SB 523

Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 523 (Senator Manno)

Budget and Taxation Ways and Means

State and Local Revenue and Financing Act of 2012

This bill impacts State and local revenues as follows:

- increases State income tax revenues by (1) increasing State income tax rates and establishing new individual income tax brackets beginning in tax year 2012; and (2) repealing the credit for telecommunications property taxes;

- increases sales and use tax revenues by (1) requiring specified out-of-state vendors to collect the sales and use tax; and (2) repealing the State sales and use tax exemption for demurrage charges;

- increases the maximum filing fee from $125 to $150 for an appeal of a decision by the Motor Vehicle Administration to suspend or revoke a driver's license;

- expands the State refundable earned income credit;

- increases the other tobacco products tax; and

- applies the recordation tax to an "indemnity mortgage."

In addition, the bill impacts State expenditures and provides fiscal relief to local governments by (1) increasing mandated State funding for the Aging Schools Program beginning in fiscal 2013; (2) increasing mandated State funding for municipalities under the local highway user revenues formula in fiscal 2013 only; and (3) reducing the additional fiscal 2016 public school maintenance of effort amounts counties are required to provide to local school systems.

Fiscal Summary

State Effect: Total State revenues increase by $503.5 million in FY 2013 and by $398.7 million in FY 2017. Expenditures for education and transportation increase by $30.1 million in FY 2013 and by $24.7 million in FY 2017. **Exhibit 1** shows the net effect on State revenues and expenditures by fund type. **Exhibit 2** shows the impact on State revenues by provision. **Exhibit 3** shows the impact on State expenditures by agency.

Local Effect: Local government revenues increase by $69.9 million in FY 2013 and by $67.0 million annually thereafter. **Exhibit 4** shows the impact on local revenues in FY 2013 by county. Local education expenditures decrease by $27.0 million in FY 2016. Montgomery County expenditures for its earned income credit program may increase beginning in FY 2014.

Small Business Effect: The impact of any provision affecting small businesses is discussed in the provision analysis below.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office, Department of Assessments and Taxation, Motor Vehicle Administration, Office of Administrative Hearings, Maryland Association of Counties, Department of Legislative Services

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Exhibit 1
Net Effect on State Revenues and Expenditures
($ in Millions)

	FY 2013	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**
Revenues					
GF	$501.3	$358.4	$370.3	$383.7	$396.5
SF	2.2	2.2	2.3	2.2	2.2
TTF	1.6	1.6	1.7	1.5	1.6
HEIF	0.6	0.6	0.6	0.6	0.6
Total	**$503.5**	**$360.6**	**$372.6**	**$385.9**	**$398.7**
Expenditures					
GF	$29.4	$26.4	$26.4	$26.4	$23.9
SF	0.7	0.7	0.8	0.8	0.8
TTF	0.2	0.2	0.2	0.1	0.2
HEIF	0.6	0.6	0.6	0.6	0.6
Total	**$30.1**	**$27.2**	**$27.2**	**$27.1**	**$24.7**
Net Effect	**$473.4**	**$333.4**	**$345.4**	**$358.7**	**$374.1**

GF: General Fund

SF: Special Fund

TTF: Transportation Trust Fund

HEIF: Higher Education Investment Fund

Exhibit 2
Impact on State Revenues by Provision
($ in Millions)

	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Income Tax					
Rate Increase	$475.8	$339.8	$358.9	$379.5	$399.4
Earned Income Credit	-7.8	-14.8	-22.3	-30.0	-37.5
Telecomm. Tax Credit	9.6	9.9	10.2	10.5	10.8
Subtotal	**$477.6**	**$334.9**	**$346.8**	**$360.0**	**$372.7**
OTP Tax	**$4.7**	**$4.5**	**$4.6**	**$4.7**	**$4.8**
OAH Fees	**$0.5**	**$0.5**	**$0.5**	**$0.5**	**$0.5**
Sales and Use Tax					
Online Sales Presumption	$20.0	$20.0	$20.0	$20.0	$20.0
Cylinder Demurrage Charges	0.7	0.7	0.7	0.7	0.7
Subtotal	**$20.7**	**$20.7**	**$20.7**	**$20.7**	**$20.7**
Total Revenues	**$503.5**	**$360.6**	**$372.6**	**$385.9**	**$398.7**
General Funds	501.3	358.4	370.3	383.7	396.5
Special Funds	2.2	2.2	2.3	2.2	2.2
TTF	1.6	1.6	1.7	1.5	1.6
HEIF	0.6	0.6	0.6	0.6	0.6

