholly predicated on those laws. HB 378 would enable insurance for the Pooled Trust that is closer to home, and more affordable, since LGIT more clearly understands the limited role of an admittedly peculiar entity.

HB 378 would treat a specific pooled investment trust as a governmental entity, and allow it to receive insurance coverage tailored to its limited scope, saving its member jurisdictions some overhead costs and promoting this best practice. For these reasons, MACo **SUPPORTS** HB 378 and urges a **FAVORABLE** report.

DDavis_Written_Testimony_HB378_Senate.pdf

Uploaded by: Young, Ny'esha

Position: FAV



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

Chair Smith and Vice Chair Waldstreicher
Senate Judicial Proceedings
2 East Miller Senate Office Building
Annapolis, MD 21401

April 6, 2021

Dear Chair Smith, Vice Chair Waldstreicher and Committee Members:

I am pleased to present House Bill 378 – Local Government Tort Claims Act – Definition of Local Government. This legislation expands the definition under the Local Government Tort Claims Act to include the Maryland Association of Counties Pooled OPEB Trust Fund. The Local Government Tort Claims Act allows citizens to bring a torts claim against local government officials or employees. If the local government official or employee is held liable, then the Act holds the local government responsible for any compensation awarded. As a means of insurance for these claims, the Maryland Association of Counties created a Pooled Trust for the counties, libraries, community colleges, and other government entities within their association. That fund currently has at least \$50 million in assets. The trustees that work for the Pooled Trust require insurance to protect them in cases of errors and/or omissions. Since the Maryland Association of Counties Pooled OPEB Trust Fund is not defined as a local government under the Local Government Tort Claims Act, trustees are not able to be insured by the Local Government Insurance Trust. As a result the trustees, do not have access to the fund and must resort to private insurance companies that overcharge and do not have a real understanding of what the trustee does. While the trustees do the same service as county employees of larger counties, they are not able to receive the same quality of insurance.

The Maryland General Assembly has a history of expanding the definition of local government within the Local Government Tort Claims Act. For example, in 2016 the General Assembly passed [SB 1097](#), which expanded the definition of local government to include the Tri-County Council in Southern Maryland. In addition, this bill will have no financial impact on the state. It will save local governments from overpaying private insurance companies and give the trustees the proper insurance that they deserve.

For the above reasons, I respectfully request a favorable report on HB 378.

Sincerely,

Delegate Debra M. Davis

District 28, Charles County

MAJ Position HB378 - OPP.pdf

Uploaded by: Howe, Josh

Position: UNF



Maryland Association for Justice, Inc.

2021 Position Paper

HB 378

Local Government Tort Claims Act – Definition of Local Government

UNFAVORABLE

The Maryland Association for Justice, Inc. (MAJ) represents over 1,200 trial attorneys throughout the state of Maryland. MAJ advocates for the preservation of the civil justice system and the protection of the rights of consumers.

The Maryland Association for Justice historically opposes most legislation that offer immunity from civil liability as well as monetary caps on civil liability recovery.

HB 378 would expand the definition of “Local Government” under the Courts and Judicial Proceedings Article, Section 5-301 to include the Maryland Association of Counties Pooled OPEB Trust Fund (“the fund”). In other words, HB 378 seeks to limit the liability of the MACo OPEB Fund 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).

From the Fiscal Note of HB 378 (page 2), the analysis advises that its inclusion under LGTCA will “minimally” decrease the fund’s insurance costs and reduce its future exposure to liability as it serves 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.

MAJ opposes limiting the rights of recovery of potential victims for the sole purpose of “minimal” cost savings.

MAJ respectfully urges an Unfavorable Report on HB378