
By: **Delegates Healey, Barkley, Bozman, Bronrott, Burns, Busch, G. Clagett, V. Clagett, Conroy, C. Davis, Doory, Frush, Gaines, Goodwin, Gordon, Griffith, Haynes, Heller, Hixson, Howard, Hubbard, James, Kaiser, King, Lee, Love, Madaleno, Mandel, Marriott, Menes, Montgomery, Niemann, Patterson, Pendergrass, Petzold, Quinter, Ross, and F. Turner**

Introduced and read first time: February 10, 2006

Assigned to: Ways and Means and Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Public School Construction Assistance Act of 2006**

3 FOR the purpose of imposing recordation and transfer taxes on the transfer of
 4 controlling interest in certain entities owning certain interests in real property
 5 in Maryland; requiring the counties and Baltimore City for certain fiscal years
 6 to dedicate certain recordation tax revenues to public school construction and
 7 renovation; requiring the filing of a certain report; providing for a filing fee;
 8 establishing the rate of taxation and the method of calculation of tax liability;
 9 exempting certain transfers; providing for interest and a penalty for certain
 10 filings; requiring the State Department of Assessments and Taxation to adopt
 11 certain regulations; requiring the Department to deduct and credit certain
 12 revenues to a certain fund; defining certain terms; providing for a delayed
 13 effective date; and generally relating to the taxation of transfers of controlling
 14 interests in certain entities.

15 BY repealing and reenacting, with amendments,
 16 Article - Tax - Property
 17 Section 12-110(d) and 13-209(a)
 18 Annotated Code of Maryland
 19 (2001 Replacement Volume and 2005 Supplement)

20 BY adding to
 21 Article - Tax - Property
 22 Section 12-110(e), 12-116, and 13-103
 23 Annotated Code of Maryland
 24 (2001 Replacement Volume and 2005 Supplement)

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

1

Article - Tax - Property

2 12-110.

3 (d) (1) THE DEPARTMENT SHALL DEDUCT THE COST OF ADMINISTERING
 4 THE RECORDATION TAX FROM THE TAXES COLLECTED UNDER THIS TITLE AND
 5 CREDIT THOSE REVENUES TO THE FUND ESTABLISHED UNDER § 1-203.3 OF THE
 6 CORPORATIONS AND ASSOCIATIONS ARTICLE.

7 (2) [The] AFTER DEDUCTING THE REVENUES REQUIRED UNDER
 8 PARAGRAPH (1) OF THIS SUBSECTION, THE recordation tax collected under [§
 9 12-103(d)] §§ 12-103(D) AND 12-116 of this title shall be paid to the Comptroller.
 10 [After deduction of the cost to the Department of collecting the tax, the] THE
 11 Comptroller shall distribute the revenue to the counties in the ratio that the
 12 recordation tax collected in the prior fiscal year in each county bears to the total
 13 recordation tax collected in all counties in that year.

14 (E) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS
 15 SUBSECTION, FOR EACH FISCAL YEAR BEGINNING ON OR AFTER JULY 1, 2006, BUT
 16 BEFORE JULY 1, 2010, FROM THE RECORDATION TAX REVENUE RECEIVED FOR THE
 17 FISCAL YEAR, EACH COUNTY AND BALTIMORE CITY SHALL DISTRIBUTE THE
 18 FOLLOWING AMOUNT TO A SPECIAL FUND, TO BE USED TO PAY ONLY FOR THE COSTS
 19 OF PUBLIC SCHOOL CONSTRUCTION AND RENOVATION, INCLUDING PAYMENT OF
 20 DEBT SERVICE ON BONDS ISSUED TO PAY FOR PUBLIC SCHOOL CONSTRUCTION AND
 21 RENOVATION:

22 ALLEGANY	\$ 158,426
23 ANNE ARUNDEL	4,417,755
24 BALTIMORE CITY	4,483,456
25 BALTIMORE	8,154,629
26 CALVERT	168,011
27 CAROLINE	84,103
28 CARROLL	466,466
29 CECIL	224,817
30 CHARLES	517,315
31 DORCHESTER	193,828
32 FREDERICK	1,026,151
33 GARRETT	151,162
34 HARFORD	1,286,220
35 HOWARD	2,785,897
36 KENT	99,662
37 MONTGOMERY	12,007,124
38 PRINCE GEORGE'S	7,291,385
39 QUEEN ANNE'S	165,835
40 ST. MARY'S	538,442
41 SOMERSET	27,135
42 TALBOT	326,374
43 WASHINGTON	510,583
44 WICOMICO	257,591
45 WORCESTER	617,633