Exhibit 3
Impact on State Expenditures
($ in Millions)

	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
General Fund					
MSDE	$27.0	$27.0	$27.0	$27.0	$24.5
USM	-0.6	-0.6	-0.6	-0.6	-0.6
MDOT	3.0	0	0	0	0
Total General Funds	**$29.4**	**$26.4**	**$26.4**	**$26.4**	**$23.9**
Special Fund					
USM	$0.6	$0.6	$0.6	$0.6	$0.6
MDOT	0.2	0.2	0.2	0.1	0.2
Total Special Funds	**$0.7**	**$0.7**	**$0.8**	**$0.8**	**$0.8**
Total Expenditures	**$30.1**	**$27.2**	**$27.2**	**$27.1**	**$24.7**

MSDE: Maryland State Department of Education

USM: University System of Maryland

MDOT: Maryland Department of Transportation

Exhibit 4
Fiscal 2013 Impact on Local Government Revenues

County	Aging Schools	Recordation Tax	Highway User Revenues	Total Impact
Allegany	$380,209	$107,000	$160,527	$647,736
Anne Arundel	1,965,962	2,925,000	130,939	5,021,901
Baltimore City	5,393,076	400,000	128,539	5,921,615
Baltimore	4,999,773	2,100,000	3,597	7,103,370
Calvert	148,708	550,000	37,373	736,081
Caroline	194,926	100,000	55,008	349,934
Carroll	532,739	800,000	174,679	1,507,418
Cecil	372,976	2,195,000	83,222	2,651,198
Charles	194,926	1,000,000	51,641	1,246,567
Dorchester	148,708	185,000	62,801	396,509
Frederick	710,378	5,000,000	331,676	6,042,054
Garrett	148,708	220,000	50,535	419,243
Harford	844,621	1,020,000	144,995	2,009,616
Howard	341,224	2,903,000	1,363	3,245,587
Kent	148,708	70,000	31,480	250,188
Montgomery	4,000,349	15,000,000	489,338	19,489,687
Prince George’s	4,699,574	2,500,000	632,231	7,831,805
Queen Anne’s	194,926	500,000	21,220	716,146
St. Mary’s	194,926	500,000	10,915	705,841
Somerset	148,708	40,000	24,103	212,811
Talbot	148,708	565,000	80,922	794,630
Washington	524,096	455,000	200,562	1,179,658
Wicomico	414,373	350,000	145,207	909,580
Worcester	148,708	250,000	105,813	504,521
Total	**$27,000,010**	**$39,735,000**	**$3,158,686**	**$69,893,696**

Individual Income Tax – Tax Rate Increase

Provision in the Bill: Increases specified State income tax rates and establishes new State income tax brackets effective tax year 2012. In addition, the bill imposes a separate tax rate of 5.75% on the entire net taxable income of any taxpayer with net taxable income in excess of $500,000.

Type of Action: Revenue enhancement; tax increase

Fiscal Impact:	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**
			($ in millions)			
GF Rev	$0	$475.8	$339.8	$358.9	$379.5	$399.4

State Effect: General fund revenues increase by $475.8 million in fiscal 2013 due to the income tax rates specified by the bill, reflecting revenues from one and one-half tax years. Future year estimates reflect annualization and the current income tax revenue forecast.

It is estimated that 2.2 million tax returns will pay more taxes in tax year 2012 under the proposed rate increase, which represents 96% of all estimated taxable resident returns filed. The estimated average tax increase in tax year 2012 is $143.

