

**Department of Legislative Services**  
 Maryland General Assembly  
 2004 Session

**FISCAL AND POLICY NOTE**

Senate Bill 379 (Senator Frosh)  
 Judicial Proceedings

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

This bill requires a “real property entity” that owns specified interests in real property in Maryland to report to the State Department of Assessments and Taxation (SDAT) the amount of consideration paid for a transfer of a controlling interest in the entity. The bill specifies the manner in which the reported consideration must be calculated and the information to be included in the report. The bill imposes a \$25 fee to file the report.

Finally, the bill requires that, beginning in 2005, SDAT report to the Governor and the General Assembly by February 1 of each year on the total amount of consideration paid during the immediately preceding calendar year for transfers of controlling interests in real property entities for each county in Maryland in which a transfer occurred.

The bill takes effect July 1, 2004.

**Fiscal Summary**

**State Effect:** Minimal increase in special fund revenue from \$25 filing fee. Potential significant special fund revenue increase resulting from higher property assessments in future years. General fund expenditure increase of approximately \$72,100 in FY 2005. Future years reflect annualization and inflation.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
SF Revenue			--	--	--
GF Expenditure	72,100	86,700	92,000	97,800	104,000
Net Effect	(\$72,100)	(\$86,700)	(\$92,000)	(\$97,800)	(\$104,000)

*Note :() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** Potential significant increase in local property taxes revenue resulting from higher assessment.

**Small Business Effect:** Minimal. The bill would only affect small businesses which own real estate entities which they transfer outside of the normal recordation and transfer process through the transfer of the controlling interest of the entity. These businesses would have to report these transfer to SDAT and pay the \$25 fee.

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## Analysis

**Bill Summary:** The bill applies to transfers of controlling interests by entities that own real property that constitutes at least 80% of the value of its assets and that has a total assessed value of at least \$500,000. “Controlling interest” means more than 80% of: (1) the total value of all classes of stock of a corporation; (2) the total interest in capital and profits of an unincorporated business; or (3) the beneficial interest in a trust.

Certain transfers (*e.g.*, mergers and dissolutions) are exempt from the reporting requirement. The report must be filed with SDAT upon the transfer of a controlling interest within 30 days of the final transfer.

**Current Law:** Real property can be effectively transferred without payment of transfer and recordation taxes by transferring a controlling interest or ownership of the entity if the property is owned by a corporation, limited liability company, or partnership.

The counties and Baltimore City are authorized by law to impose locally established 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 State and counties also impose a 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). In some jurisdictions a local property transfer tax may be imposed on instruments transferring title to real property. A distinction is made in the local codes between instruments transferring title such as a deed and certain leaseholds and instruments securing real property such as a mortgage. Except in Prince George’s County, mortgages are not subject to the tax.

**Background:** Numerous other jurisdictions in the country currently tax the transfer of the controlling interest in an entity owning real property: California, Connecticut, Delaware, District of Columbia, Illinois, New York, Pennsylvania, and Washington.

The transfer of controlling interest has become a typical method of transferring commercial and industrial property in order to avoid paying recordation and transfer taxes. These transfers are also not being recorded in the land records of the local jurisdictions and are, therefore, difficult to track. The mandate that real property be assessed at its market value is jeopardized for commercial and industrial properties if these transfers are not known to the assessor. This can lead to entire classes of properties being improperly assessed, typically too low.

State transfer tax revenues are special fund revenues dedicated for specific programs and are distributed as follows: 3% of total revenues are earmarked to defray administrative costs and \$1 million to cover debt service expenses. The remaining revenues are approximately dedicated to the following: 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. In fiscal 2004 most transfer tax revenues were transferred to the general fund due to the State's fiscal constraints. The Administration is proposing similar changes for fiscal 2005.

**State Fiscal Effect:** There would be an increase of special fund revenues from the \$25 fee accompanying each transfer of the controlling interest of a real property entity. However, the amount of revenue generated from fees cannot be reliably estimated because it is not known how many of these transactions that will occur each year. SDAT advises that there could be an increase in assessed values for commercial properties as a result of the bill, which would increase State property tax revenues.

SDAT recently identified 25 real estate transactions in calendar 2001, 19 in 2002, and 7 in 2003 that were transferred through the transfer of controlling interest. These properties include:

<u>Property</u>	<u>Location</u>
Annapolis Mall	Anne Arundel County
USInternetworking Headquarters Building	Anne Arundel County
Candler Building (twice)	Baltimore City
IBM Building	Baltimore City
Golden Ring Mall	Baltimore County
Eastpoint Shopping Center	Baltimore County
Cove Point LNG Facility	Calvert County
Westminster Professional Center	Carroll County
Hillcrest Plaza Shopping Center (twice)	Frederick County
Dam and Power Plant at Deep Creek Lake	Garrett County
Winters Run Golf Course	Harford County
Country Village Apartments	Harford County
Oak Court Apartments	Harford County
Fenland Field Apartments	Howard County
Cedar Valley Apartments	Howard County
Archstone Apartments	Howard County
Village Centers in Columbia	Howard County
Montgomery Mall	Montgomery County

SDAT's general fund expenditures could increase by an estimated \$72,095 in fiscal 2005, which accounts for a 90-day start-up delay due to the bill's July 1, 2004 effective date. This estimate reflects the cost of hiring one charter specialist and one office secretary to record transfers, communicate these transfers to county assessment supervisors, approve or deny exemption claims, and follow up on transfers that are not reported. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

**Local Fiscal Effect:** SDAT advises that there could be an increase in assessed values for commercial properties as a result of the bill which would increase local property tax revenues.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 13, 2004  
mam/hlb

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