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By: **Senator Frosh**

Introduced and read first time: February 4, 2004

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Real Property Entities - Transfers of Controlling Interests - Reporting and**  
3 **Notice Requirements**

4 FOR the purpose of requiring certain entities that own certain interests in real  
5 property in Maryland to report to the State Department of Assessments and  
6 Taxation the amount of consideration paid for certain transfers of controlling  
7 interests in the entities; specifying the manner in which the reported  
8 consideration must be calculated; requiring a certain entity to file a report of a  
9 certain transfer of a controlling interest in the entity with the Department at a  
10 certain time; requiring the report to include certain information; requiring a  
11 certain statement to be attached to the report; establishing a certain fee for  
12 filing the report; requiring the Department to collect the fee; establishing  
13 certain exemptions to the reporting requirement; requiring an entity that claims  
14 an exemption to the reporting requirement to give a certain notice to the  
15 Department at a certain time; providing that the entity has the burden of  
16 establishing the applicability of any exemption claimed; providing for the loss of  
17 good standing with the Department for entities that do not comply with the  
18 reporting and notice requirements established under this Act; providing for the  
19 application of this Act; requiring the Department to adopt certain regulations;  
20 defining certain terms; requiring the Department to report certain information  
21 to the Governor and the General Assembly on or before a certain date; and  
22 generally relating to transfers of controlling interests in entities that own  
23 interests in real property in Maryland.

24 BY repealing and reenacting, with amendments,  
25 Article - Corporations and Associations  
26 Section 1-203(b)(3)  
27 Annotated Code of Maryland  
28 (1999 Replacement Volume and 2003 Supplement)

29 BY adding to  
30 Article - Corporations and Associations  
31 Section 1-407  
32 Annotated Code of Maryland

1 (1999 Replacement Volume and 2003 Supplement)

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
3 MARYLAND, That the Laws of Maryland read as follows:

4 **Article - Corporations and Associations**

5 1-203.

6 (b) (3) For each of the following documents which are filed but not recorded,  
7 the filing fee is as indicated:

8 Reservation of a corporate, limited partnership, limited liability partnership or  
9 limited liability company name ..... \$25

10 Original registration of name of a foreign corporation to end of calendar  
11 year ..... \$100

12 Renewal of registration of name of a foreign corporation for one calendar  
13 year ..... \$100

14 Documents in connection with the qualification of a foreign corporation to do  
15 intrastate business in this State ..... \$100

16 Application for registration of a foreign limited partnership, a foreign limited  
17 liability partnership, or a foreign limited liability company ..... \$100

18 Annual report of a Maryland corporation, except a charitable or benevolent  
19 institution, nonstock corporation, savings and loan corporation, credit union, and  
20 banking institution ..... \$300

21 Annual report of a foreign corporation subject to the jurisdiction of this State,  
22 except an insurance company which pays an annual filing fee of \$25 to the Insurance  
23 Commissioner, national banking association, savings and loan association, credit  
24 union, nonstock corporation, and charitable and benevolent institution ..... \$300

25 Annual report of a Maryland savings and loan association, banking institution,  
26 or credit union or of a foreign savings and loan association, national banking  
27 association, or credit union that is subject to the jurisdiction of this State ..... \$300

28 Annual report of a Maryland limited liability company, limited liability  
29 partnership, limited partnership, or of a foreign limited liability company, foreign  
30 limited liability partnership, or foreign limited partnership ..... \$300

31 Annual report of a real estate investment trust doing business in this  
32 State ..... \$300

33 REPORT OF A REAL PROPERTY ENTITY OF A TRANSFER OF A CONTROLLING  
34 INTEREST IN THE REAL PROPERTY ENTITY ..... \$25

1 Other documents ..... \$6

2 1-407.

3 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
4 INDICATED.

5 (2) "CONTROLLING INTEREST" MEANS:

6 (I) MORE THAN 80% OF THE TOTAL VALUE OF ALL CLASSES OF  
7 STOCK OF A CORPORATION;

8 (II) MORE THAN 80% OF THE TOTAL INTEREST IN CAPITAL AND  
9 PROFITS OF A PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER  
10 UNINCORPORATED FORM OF DOING BUSINESS; OR

11 (III) MORE THAN 80% OF THE BENEFICIAL INTEREST IN A TRUST.

12 (3) "FINAL TRANSFER" MEANS THAT TRANSFER OF ANY PORTION OF A  
13 CONTROLLING INTEREST WHICH COMPLETES THE TRANSFER OF A CONTROLLING  
14 INTEREST IN A REAL PROPERTY ENTITY.

15 (4) (I) "PLAN OF TRANSFER" MEANS AN INTENTIONAL PLAN OR  
16 PROGRAM TO TRANSFER THE CONTROLLING INTEREST IN A REAL PROPERTY ENTITY.