1 (2) FOR THE FISCAL YEAR BEGINNING JULY 1, 2006, THE AMOUNT
 2 REQUIRED TO BE DISTRIBUTED TO A SPECIAL FUND BY EACH COUNTY AND
 3 BALTIMORE CITY IS ONE-HALF OF THE AMOUNT SPECIFIED IN PARAGRAPH (1) OF
 4 THIS SUBSECTION.

5 (3) FOR ANY FISCAL YEAR, THE AMOUNT THAT A COUNTY IS
 REQUIRED

6 TO DISTRIBUTE TO A SPECIAL FUND UNDER THIS SECTION MAY NOT EXCEED THE
 7 AMOUNT BY WHICH THE TOTAL REVENUE COLLECTED BY THE COUNTY FROM
 8 RECORDATION AND TRANSFER TAXES FOR THAT FISCAL YEAR EXCEEDS THE TOTAL
 9 REVENUE COLLECTED BY THE COUNTY FROM RECORDATION AND TRANSFER TAXES
 10 FOR FISCAL YEAR 2006, AFTER ADJUSTING FOR ANY CHANGE IN TAX RATES.

11 (4) RECORDATION TAX REVENUES DEDICATED TO PUBLIC SCHOOL
 12 CONSTRUCTION AND RENOVATION UNDER THIS SUBSECTION ARE INTENDED TO
 13 SUPPLEMENT FUNDING FOR PUBLIC SCHOOL CONSTRUCTION AND RENOVATION
 14 AND MAY NOT SUPPLANT OTHER COUNTY OR STATE FUNDING FOR PUBLIC SCHOOL
 15 CONSTRUCTION AND RENOVATION.

16 12-116.

17 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
 18 INDICATED.

19 (2) "CONTROLLING INTEREST" MEANS:

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

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

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

26 (3) "FINAL TRANSFER" MEANS THAT TRANSFER OF ANY PORTION OF A
 27 CONTROLLING INTEREST THAT COMPLETES THE TRANSFER OF A CONTROLLING
 28 INTEREST IN A REAL PROPERTY ENTITY.

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

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

33 (5) (I) "REAL PROPERTY" MEANS REAL PROPERTY LOCATED IN
 THE
 34 STATE.

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

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

3 2. ANY MORTGAGE, DEED OF TRUST, OR OTHER LIEN
 ON OR
 4 SECURITY INTEREST IN REAL PROPERTY THAT SECURES AN INDEBTEDNESS.

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

9 1. CONSTITUTES AT LEAST 80% OF THE VALUE OF ITS
 10 ASSETS; AND

11 2. HAS AN AGGREGATE VALUE OF AT LEAST \$1,000,000.

12 (II) FOR THE PURPOSES OF THIS PARAGRAPH, THE VALUE OF
 REAL
 13 PROPERTY SHALL BE DETERMINED WITHOUT REDUCTION FOR ANY MORTGAGE,
 14 DEED OF TRUST, OR OTHER LIEN ON OR SECURITY INTEREST IN THE REAL
 15 PROPERTY.

16 (III) "REAL PROPERTY ENTITY" DOES NOT INCLUDE AN ENTITY
 17 WITH LAND HOLDINGS THAT, OTHER THAN HOMESITES OR AREAS OF COMMERCIAL
 18 ACTIVITY RELATED TO AGRICULTURAL PRODUCTION, ARE ENTIRELY SUBJECT TO AN
 19 AGRICULTURAL USE ASSESSMENT UNDER § 8-209 OF THIS ARTICLE.

20 (B) (1) THE RECORDATION TAX IS IMPOSED ON THE TRANSFER OF A
 21 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY, AS IF THE REAL PROPERTY
 22 DIRECTLY OR BENEFICIALLY OWNED BY THE REAL PROPERTY ENTITY, WAS
 23 CONVEYED BY AN INSTRUMENT OF WRITING THAT IS RECORDED WITH THE CLERK
 24 OF THE CIRCUIT COURT FOR A COUNTY OR FILED WITH THE DEPARTMENT UNDER §
 25 12-102 OF THIS SUBTITLE.

