

Department of Legislative Services  
Maryland General Assembly  
2002 Session

FISCAL NOTE

House Bill 843  
Ways and Means

(Delegate Patterson, *et al.*)

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Recordation Tax and State Transfer Tax - Memorandum of Lease

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This bill exempts from recordation taxes and State and code home rule county transfer taxes a memorandum of lease in lieu of recording a lease. The bill also increases the recording fee for a memorandum of lease to \$1,000.

The bill is effective July 1, 2002.

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Fiscal Summary

**State Effect:** Potential significant decrease in State special fund revenues. General fund revenue increase from increased recording fees. No effect on expenditures.

**Local Effect:** Potential significant decrease in county recordation tax revenues and potential significant decrease in code counties' transfer tax revenues. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** Potential meaningful impact.

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Analysis

**Current Law:** Generally, in order for a lease in excess of seven years to be effective it must be executed and recorded with either the clerk of the circuit court or the Department of Assessments and Taxation, whichever is appropriate. In lieu of recording a lease, a memorandum of the lease, executed by all the parties to the lease, may be recorded with the same effect. The memorandum must contain certain information, such as names and addresses and a description of the leased premises. A lease for fewer than seven years is

not required to be recorded and, as such, is exempt from recordation taxes and State transfer taxes if recorded. Section 13-402.1 of the Property-Tax Article provides that any exemption from State transfer taxes under section 12-307 (leases of less than seven years is included in this section) also applies to a code home rule county's transfer taxes. The following are code home rule counties: Allegany, Caroline, Kent, Queen Anne's, and Worcester.

## **Background:**

### *Transfer Tax*

The State transfer tax rate is 0.5% of the consideration payable for an instrument of writing conveying title to, or a leasehold interest in, real property (0.25% for first-time Maryland home buyers). The tax is collected by the clerks of the circuit court and transferred to the Comptroller of the Treasury.

State transfer tax revenues are special fund revenues dedicated for specific programs and are distributed as follows: 3% of total revenue is earmarked to defray administrative costs and \$1 million is earmarked to cover debt service expenses. The remaining revenues are dedicated to the following programs in the following approximate percentages: Program Open Space (76%), Agricultural Land Preservation Fund (17%), Heritage Conservation Fund (2%), and Rural Legacy Program (5%). Approximately 50% of Program Open Space revenues are distributed to local Program Open Space programs. Any decrease in transfer tax revenues would result in a funding decrease for these programs. The property transfer tax allocation to these programs for fiscal 2003 totals \$105,765,000.

### *Recordation Tax*

The counties and Baltimore City are authorized by law to impose recordation tax rates on any business or person: (1) conveying title to real property; or (2) creating or giving notice of a security interest (i.e., a lien or encumbrance) in real or personal property, by means of an instrument of writing.

The clerks of the circuit court collect the county recordation taxes in all counties except Prince George's, where they are collected by the county director of finance. Fees ranging from 3% to 5% of the tax collected are retained by the clerks, which are credited to the State general fund. The remainder of the tax is remitted to the respective counties. Total recordation taxes collected during fiscal 2001, the latest year

for which information is available, totaled \$207,401,714 while fees retained by the clerks totaled \$7,300,540.

**State Revenues:** State special fund revenues could decrease significantly. State transfer tax revenues, as noted above, are dedicated to Program Open Space and other programs so any decrease in transfer tax will result in reductions to these programs. Memorandums of lease that are currently subject to recordation and transfer taxes are usually business leases. Any one such lease could be valued in excess of millions of dollars and the effect of exempting it from transfer tax would be significant. Information is currently not compiled by the clerks of the court that would enable the Department of Legislative Services (DLS) to determine how much transfer tax has been collected in the past from memorandums of lease or to estimate any future impact of exempting memorandums of lease from transfer tax. The actual decrease in transfer taxes depends on the consideration payable in the lease and the number filed during the year.

State general fund revenues could increase as a result of the increase in the fee for recording a memorandum of lease. The current recording fee is \$20 for a memorandum of nine pages or less or \$75 for a memorandum greater than nine pages. As noted above, the clerks of the court do not compile information necessary for DLS to determine the number of filings that would be affected by this increase.

**Local Revenues:** County and Baltimore City recordation tax revenues could decrease significantly. Based on a limited survey of the counties from a similar recent bill, it appears that the number of memorandums of lease filed in each county is from 5 to 20 annually. The actual decrease in recordation taxes depends on the county recordation tax rate, the consideration payable in the lease, and the number filed during the year.

The code home rule counties' transfer tax rate could decrease significantly. The actual decrease in transfer taxes depends on the county transfer tax rate, the consideration payable in the lease, and the number filed during the year. The following are the transfer tax rates of the code home rule counties:

<u>County</u>	<u>Transfer Tax Rate (Percentage of Transaction Value)</u>
Allegany	0.2%
Caroline	0.5%
Kent	0.5%
Queen Anne's	0.5%
Worcester	0.5%

**Small Business Effect:** This bill could potentially impact small businesses that enter into long-term leases by exempting the lease from recordation and State and code county transfer taxes. Although the businesses would have to pay the increased recording fee they would potentially have a net decrease in the cost of recording a memorandum of lease because of the tax exemption.

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### **Additional Information**

**Prior Introductions:** A similar bill, HB 1367 of 2001, was heard by the Ways and Means Committee but no further action was taken. HB 843 of 2000 would have exempted memorandums of lease from the recordation and State transfer taxes. The bill received an unfavorable report from the Ways and Means Committee.

**Cross File:** None.

**Information Source(s):** Department of Assessments and Taxation, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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