17 (II) "PLAN OF TRANSFER" DOES NOT INCLUDE A SERIES OF SALES  
18 OF SHARES OF A PUBLICLY TRADED ENTITY.

19 (5) (I) "REAL PROPERTY" MEANS REAL PROPERTY LOCATED IN THE  
20 STATE.

21 (II) "REAL PROPERTY" DOES NOT INCLUDE:

22 1. A LEASEHOLD, UNLESS CREATED BY A LEASE THAT IS  
23 REQUIRED TO BE RECORDED UNDER § 3-101(A) OF THE REAL PROPERTY ARTICLE; OR

24 2. ANY MORTGAGE, DEED OF TRUST, OR OTHER LIEN UPON  
25 OR SECURITY INTEREST IN REAL PROPERTY THAT SECURES AN INDEBTEDNESS.

26 (6) (I) "REAL PROPERTY ENTITY" MEANS A CORPORATION,  
27 PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, LIMITED LIABILITY  
28 PARTNERSHIP, OTHER UNINCORPORATED FORM OF DOING BUSINESS, OR TRUST  
29 THAT DIRECTLY OR BENEFICIALLY OWNS REAL PROPERTY THAT:

30 1. CONSTITUTES AT LEAST 80% OF THE VALUE OF ITS  
31 ASSETS; AND

32 2. HAS A TOTAL ASSESSED VALUE OF AT LEAST \$500,000.

33 (II) FOR THE PURPOSES OF THIS PARAGRAPH, THE ASSESSED  
34 VALUE OF REAL PROPERTY SHALL BE DETERMINED WITHOUT REDUCTION FOR ANY

1 MORTGAGE, DEED OF TRUST, OR OTHER LIEN UPON OR SECURITY INTEREST IN THE  
2 REAL PROPERTY.

3 (B) (1) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,  
4 CONSIDERATION PAID FOR THE TRANSFER OF A CONTROLLING INTEREST IN A REAL  
5 PROPERTY ENTITY SHALL BE REPORTED TO THE DEPARTMENT IN ACCORDANCE  
6 WITH SUBSECTION (C) OF THIS SECTION.

7 (2) (I) THE REPORTED CONSIDERATION SHALL INCLUDE THE  
8 AMOUNT OF:

9 1. ANY MORTGAGE, DEED OF TRUST, OR OTHER LIEN UPON  
10 OR SECURITY INTEREST IN THE REAL PROPERTY DIRECTLY OR BENEFICIALLY  
11 OWNED BY THE REAL PROPERTY ENTITY;

12 2. ANY OTHER DEBT OR ENCUMBRANCE OF THE REAL  
13 PROPERTY ENTITY; AND

14 3. ANY DEBT ASSUMED OR INCURRED BY THE GRANTEE OF  
15 THE INTEREST IN THE REAL PROPERTY ENTITY THAT IS A PART OF THE PLAN OF  
16 TRANSFER.

17 (II) THE REPORTED CONSIDERATION SHALL BE REDUCED BY THE  
18 AMOUNT ALLOCABLE TO THE ASSETS OF THE REAL PROPERTY ENTITY OTHER THAN  
19 REAL PROPERTY.

20 (C) (1) UNLESS AN EXEMPTION UNDER SUBSECTION (D) OF THIS SECTION  
21 APPLIES, WITHIN 30 DAYS AFTER THE DATE OF THE FINAL TRANSFER, A REAL  
22 PROPERTY ENTITY SHALL FILE WITH THE DEPARTMENT A REPORT OF ANY  
23 TRANSFER OF A CONTROLLING INTEREST IN THE REAL PROPERTY ENTITY THAT IS  
24 COMPLETED WITHIN A PERIOD OF 24 MONTHS OR LESS.

25 (2) THE REPORT SHALL INCLUDE ALL INFORMATION NECESSARY TO  
26 ESTABLISH TO THE SATISFACTION OF THE DEPARTMENT:

27 (I) THE CONSIDERATION REFERRED TO IN SUBSECTION (B)(1) OF  
28 THIS SECTION; AND

29 (II) THE AMOUNT OF ASSETS OTHER THAN REAL PROPERTY  
30 REFERRED TO IN SUBSECTION (B)(2)(II) OF THIS SECTION AND ANY ALLOCATIONS OF  
31 VALUE AMONG ALL THE ASSETS OF THE REAL PROPERTY ENTITY.

32 (3) A STATEMENT VERIFYING THE ACCURACY OF THE INFORMATION  
33 CONTAINED IN THE REPORT, MADE UNDER OATH AND SIGNED BY A PRINCIPAL OF  
34 THE REAL PROPERTY ENTITY, SHALL BE ATTACHED TO THE REPORT.