26 (2) (I) THE RECORDATION TAX IS IMPOSED ON THE
 CONSIDERATION
 27 PAYABLE FOR THE TRANSFER OF THE CONTROLLING INTEREST IN THE REAL
 28 PROPERTY ENTITY.

29 (II) THE CONSIDERATION TO WHICH THE RECORDATION TAX
 30 APPLIES INCLUDES THE AMOUNT OF:

31 1. ANY MORTGAGE, DEED OF TRUST, OR OTHER LIEN
 ON OR
 32 SECURITY INTEREST IN THE REAL PROPERTY DIRECTLY OR BENEFICIALLY OWNED
 33 BY THE REAL PROPERTY ENTITY; AND

34 2. ANY OTHER DEBT OR ENCUMBRANCE OF THE REAL
 35 PROPERTY ENTITY.

36 (III) THE CONSIDERATION TO WHICH THE RECORDATION TAX
 37 APPLIES IS REDUCED BY THE AMOUNT ALLOCABLE TO THE ASSETS OF THE REAL
 38 PROPERTY ENTITY OTHER THAN REAL PROPERTY.

1 (IV) THE REAL PROPERTY ENTITY HAS THE BURDEN OF
2 ESTABLISHING TO THE SATISFACTION OF THE DEPARTMENT THE CONSIDERATION
3 REFERRED TO IN SUBPARAGRAPH (I) OF THIS PARAGRAPH AND THE AMOUNT OF ANY
4 CONSIDERATION ALLOCABLE TO ASSETS OTHER THAN REAL PROPERTY REFERRED
5 TO IN SUBPARAGRAPH (III) OF THIS PARAGRAPH.

6 (V) IF THE REAL PROPERTY ENTITY FAILS TO ESTABLISH THE
7 AMOUNT OF CONSIDERATION REFERRED TO IN SUBPARAGRAPH (I) OF THIS
8 PARAGRAPH, THE RECORDATION TAX IS IMPOSED ON THE VALUE OF THE REAL
9 PROPERTY, DIRECTLY OR BENEFICIALLY OWNED BY THE REAL PROPERTY ENTITY,
10 DETERMINED BY THE DEPARTMENT AT THE DATE OF FINALITY IMMEDIATELY
11 BEFORE THE DATE OF THE FINAL TRANSFER.

12 (3) EXCEPT AS OTHERWISE PROVIDED IN § 12-103(D) OF THIS SUBTITLE,
13 THE RECORDATION TAX IS APPLIED AT THE RATE SET UNDER § 12-103(B) OF THIS
14 SUBTITLE BY THE COUNTY WHERE THE REAL PROPERTY IS LOCATED.

15 (C) (1) THE TRANSFER OF A CONTROLLING INTEREST IN A REAL
PROPERTY
16 ENTITY IS NOT SUBJECT TO RECORDATION TAX IF THE TRANSFER OF THE REAL
17 PROPERTY BY AN INSTRUMENT OF WRITING BETWEEN THE SAME PARTIES AND
18 UNDER THE SAME CIRCUMSTANCES WOULD HAVE BEEN EXEMPT UNDER § 12-108 OF
19 THIS SUBTITLE.

20 (2) THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF A
21 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY EFFECTED IN MORE THAN
22 ONE TRANSACTION IF:

23 (I) THE TRANSFER IS COMPLETED OVER A PERIOD OF MORE
THAN
24 12 MONTHS; OR

25 (II) THE TRANSFER IS NOT MADE IN ACCORDANCE WITH A
PLAN OF
26 TRANSFER.

27 (3) THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF A
28 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY TO ANOTHER BUSINESS IF
29 THE OWNERSHIP INTERESTS IN THE TRANSFEREE BUSINESS ENTITY ARE HELD BY
30 THE SAME PERSONS AND IN THE SAME PROPORTION AS IN THE REAL PROPERTY
31 ENTITY THE CONTROLLING INTEREST OF WHICH WAS TRANSFERRED.