In fiscal 2013, $59.2 million of the total revenue increase shown above is generated from the 5.75% flat tax rate imposed on higher-income taxpayers. This increases revenues by $42.3 million in fiscal 2014, $44.7 million in fiscal 2015, $47.2 million in fiscal 2016, and $49.7 million in fiscal 2017. This estimate is reduced to reflect dynamic behavior changes from those taxpayers who might be subject to the tax due to the high marginal tax rates imposed. It is estimated that 16,500 taxpayers could be subject to the 5.75% flat tax rate in tax year 2012. The average tax paid by a taxpayer with a net taxable income of between $500,000 and $1 million increases by $7,150 or 12% – the increase is $11,970 or 7% for taxpayers with net taxable income above $1 million.

The State tax incidence is shown by county in **Exhibit 5**.

Current Law/Bill Summary: **Exhibit 6** shows the State income tax rates under current law. **Exhibit 7** shows the State income tax rates proposed by the bill beginning in tax year 2012 for taxpayers with net taxable income under $500,000. Taxpayers with net taxable income in excess of $500,000 pay a separate tax of 5.75% on all net taxable income.

Exhibit 5
Total State Tax Incidence for Changes to Income Tax
Tax Year 2012

County	Impacted Returns	Rate Increase	Flat Tax	Percent of Statewide Total Increase	Average State Tax Increase Per Affected Taxpayer
Allegany	23,271	$1,457,000	$88,000	0.5%	$66
Anne Arundel	211,864	28,495,000	3,653,000	10.5%	152
Baltimore City	203,672	14,400,000	1,634,000	5.2%	79
Baltimore	322,584	39,069,000	7,515,000	15.2%	144
Calvert	34,226	3,958,000	188,000	1.4%	121
Caroline	11,450	626,000	*	0.2%	55
Carroll	64,885	7,014,000	293,000	2.4%	113
Cecil	35,967	2,957,000	140,000	1.0%	86
Charles	56,088	5,507,000	177,000	1.9%	101
Dorchester	11,591	634,000	*	0.2%	55
Frederick	92,257	10,617,000	878,000	3.8%	125
Garrett	10,098	660,000	51,000	0.2%	70
Harford	96,073	9,882,000	594,000	3.4%	109
Howard	113,972	20,741,000	2,889,000	7.7%	207
Kent	6,923	539,000	24,000	0.2%	81
Montgomery	401,143	79,673,000	18,008,000	32.0%	244
Prince George’s	341,074	24,435,000	563,000	8.2%	73
Queen Anne’s	18,123	2,139,000	232,000	0.8%	131
St. Mary’s	39,065	4,141,000	161,000	1.4%	110
Somerset	6,559	297,000	*	0.1%	45
Talbot	14,452	2,189,000	601,000	0.9%	193
Washington	53,544	3,905,000	240,000	1.4%	77
Wicomico	33,754	2,322,000	161,000	0.8%	74
Worcester	20,686	1,707,000	236,000	0.6%	94
Total	**$2,223,322**	**$267,364,000**	**$38,325,000**		**$134**

*Data cannot be reported due to confidentiality requirements; as such, the total revenue increase does not reflect increases from these counties.

Exhibit 6
Maryland State Income Tax Rates
Current Law

Single, Dependent Filer, Married Filing Separate		Joint, Head of Household, Widower	
Rate	**Maryland Taxable Income**	**Rate**	**Maryland Taxable Income**
2.00%	$1-$1,000	2.00%	$1-$1,000
3.00%	$1,001-$2,000	3.00%	$1,001-$2,000
4.00%	$2,001-$3,000	4.00%	$2,001-$3,000
4.75%	$3,001-$150,000	4.75%	$3,001-$200,000
5.00%	$150,001-$300,000	5.00%	$200,001-$350,000
5.25%	$300,001-$500,000	5.25%	$350,001-$500,000
5.50%	Excess of $500,000	5.50%	Excess of $500,000

