

Department of Legislative Services  
Maryland General Assembly  
2014 Session

**FISCAL AND POLICY NOTE**

Senate Bill 326 (Senator Simonaire)  
Judicial Proceedings

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**Elected Officials - Civil Cases - Liability for Costs, Judgments, and Settlements  
(Taxpayer Protection Act of 2014)**

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This emergency bill makes several changes to the Local Government Tort Claims Act (LGTCOA) and provisions governing civil actions against State officers and State employees to hold a local or State elected official liable for legal expenses, damages, or settlements related to lawsuits against the elected official.

The bill applies to causes of action that result in a judgment or settlement after the bill's effective date.

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**Fiscal Summary**

**State Effect:** Minimal decrease in special and general fund expenditures for payments of legal expenses, damages, or settlements or due to reimbursements received by the State for legal expenses. Revenues are not affected.

**Local Effect:** Minimal decrease in local expenditures due to reimbursements received pursuant to the bill or reduced payments of damages. Revenues are not affected.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** The bill amends LGTCOA to authorize a local government to require an elected official to reimburse the local government for any costs associated with a legal defense provided under LGTCOA for alleged tortious acts or omissions committed by a local elected official within the official's scope of employment if the elected official

(1) is found to have knowingly or recklessly violated federal, State, or local law; (2) admitted to such a violation; or (3) consents to a settlement agreement in an action involving an applicable violation.

Unless a local government agrees to assume liability, a local elected official is also fully liable for all damages awarded in an LGTCA action if the official is found to have knowingly or recklessly violated federal, State, or local law, or admitted to doing so. In these cases, the local government may not be liable for the damages awarded. If an elected official consents to a settlement in an applicable action, the official is fully liable for the amount of the settlement unless the local government agrees to assume the liability.

The bill creates exceptions to the general immunity applicable to State personnel in lawsuits in State courts and tort liability for tortious acts or omissions within the scope of their public duties that are made without malice or gross negligence and for which the State has waived immunity under the Maryland Tort Claims Act (MTCA). Under the bill, unless the State agrees to assume liability, this general immunity does not apply to a State elected official who (1) was found to have knowingly or recklessly violated federal, State, or local law; (2) admitted to knowingly or recklessly violating federal, State, or local law; or (3) consented to a settlement agreement in an action involving a knowing or reckless violation of federal, State, or local law.

The bill amends provisions governing civil actions against State officials and State employees to establish that, unless the State agrees to assume the liability (1) the Board of Public Works may not pay all or part of a settlement consented to by a State elected official in an action against the official involving a knowing or reckless violation of federal, State, or local law and (2) the Board of Public Works may not pay all or part of a judgment in a lawsuit against a State elected official who was found to have knowingly or recklessly violated federal, State, or local law or admitted to such a violation.

The bill also establishes that unless the State agrees to assume the liability, the State may not be held liable to a State elected official for reimbursement of court costs, counsel fees, and other reasonable expenses under specified circumstances if the official was (1) found to have knowingly or recklessly violated federal, State, or local law; (2) admitted to such a violation; or (3) consented to a settlement in an action involving an applicable violation.

If the Office of the Attorney General (OAG) represented the official in the lawsuit, the bill requires that the agreement of legal representation between OAG and the State elected official contain provisions enabling OAG to require that the elected official reimburse the State for court costs, counsel fees, and other reasonable expenses if the official was (1) found to have knowingly or recklessly violated federal, State, or local

law; (2) admitted to such a violation; or (3) consented to a settlement in an action involving an applicable violation.

### **Current Law:**

*Local Government Tort Claims Act (LGTC):* The definition of “local government” in LGTCA includes 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.

LGTC establishes that a local government is liable for the tortious acts or omissions of its employees acting within the scope of employment, so long as the employee did not act with actual malice. Thus, LGTCA prevents local governments from asserting a common law claim of governmental immunity from liability for such acts or omissions of its employees. 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).