32 (4) THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF A
33 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY IF EACH TRANSFEROR, EACH
34 TRANSFEREE, AND EACH REAL PROPERTY ENTITY IS:

35 (I) A SUBSIDIARY CORPORATION, ALL OF THE STOCK OF
WHICH IS
36 OWNED, DIRECTLY OR INDIRECTLY, BY A COMMON PARENT CORPORATION;

37 (II) A PARTNERSHIP, ALL OF THE INTERESTS IN WHICH ARE
38 OWNED, DIRECTLY OR INDIRECTLY, BY ONE OR MORE SUBSIDIARIES OR THE
39 COMMON PARENT CORPORATION; OR

1 (III) THE COMMON PARENT CORPORATION.

2 (5) THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF A
3 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY IF THE TRANSFEREE OF THE
4 CONTROLLING INTEREST IN THE REAL PROPERTY ENTITY IS:

5 (I) A NONSTOCK CORPORATION ORGANIZED UNDER TITLE 5,
6 SUBTITLE 2 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE; AND

7 (II) REGISTERED WITH THE DEPARTMENT OF AGING AS A
8 CONTINUING CARE RETIREMENT COMMUNITY UNDER ARTICLE 70B, § 9 OF THE CODE.

9 (6) THE REAL PROPERTY ENTITY HAS THE BURDEN OF ESTABLISHING
10 TO THE SATISFACTION OF THE DEPARTMENT THE APPLICABILITY OF ANY
11 EXEMPTION REFERRED TO IN PARAGRAPHS (1) THROUGH (5) OF THIS SUBSECTION.

12 (D) (1) THE REAL PROPERTY ENTITY SHALL FILE WITH THE DEPARTMENT
A
13 REPORT OF ANY TRANSFER OF A CONTROLLING INTEREST IN THE REAL PROPERTY
14 ENTITY THAT IS COMPLETED WITHIN A PERIOD OF 12 MONTHS OR LESS WITHIN 30
15 DAYS FOLLOWING THE DATE OF THE FINAL TRANSFER.

16 (2) THE REPORT SHALL INCLUDE ALL INFORMATION TO ESTABLISH TO
17 THE SATISFACTION OF THE DEPARTMENT:

18 (I) THE CONSIDERATION REFERRED TO IN SUBSECTION (B)(2)(I)
OF
19 THIS SECTION;

20 (II) THE AMOUNT OF ASSETS OTHER THAN REAL ESTATE
21 REFERRED TO IN SUBSECTION (B)(2)(II) OF THIS SECTION; AND

22 (III) ANY EXEMPTION PROVIDED FOR IN SUBSECTION (C) OF
THIS
23 SECTION.

24 (3) THE REPORT SHALL BE ACCOMPANIED BY PAYMENT OF:

25 (I) A \$20 FILING FEE; AND

26 (II) ANY TAX, INTEREST, AND PENALTY THAT IS DUE.

27 (E) (1) IF ANY TAX DUE UNDER THIS SECTION REMAINS UNPAID FOR 30
28 DAYS AFTER THE DATE OF THE FINAL TRANSFER:

29 (I) INTEREST ON THE UNPAID AMOUNT SHALL ACCRUE
30 THEREAFTER AT THE RATE OF 1% PER MONTH; AND

31 (II) A PENALTY OF 10% OF THE UNPAID AMOUNT SHALL BE
DUE.

32 (2) ANY TAX, INTEREST, AND PENALTY DUE UNDER THIS SECTION IS
AN
33 OBLIGATION OF THE REAL PROPERTY ENTITY.

1 (3) FOR REASONABLE CAUSE, THE DEPARTMENT MAY WAIVE THE
2 IMPOSITION OF INTEREST OR PENALTY.

3 (F) THIS SECTION DOES NOT APPLY TO:

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

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

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

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

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

17 (2) THE REGULATIONS SHALL INCLUDE ANY ADDITIONAL
STANDARDS
18 AND EXEMPTIONS TO ASSURE THAT:

19 (I) A TAX IS IMPOSED WHEN A TRANSACTION IS STRUCTURED
20 INVOLVING A CONTROLLING INTEREST IN A REAL PROPERTY ENTITY TO AVOID
21 PAYMENT OF THE RECORDATION TAX;

22 (II) EXEMPTIONS PROVIDED BY LAW WHEN REAL PROPERTY IS
23 TRANSFERRED BY AN INSTRUMENT OF WRITING ARE APPLICABLE; AND

24 (III) THERE IS NO DOUBLE TAXATION OF A SINGLE
TRANSACTION.

