

Department of Legislative Services
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FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 934

(Senator Manno)

Judicial Proceedings

Judiciary

Local Government Tort Claims Act - Notice Requirement

This bill requires a court to entertain a cause of action under the Local Government Tort Claims Act (LGTCA) even if the plaintiff/claimant did not provide the required notice under LGTCA, unless the defendant (the local government) in an LGTCA suit can affirmatively show that its defense has been prejudiced by lack of required notice. The bill repeals the statutory requirement that a plaintiff who did not provide the required notice under LGTCA show good cause why the court should entertain the lawsuit.

The bill applies prospectively to causes of action arising on or after the bill's October 1, 2016 effective date.

Fiscal Summary

State Effect: The bill does not materially affect State finances.

Local Effect: Potential significant increase in local expenditures beginning in FY 2018 depending on litigation costs and the monetary value of payments for claims, as discussed below. Revenues are not affected.

Small Business Effect: Potential meaningful impact on small business law firms that are able to litigate or proceed with LGTCA lawsuits as a result of the bill.

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 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 of its employees.

LGTCA also specifies that an action for unliquidated damages may not be brought unless notice of the claim is given within one year after the injury. The notice must be in writing and must state the time, place, and cause of the injury. The notice must also be given in person or by certified mail, return receipt requested, bearing a postmark from the U.S. Postal Service, by the claimant or the representative of the claimant. If the defendant local government is Baltimore City, the notice must be given to the city solicitor. Notice of LGTCA actions against Howard or Montgomery counties must be given to the county executive. Notice of LGTCA actions against Anne Arundel, Baltimore, Harford, or Prince George's counties must be given to the county solicitor or the county attorney. Notice for any other county must be given to the county council or county commissioners of the defendant local government. For any other local government, the notice must be given to the corporate authorities of the defendant local government.

However, under case law, a plaintiff who does not strictly comply with the notice requirement may substantially comply with LGTCA's notice requirement by providing notice "in fact" which, while not strictly compliant with the statutory notice requirements, provides requisite and timely notice of the facts and circumstances giving rise to the plaintiff's claim and fulfills the purpose of the notice requirement – to apprise the local government of its potential liability at a time when it is still possible for the local government to conduct a proper investigation. *Faulk v. Ewing*, 371 Md. 284, at 298-99 (2002).

The notice requirement does not apply to actions against specified nonprofit corporations covered under LGTCA.

Unless the defendant (the local government) in an LGTCA suit can affirmatively show that its defense has been prejudiced by lack of required notice, the court, upon motion and for good cause shown, *may* entertain the suit even though the notice was not given. A claimant demonstrates “good cause” when he/she prosecutes a claim “...with that degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances.” *Heron v. Strader*, 361 Md. 258, 271(2000) quoting *Westfarm Association v. Washington Suburban Sanitary Commission*, 66 F.3d 669, 676-77 (4th Cir. 1995). A claimant who wishes a court to entertain his/her lawsuit under these conditions must make the appropriate motion and show good cause before a court will consider whether the defendant/local government’s defense has been prejudiced by the lack of required notice by the claimant.

Local Expenditures: The bill may result in a significant increase in expenditures, beginning in fiscal 2018, for local governments to litigate an increased volume of LGTCA lawsuits brought as a result of the bill, pay judgments awarded in those cases, and pay increased insurance premiums for coverage of LGTCA claims. Many 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 (17 Maryland counties and 143 Maryland municipalities). LGIT assesses premiums based on the projected claims and losses of its members.

The bill (1) repeals the requirement that an LGTCA claimant show good cause why a court should entertain his/her lawsuit when the claimant did not provide the required notice and (2) requires a court (rather than authorizes a court under current law) to entertain an LGTCA lawsuit from such a plaintiff/claimant unless the defendant/local government can affirmatively show that its defense was prejudiced by the lack of required notice.

Thus, the bill may result in (1) an increase in LGTCA lawsuits for claims that would be dismissed under current law because the claimant failed to show good cause for the court to entertain the claimant’s lawsuit and (2) an increase in litigation of lawsuits involving older claims.

Both of these factors may result in (1) increased expenditures to investigate older claims; (2) a decrease in the ability of local governments to properly investigate claims and resolve claims before litigation; and (3) an increase in litigation costs and costs for payments of claims from LGTCA lawsuits brought under the bill. The extent of the bill’s fiscal impact depends on the volume of claims filed as a result of the bill, the costs associated with litigating and paying claims in applicable cases, and the ability of a local government to successfully show that its defense has been prejudiced by the lack of required notice from the defendant/claimant.

LGIT advises that the bill affects the ability of local governments to investigate claims in a timely manner and potentially settle them before they ripen into costly litigation. According to LGIT, removal of the “good cause” requirement results in older claims being immediately converted into litigation.

Under existing statute, a court *may* entertain an LGTCA lawsuit upon motion and for good cause shown even if the claimant did not provide the required notice, unless the local government can affirmatively show that its defense has been prejudiced by the lack of required notice. The bill *requires* a court to entertain such a lawsuit. LGIT advises that it is not aware of any case in which a court has not allowed a lawsuit to proceed after finding both good cause and an absence of prejudice.

Additional Information

Prior Introductions: None.

Cross File: HB 637 (Delegate Smith, *et al.*) - Judiciary.

Information Source(s): Baltimore, Charles, and Montgomery counties; cities of Frederick and Havre de Grace; Maryland Commission on Civil Rights; Judiciary (Administrative Office of the Courts); Maryland Municipal League; Local Government Insurance Trust; Department of Legislative Services

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