Under LGTCA, each local government must provide a legal defense for its employees in any lawsuit alleging damages resulting from tortious acts or omissions committed by an employee within the scope of employment with the local government.

*Civil Actions Against State Employees or State Officials:* In general, the Attorney General represents a State employee or State officers in civil actions against the employee or officer. However, before the Attorney General can begin to represent the employee/officer, the Attorney General must have the officer or employee enter into an agreement that enables the Attorney General to require reimbursement of court costs, reasonable counsel fees, and other expenses in representing the officer or employee if it is judicially determined that (1) the defense of sovereign immunity is not available to the officer or employee; (2) the injuries arose out of an act or omission of the officer or employee; (3) the act or omission was malicious or grossly negligent or the officer/employee was not performing a duty within the scope of his/her employment when the act or the omission was made; and (4) the officer or employee did not give the Attorney General complete information or gave false or misleading information.

The State is liable to a State officer or State employee for reimbursement of court costs, counsel fees, and other reasonable expenses that the officer or employee incurs in defending an action or proceeding if (1) the Attorney General declined representation and (2) it is determined judicially that the defense of sovereign immunity is available to the officer or employee, or the injuries arose from an act or omission that was not malicious or grossly negligent while the employee or officer was acting within the scope of his/her employment.

The Board of Public Works may pay all or part of a settlement or judgment against the State or any State personnel and may include counsel fees and costs in the payment.

*Maryland Tort Claims Act (MTCA):* Under MTCA, State personnel are immune from liability for tortious acts or omissions 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 its own common law (sovereign) immunity. However, MTCA limits State liability to \$200,000 to a single claimant for injuries arising from a single incident. 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.

Attorney's fees are included in the liability cap under MTCA. Under MTCA, attorneys may not charge or receive a fee that exceeds 20% of a settlement or 25% of a judgment.

**State Expenditures:** The expenses listed in the bill would be eligible for payment by a governmental entity if it is deemed that an employee or officer was acting within the employee/officer's scope of employment and was not acting with malice or gross negligence. It is unclear to what extent a "knowing and reckless" violation of specified laws would be subject to the immunity from liability provisions under existing statute. However, to the extent that a State elected official incurs these expenses or is liable for damages or settlements for knowing and reckless acts or omissions that transpired while the official was acting within the scope of his/her employment, the bill could result in reduced special and general fund expenditures.

Claims under MTCA are paid out of the State Insurance Trust Fund, which is a special fund administered by the Treasurer's Office. Payments by the Board of Public Works are general fund expenditures. Reimbursement of legal expenses for representation by OAG are collected as a debt due to the State.

**Local Expenditures:** The expenses listed in the bill are typically paid by a governmental entity if it is deemed that an employee or officer was acting within the employee/officer's scope of employment and did not act with actual malice. To the extent that a local elected official incurs these expenses or is liable for damages or settlements for knowing and reckless acts or omissions that transpired while the official was acting within the scope of his/her employment, the bill could result in reduced local expenditures.

Charles County advises that the bill may lead to decreases in the county's payments for insurance deductibles and insurance premiums. The county is insured through the Local

Government Insurance Trust, a self-insurer. The Maryland Municipal League advises that the bill could result in meaningful savings in legal defense costs and court awards to the extent that a municipal elected official faces such a claim. The City of Frederick reports that the bill may provide some savings, however; the city does not have a history of paying for civil cases against local officials. The City of Havre de Grace advises that the bill is not expected to cause a reduction in expenses for bonding and liability insurance.

Montgomery County does not foresee a measurable fiscal impact as a result of the bill.

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### **Additional Information**

**Prior Introductions:** SB 210 of 2013, a similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee.

**Cross File:** None.

**Information Source(s):** Charles and Montgomery counties; Cities of Frederick and Havre de Grace; Office of the Attorney General; Governor's Office; Maryland Association of Counties; Maryland Municipal League; State's Attorneys' Association; Secretary of State; Department of Legislative Services

**Fiscal Note History:** First Reader - February 11, 2014  
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