

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 357
Judiciary

(Delegate Afzali)

Judicial Proceedings

Frederick County - Local Government Tort Claims Act - Notice of Claim

This bill requires a notice of a claim against Frederick County under the Local Government Tort Claims Act (LGTCA) to be given to the county solicitor or county attorney.

Fiscal Summary

State Effect: None.

Local Effect: The bill is procedural in nature and does not materially affect Frederick County's finances.

Small Business Effect: None.

Analysis

Current Law/Background: 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.

Liability Limits: 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.

Notice Requirement: LGTCA 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. For any other county, notice must be given to the county commissioners or county council 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Frederick County, Judiciary (Administrative Office of the Courts), State's Attorneys' Association, Department of Legislative Services

Fiscal Note History: First Reader - February 8, 2016
md/kdm Revised - Correction - May 18, 2016

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