35 (4) THE DEPARTMENT SHALL COLLECT THE FEE ESTABLISHED UNDER §  
36 1-203(B) OF THIS ARTICLE FOR FILING THE REPORT REQUIRED UNDER THIS  
37 SUBSECTION.

1 (D) (1) A REPORT TO THE DEPARTMENT IS NOT REQUIRED IF A PLAN OF  
2 TRANSFER OCCURS OVER A PERIOD OF MORE THAN 24 MONTHS.

3 (2) A REPORT TO THE DEPARTMENT IS NOT REQUIRED ON THE  
4 TRANSFER OF A CONTROLLING INTEREST IN A REAL PROPERTY ENTITY TO ANOTHER  
5 ENTITY IF THE OWNERSHIP INTERESTS IN THE TRANSFEREE ENTITY ARE HELD BY  
6 THE SAME PERSONS AND IN THE SAME PROPORTION AS IN THE REAL PROPERTY  
7 ENTITY THE CONTROLLING INTEREST OF WHICH WAS TRANSFERRED.

8 (3) A REPORT TO THE DEPARTMENT IS NOT REQUIRED ON THE  
9 TRANSFER OF A CONTROLLING INTEREST IN A REAL PROPERTY ENTITY IF EACH  
10 TRANSFEROR, EACH TRANSFEREE, AND EACH REAL PROPERTY ENTITY IS EITHER AN  
11 ENTITY THAT IS WHOLLY OWNED, DIRECTLY OR INDIRECTLY, BY A COMMON PARENT  
12 ENTITY OR THE COMMON PARENT ENTITY.

13 (4) (I) A REAL PROPERTY ENTITY THAT CLAIMS AN EXEMPTION  
14 UNDER THIS SUBSECTION SHALL GIVE WRITTEN NOTICE TO THE DEPARTMENT OF  
15 THE CLAIM WITHIN 30 DAYS AFTER THE DATE OF THE FINAL TRANSFER OF A  
16 CONTROLLING INTEREST IN THE REAL PROPERTY ENTITY.

17 (II) THE NOTICE SHALL CONTAIN A STATEMENT, MADE UNDER  
18 OATH AND SIGNED BY A PRINCIPAL OF THE REAL PROPERTY ENTITY, IDENTIFYING  
19 THE EXEMPTION CLAIMED AND THE REASON IT IS APPLICABLE.

20 (III) A REAL PROPERTY ENTITY HAS THE BURDEN OF ESTABLISHING  
21 TO THE SATISFACTION OF THE DEPARTMENT THE APPLICABILITY OF ANY  
22 EXEMPTION CLAIMED BY THE REAL PROPERTY ENTITY.

23 (E) FAILURE TO COMPLY WITH THE REPORTING REQUIREMENTS UNDER  
24 SUBSECTION (C) OF THIS SECTION OR THE NOTICE REQUIREMENTS UNDER  
25 SUBSECTION (D) OF THIS SECTION SHALL RESULT IN THE REAL PROPERTY ENTITY'S  
26 LOSS OF GOOD STANDING WITH THE DEPARTMENT.

27 (F) THIS SECTION DOES NOT APPLY TO:

28 (1) A PLEDGE OF STOCK OR OTHER INTEREST IN A REAL PROPERTY  
29 ENTITY AS SECURITY FOR A LOAN; OR

30 (2) THE ADMISSION TO THE REAL PROPERTY ENTITY OF ADDITIONAL  
31 SHAREHOLDERS, PARTNERS, BENEFICIAL OWNERS, OTHER MEMBERS INCIDENT TO  
32 THE RAISING OF ADDITIONAL CAPITAL THROUGH A PUBLIC OR PRIVATE OFFERING  
33 OF STOCK OR OTHER INTERESTS IN THE REAL PROPERTY ENTITY IF:

34 (I) THE EFFECTIVE MANAGEMENT OF THE REAL PROPERTY  
35 ENTITY IS NOT SUBSTANTIALLY CHANGED; AND

36 (II) UNDER THE TERMS OF THE OFFERING, NONE OF THE NEW  
37 MEMBERS IS EXPECTED TO PARTICIPATE IN THE DAY-TO-DAY MANAGEMENT OF THE  
38 REAL PROPERTY ENTITY.

1 (G) THE DEPARTMENT SHALL ADOPT REGULATIONS TO ADMINISTER THIS  
2 SECTION.

3 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before February 1,  
4 2005, and on or before February 1 of each following year, the State Department of  
5 Assessments and Taxation shall report to the Governor and, in accordance with §  
6 2-1246 of the State Government Article, to the General Assembly, on the total amount  
7 of consideration paid during the immediately preceding calendar year for transfers of  
8 controlling interests in real property entities for each county in Maryland in which a  
9 transfer occurred.

10 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
11 July 1, 2004.