

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
Enrolled - Revised

House Bill 637  
Judiciary

(Delegate Smith, *et al.*)

Judicial Proceedings

---

Local Government Tort Claims Act - Notice Requirement - Exception

---

This bill creates an exception to the notice requirement under the Local Government Tort Claims Act (LGTCA) if, within one year after the injury giving rise to the claim, the defendant local government has actual or constructive notice of the claimant's injury or the defect or circumstances giving rise to the claimant's injury.

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 expenditures for local governments to (1) investigate and litigate LGTCA cases that could otherwise be resolved through motions for summary judgment under existing statute; (2) pay LGTCA claims that are brought as a result of the bill or are allowed to proceed as a result of the bill; and (3) pay increased insurance premiums for liability coverage against LGTCA claims. Revenues are not affected.

**Small Business Effect:** Potential meaningful impact on small business law firms that are able to litigate LGTCA cases as a result of the bill's provisions.

---

## 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.

**Local Expenditures:** Local expenditures increase, perhaps significantly, if the bill results in higher payments for LGTCA claims. The impact of the bill depends on (1) the extent to which LGTCA claims currently dismissed for failure to provide notice remain viable as a result of the bill; (2) the ability of local governments to properly investigate claims brought under the bill; (3) the bill's effect on the volume of LGTCA claims, and investigation and litigation costs for such claims; and (4) payments for LGTCA claims affected by the bill.

LGTCA requires a person to give notice of his/her claim within one year from the date of the injury. The bill creates an exception to this requirement if, within one year after the injury giving rise to the claim, the defendant local government has actual or constructive notice of the claimant's injury or the defect or circumstances giving rise to the claimant's injury. Thus, it appears that a person who can prove compliance with this actual or constructive notice condition and wishes to file a claim under LGTCA simply needs to comply with the standard three-year statute of limitations for civil actions to proceed with the claim.

Some 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 municipalities). LGIT assesses premiums based on the projected claims and losses of its members. LGIT advises that the bill results in a significant increase in expenditures for local governments.

According to LGIT, more cases will survive preliminary, procedural challenges for failure to provide notice or meet the "good cause" provision of LGTCA as a result of the bill, resulting in an increase in settlements/payments of claims in these cases. LGIT advises that this is most likely to occur in general or automobile liability cases. The bill may also lead to an increase in LGTCA claims if attorneys who are reluctant to pursue LGTCA claims under existing statute due to untimely notice and failure to show good cause decide to pursue claims under the actual or constructive notice provisions of the bill.

LGIT advises that according to past practice, issues concerning notice under LGTCA have mostly been resolved at the pleading stage of litigation. However, LGIT does not anticipate that this will be the case in many instances regarding the existence of actual or constructive notice under the bill, which will likely be resolved at a later stage of litigation through testimony and documentary evidence. LGIT also advises that as a result of the bill, its analysts, adjusters, and attorneys must determine from its members if, when, and to whom written notice was provided and whether or not the member learned of the alleged injury and/or its cause in some other way within one year, aside from written notice. According to LGIT, these factors may result in an increase in litigation and investigation costs.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 934 (Senator Manno) - Judicial Proceedings.

**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

**Fiscal Note History:** First Reader - February 15, 2016  
md/kdm Revised - House Third Reader - March 29, 2016  
Revised - Enrolled Bill - May 19, 2016

---

Analysis by: Amy A. Devadas

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510