Exhibit 7
Maryland State Income Tax Rates
Proposed

Single, Dependent Filer, Married Filing Separate		Joint, Head of Household, Widower	
Rate	**Maryland Taxable Income**	**Rate**	**Maryland Taxable Income**
2.00%	$1-$1,000	2.00%	$1-$1,000
3.00%	$1,001-$2,000	3.00%	$1,001-$2,000
4.00%	$2,001-$3,000	4.00%	$2,001-$3,000
4.90%	$3,001-$25,000	4.90%	$3,001-$50,000
4.95%	$25,001-$75,000	4.95%	$50,001-$100,000
5.00%	$75,001-$150,000	5.00%	$100,001-$200,000
5.25%	$150,001-$300,000	5.25%	$200,001-$350,000
5.50%	$300,001-$500,000	5.50%	$350,001-$500,000

Note: A rate of 5.75% is imposed on all net taxable income of taxpayers with net taxable income in excess of $500,000.

Small Business Effect: Small businesses that are partnerships, S corporations, limited liability companies, and sole proprietorships would be meaningfully impacted by the bill. Any of these small businesses with higher amounts of taxable income would be negatively impacted through increased income tax liabilities. An unknown number of impacted businesses would be small businesses.

Analysis prepared by: Robert J. Rehrmann

Individual Income Tax – Refundable Earned Income Credit

Provision in the Bill: Expands the State refundable earned income credit (REIC) by increasing the value of the refund for qualified individuals from 25% to 30% of the federal earned income credit (EIC), minus any pre-credit State income tax liability. This increase is phased in by 1% annually over five years.

Type of Action: Tax credit enhancement

Fiscal Impact:	*($ in millions)* **FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**
GF Rev	$0	($7.8)	($14.8)	($22.3)	($30.0)	($37.5)

State Effect: General fund revenues decrease by $7.8 million in fiscal 2013 due to expansion of the credit. Future years reflect the phase in of the increase, termination of applicable federal laws, and the estimated number of eligible individuals.

Local Effect: No county has currently authorized a refundable county EIC as provided under current law. Montgomery County has a local EIC grant program based on the State's REIC. Payments for this county EIC grant are made in the fiscal year following the fiscal year in which the returns are filed. Accordingly, Montgomery County expenditures could increase in fiscal 2014 and beyond.

Current Law/Background: An individual who qualifies for the federal EIC can claim a refundable State EIC equal to 25% of the federal credit, minus any pre-credit State income tax liability. The nonrefundable State EIC is currently 50% of the federal EIC, not to exceed the total pre-credit State income tax liability. To the extent provided, a county refundable EIC is the amount by which five times the federal EIC multiplied by the county income tax rate exceeds the county income tax liability.

Maryland's income tax law has provided a nonrefundable State EIC equal to 50% of the federal EIC since 1987. Chapter 5 of 1998 established a REIC for taxpayers who meet the eligibility requirements of the federal credit and have at least one dependent. The value of the initial refundable credit was equal to 10% of the federal credit and increased in two steps to 15% in tax year 2001 and beyond. Chapter 510 of 2000 accelerated, to tax year 2000, the 15% value of the credit and also authorized counties to provide, by law, a county REIC. Subsequent legislation increased the value of the credit to 25%. In tax year 2010, 255,988 Maryland tax returns claimed a total of $78.3 million in State EICs, an average of $306 per return. In the same year, 278,602 Maryland tax returns claimed a total of $147.1 million in State REICs, an average of $528 per return. About 13%, or one in every eight households, claimed the State REIC in tax year 2010. For more information on the State and federal EICs, please consult the fiscal and policy note for Senate Bill 943/House Bill 331 of 2012.

Analysis prepared by: Robert J. Rehrmann

Sales and Use Tax – Online Sales Presumption

Provision in the Bill: Specifies that, for purposes of determining whether a person is engaged in the business of an out-of-state vendor under provisions of the State sales and use tax law, a seller is presumed to have an agent, canvasser, representative, salesman, independent contractor, or solicitor operating in the State for the purpose of selling or taking orders, under certain circumstances. As a result, these sellers must collect the State sales and use tax from sales made to Maryland consumers.

