

**Department of Legislative Services**  
Maryland General Assembly  
2002 Session

**FISCAL NOTE**

Senate Bill 121 (Senator Baker)  
Judicial Proceedings

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**Maryland and Foreign Business Trusts**

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This bill authorizes the conversion of a Maryland corporation to a Maryland business trust and authorizes “foreign business trusts” to operate in the State.

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**Fiscal Summary**

**State Effect:** Potential significant decrease in general fund corporate income tax revenues, partially offset by an increase in personal income tax revenues. Potential decrease in Transportation Trust Fund revenues from the corporate income tax. Potential minimal increase in general fund revenues due to the bill’s penalty provisions and for processing of all documents. Potential minimal increase in special fund revenues for expedited processing of documents. No effect on expenditures.

**Local Effect:** None.

**Small Business Effect:** Minimal. It is assumed that the bill would predominantly affect larger businesses.

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**Analysis**

**Bill Summary:** The bill authorizes a Maryland corporation registered under the Investment Company Act of 1940 to convert to a Maryland business trust upon adoption of a resolution by the board of directors approving the conversion, without stockholder approval. A converting corporation must file articles of conversion and a certificate of trust with the State Department of Assessments and Taxation (SDAT). The bill includes

the articles of conversion among documents to which a \$20 recording fee is applicable. Obligations of the converting corporation become obligations of the business trust.

The bill provides that, except as otherwise provided in the trust's governing instrument, a series of trustees or beneficial owners may be dissolved and the series' affairs wound up without causing the dissolution of the entire trust or any other series. The bill also establishes a procedure to restate or amend a certificate of trust.

Under the bill, a trustee, officer, employee, or manager acting under a governing instrument is not liable to the business trust or a beneficial owner for the individual's good faith reliance on the governing instrument. Further, a trustee's duties and liabilities may be expanded or restricted in a governing instrument. The bill also provides that the beneficial owners or trustees of a trust may take action without a vote if a written consent is signed by at least the minimum number of beneficial owners or trustees required. Beneficial owners and trustees may vote by proxy.

The bill authorizes a "foreign business trust" to conduct business in Maryland, upon filing a registration with SDAT. The registration must name: (1) the foreign business trust; (2) the State under whose laws it was formed and the date of its formation; (3) the general character of the business it proposes to do in the State; (4) the name and address of the trust's resident agent or a statement that SDAT is the resident agent if none is appointed; and (5) the address of the office to be maintained in the State of the trust's organization or the principal office of the trust if none is required. SDAT may impose a penalty of \$200 on a foreign business trust that fails to file. Agents of a foreign business trust that fails to file may be convicted of a misdemeanor, subject to a fine of up to \$1,000. A foreign business trust may cancel its registration by filing a certificate of cancellation.

A foreign business trust may not do any kind of business in the State that would be prohibited to a Maryland business trust. The bill prohibits a foreign business trust from bringing suit in the State unless it has satisfied the court that it has: (1) paid the required penalty; and (2) either: (a) complied with the laws applicable to foreign business trusts; or (b) ceased to do business in the State. The bill provides for the forfeiture of a foreign business trust's right to do business in the State if the trust fails to file a required report or fails to pay any required late filing fee.

The following activities do not constitute doing business in the State: (1) maintaining, defending, or settling an action or suit; (2) activities that relate to the internal affairs of the trust; (3) maintaining bank accounts; (4) conducting an isolated transaction; (5) foreclosing mortgages and deeds of trust; (6) acquiring property through foreclosure or deed in lieu of foreclosure; (7) holding, protecting, renting, maintaining, and operating

property in the State; or selling or transferring title to property that was acquired through foreclosure proceedings.

The bill adds a foreign business trust to the list of business entities that must submit a report annually on their personal property to SDAT.

**Current Law:** There are no provisions governing the conversion of a Maryland corporation into a Maryland business trust or governing the dissolution of a series of trustees or beneficial owners.

Under the Maryland Business Trust Act (enacted by Chapter 452 of 1999), a business trust must file a certificate of trust with SDAT, setting forth the trust's name, the address of the trust's principal office in the State, and the name and address of its resident agent. A business trust that is established in accordance with the Maryland Business Trust Act is regarded for purposes of Maryland law as a separate legal entity. Its beneficial owners enjoy the same limitation of personal liability enjoyed by stockholders of a corporation. A business trust may carry on any lawful business for any purpose, except insurance or banking business.

SDAT charges a statutory filing fee of \$50 for a certificate of trust of a business trust. For expedited processing, a business entity must pay an additional \$50 fee for recording a document. Fees collected for expedited processing are deposited into a special fund, which partially funds SDAT's Charter Unit.

**Background:** A business trust is an unincorporated business, trust, or association that: (1) is created by a governing instrument under which: (a) property is held by a trustee for the benefit of persons who are or may become entitled to a beneficial interest in the trust property; or (b) business or professional activities for profit are carried on for the benefit of persons who are or may become entitled to a beneficial interest in the trust property; and (2) files a certificate of trust with SDAT.

**State Revenues:** For State tax purposes, a business trust is classified as a corporation, an association, a partnership, a trust, or otherwise as determined under the United States Internal Revenue Code. The number of corporations that would convert to a business trust under the bill cannot be accurately determined. However, because a business trust may be treated as either a taxable or non-taxable entity, revenues from the corporate income tax could decrease. Of the revenues from the corporate income tax, 25% are dedicated to the Transportation Trust Fund and 75% inure to the general fund. Any general fund revenue loss would be partially offset by an increase in revenues from the personal income tax as income earned by the trust would "pass through" to its beneficiaries and become taxable income to the beneficiaries.

General fund revenues could increase minimally for processing of all documents under the bill by SDAT. Special fund revenues could increase minimally for expedited processing of documents under the bill. General fund revenues could increase minimally due to the bill's penalty provisions.

**State Expenditures:** General fund expenditures could increase by \$7,200 in fiscal 2003 for SDAT to reprogram its computer system to accommodate handling foreign business trusts as a business entity.

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### **Additional Information**

**Prior Introductions:** An identical bill, HB 682, passed third reading as amended in the House during the 2001 session and received an unfavorable report from the Senate Judicial Proceedings Committee. HB 682 was the subject of a briefing before the Judicial Proceedings Committee during the 2001 interim.

**Cross File:** HB 389 (Delegates Barve and Brown) – Economic Matters.

**Information Source(s):** State Department of Assessments and Taxation, Office of the Attorney General, Comptroller of the Treasury, Department of Legislative Services

**Fiscal Note History:** First Reader - January 29, 2002  
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Analysis by: Ryan Wilson

Direct Inquiries to:  
John Rixey, Coordinating Analyst  
(410) 946-5510  
(301) 970-5510