25 13-103.

26 (A) IN THIS SECTION, "CONTROLLING INTEREST", "REAL PROPERTY", AND
27 "REAL PROPERTY ENTITY" HAVE THE MEANINGS STATED IN § 12-116 OF THIS
28 ARTICLE.

29 (B) (1) THE TAXES UNDER THIS TITLE ARE IMPOSED ON THE TRANSFER OF
30 A CONTROLLING INTEREST IN A REAL PROPERTY ENTITY AS IF THE REAL PROPERTY,
31 DIRECTLY OR BENEFICIALLY OWNED BY THE REAL PROPERTY ENTITY, WAS
32 CONVEYED BY AN INSTRUMENT OF WRITING THAT IS RECORDED WITH THE CLERK
33 OF THE CIRCUIT COURT FOR A COUNTY OR FILED WITH THE DEPARTMENT UNDER §
34 13-202 OF THIS TITLE.

35 (2) THE TAXES UNDER THIS SECTION ARE IMPOSED ON THE
36 CONSIDERATION PAYABLE FOR THE TRANSFER OF THE CONTROLLING INTEREST IN

1 THE REAL PROPERTY ENTITY OR ON THE VALUE OF THE REAL PROPERTY DIRECTLY
2 OR BENEFICIALLY OWNED BY THE REAL PROPERTY ENTITY, AS PROVIDED IN §
3 12-116(B)(2) OF THIS ARTICLE.

4 (3) (I) EXCEPT FOR THE COUNTY TRANSFER TAX, THE TAXES
UNDER

5 THIS SECTION SHALL BE APPLIED AT THE RATES ESTABLISHED IN THIS TITLE.

6 (II) THE COUNTY TRANSFER TAX SHALL BE APPLIED AT THE
RATE

7 IMPOSED BY THE COUNTY WHERE THE REAL PROPERTY IS LOCATED.

8 (C) THE TAXES UNDER THIS TITLE ARE NOT IMPOSED ON THE TRANSFER OF A
9 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY IN ANY OF THE
10 CIRCUMSTANCES DESCRIBED:

11 (1) IN § 13-207 OF THIS TITLE THAT EXEMPTS AN INSTRUMENT OF
12 WRITING FROM THE TRANSFER TAX; OR

13 (2) IN § 12-116(C) OF THIS ARTICLE THAT EXEMPTS THE TRANSFER OF
A
14 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY FROM THE RECORDATION
15 TAX.

16 (D) IN EACH INSTANCE IN WHICH A CONTROLLING INTEREST IN A REAL
17 PROPERTY ENTITY IS TRANSFERRED, THE PROVISIONS OF § 12-116(D) AND (E) OF THIS
18 ARTICLE ARE APPLICABLE.

19 (E) THIS SECTION DOES NOT APPLY IN THE CIRCUMSTANCES DESCRIBED IN §
20 12-116(F) OF THIS ARTICLE.

21 (F) THE DEPARTMENT SHALL ADOPT REGULATIONS TO ADMINISTER THIS
22 SECTION IN THE SAME MANNER AS IN § 12-116(G) OF THIS ARTICLE.

23 13-209.

24 (a) (1) THE DEPARTMENT SHALL DEDUCT THE COST OF ADMINISTERING
25 THE TRANSFER TAX FROM THE TAXES COLLECTED UNDER THIS TITLE AND CREDIT
26 THOSE REVENUES TO THE FUND ESTABLISHED UNDER § 1-203.3 OF THE
27 CORPORATIONS AND ASSOCIATIONS ARTICLE.

28 (2) [The] AFTER DEDUCTING THE REVENUES REQUIRED UNDER
29 PARAGRAPH (1) OF THIS SUBSECTION, THE revenue from transfer tax is payable to
30 the Comptroller for deposit in a special fund.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 January 1, 2007.