Type of Action: Revenue enhancement

Fiscal			*($ in millions)*			
Impact:	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**
GF Rev	$0	$20.0	$20.0	$20.0	$20.0	$20.0

State Effect: General fund revenues may increase significantly beginning in fiscal 2013. The amount of the increase depends on the number of sellers impacted and the amount of sales made in Maryland. Under one set of assumptions, general fund revenues may increase by approximately $20.0 million annually beginning in fiscal 2013. Any expenditures associated with licensing can be handled with existing budgeted resources.

Summary of the Provision: A seller is defined as a person making sales of tangible personal property or a taxable service. For the purpose of a person engaged in the business of an out-of-state vendor, a seller is presumed to have an agent, canvasser, representative, salesman, independent contractor, or solicitor operating in the State for the purpose of selling or taking orders for tangible personal property or a taxable service if (1) the seller enters into an agreement with a resident of the State under which the resident, for a commission or other consideration, directly or indirectly refers potential customers to the seller, whether by a link on an Internet website or otherwise; and (2) the cumulative gross receipts from sales by the seller to customers in the State who are referred to the seller by all residents having an agreement with the seller is greater than $10,000 during the preceding four quarterly periods ending on the last day of February, May, August, and November.

The presumption under the bill may be rebutted by proof that the resident with whom the seller has an agreement did not engage in any solicitation in the State on behalf of the seller that would satisfy the nexus requirement of the U.S. Constitution during the four quarterly periods in question.

The bill may not be construed to narrow the scope of the terms of agent, canvasser, representative, salesman, independent contractor, or solicitor for purposes of any other provision of law.

Current Law: Engaging in the business of an out-of-state vendor means to sell or deliver tangible personal property or a taxable service for use in the State. This includes (1) permanently or temporarily maintaining, occupying, or using any office, sales or sample room, or distribution, storage, warehouse, or other place for the sale of tangible personal property or a taxable service directly or indirectly through an agent or subsidiary; (2) having an agent, canvasser, representative, salesman, or solicitor operating in the State for the purpose of delivering, selling, or taking orders for tangible personal property or a taxable service; or (3) entering the State on a regular basis to provide service or repair for tangible personal property.

Background: Pursuant to a 1992 U.S. Supreme Court ruling (*Quill Corp. v. North Dakota*), Internet and mail-order retailers are only required to collect sales and use tax from out-of-state customers if the retailer maintained a physical presence (*e.g.*, a store, office, or warehouse) in the customer's home state. In an effort to ensure parity with bricks-and-mortar booksellers, New York passed a law in 2008 providing that affiliate sellers (*e.g.*, independent websites that link to an online retailer's products in return for a percentage of the sales) were included within the definition of "physical presence," thus requiring out-of-state web retailers to collect sales taxes from buyers in the state if the retailers have New York-based representatives referring businesses to them. This law has been upheld by the Appellate Division of the New York Supreme Court, but it has been remanded back to the trial court.

The New York State Department of Taxation and Finance reports collecting over $170 million in sales tax revenues from approximately 35 online sellers since the law was enacted, including approximately $100 million in fiscal 2011.

In 2011, California also enacted a law creating nexus through affiliate sales. As a result, Amazon.com ended its affiliate relationships in the state and undertook a campaign to repeal the law by voter referendum. A compromise was later reached under which Amazon.com agreed to begin collecting sales tax on sales in California in September 2012, unless federal legislation addressing the taxation of remote sales is enacted before that point. Amazon.com has ceased its pursuit of a referendum and has reestablished relationships with affiliates in the state.

A number of other states, including Arkansas, Illinois, North Carolina, and Rhode Island, have passed legislation similar to that passed in New York and California. As a result, Amazon.com and Overstock.com, generally the largest companies affected, have ended their relationships with affiliates in those states in order to avoid a determination that nexus exists.

In 2010, Colorado took a different approach to the online sales tax collection issue. Rather than attempting to define nexus through affiliate relationships, Colorado passed legislation intended to improve enforcement of the state's use tax. The Colorado law requires all vendors who do not collect the sales tax and who have over $100,000 of sales into Colorado in the prior calendar year to provide an annual report to the state listing all customers and purchases for the year. In addition, these remote sellers are obligated to notify their customers that the customers are required to remit use tax on their purchases. Colorado estimated a revenue increase of approximately $12.5 million in fiscal 2012 due to this legislation.

On February 22, 2012, it was announced that Virginia and Amazon.com had reached an agreement whereby Amazon.com will begin collecting sales taxes for sales made to Virginia residents on September 1, 2013. Earlier reports had suggested that the Governor of Virginia was pursuing a deal with Amazon.com whereby the company would locate two warehouses in the state and, in exchange, would not be required to collect the sales tax for products sold to state residents.

State Fiscal Effect: The bill requires out-of-state retailers making online sales to be licensed by the Comptroller and to collect sales taxes from buyers in the State if the retailers have Maryland-based representatives referring businesses to them. Under an affiliate program, website owners can provide links to products of larger retailers, such as Amazon.com and Overstock.com, in exchange for a commission based on sales produced by customers who "click through" using a link from the affiliates' website.

As a result, sales and use tax revenues may increase significantly beginning in fiscal 2013. The amount of the increase depends on the amount of sales made by online retailers who have affiliate agreements with Maryland businesses. However, to the extent that sellers such as Amazon.com and Overstock.com eliminate relationships with Maryland affiliates, State revenues will be less than estimated. In addition, to the extent the provisions of the bill are challenged in court (as was done in New York), the timing of when revenues begin to be collected will be affected.

Based on New York's reported sales tax collections from sellers with affiliate programs, it is estimated that State general fund revenues may increase by approximately $20.0 million annually beginning in fiscal 2013. The estimate assumes a commensurate level of sales from these companies in Maryland, adjustments for state populations and tax rates, as well as a 6% reduction in sales due to the imposition of the tax on products sold by these companies.

Small Business Effect: Some small businesses could be negatively affected if the change in the law results in Internet sellers altering or terminating affiliate agreements with Maryland retailers. Small Maryland retailers that are not affiliated with large Internet sellers may realize increased sales if consumers are not able to avoid the State sales tax by shopping online and therefore have less incentive to make online purchases.

The 2009 Statistics of U.S. Businesses reports that there are 10,227 retail firms in Maryland with fewer than 20 employees and 877 retail firms with between 20 and 99 employees.

Recent History: SB 824 of 2010 and SB 1071 of 2009 received hearings in the Senate Budget and Taxation Committee, but no further action was taken on either bill.

Analysis prepared by: Michael Sanelli

Other Tobacco Products Tax

Provisions in the Bill: Increase the other tobacco product (OTP) tax rate from 15% to 20% of the wholesale price effective July 1, 2012. The tax rate for cigars that are not classified as premium cigars are taxed at 70% of the wholesale price. The bill also imposes a floor tax on any person possessing OTPs for sale at the start of business on July 1, 2012. Individuals are required to compile and file an inventory held at the close of business on June 30, 2012, and remit by October 15, 2012, any additional tax that is due.

Type of Action: Revenue enhancement; tax increase

Fiscal Impact:	*($ in millions)* **FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**
GF Rev	$0	$4.7	$4.5	$4.6	$4.7	$4.8

State Effect: General fund revenues increase by $4.7 million in fiscal 2013, which reflects increased OTP tax revenues and the floor tax revenues, net of decreased sales tax revenues due to an expected decrease in consumption. Future revenue estimates reflect both OTP and sales tax impacts. The estimates are based on an examination of the additional OTP revenues generated through tax increases in 11 other states in fiscal 2006 through 2010, adjusted for Maryland.

Current Law/Background: Chapter 121 of 1999 established an OTP tax equal to 15% of the wholesale price. OTP tax revenues are projected to total $14.2 million in fiscal 2013. About two-thirds of OTP tax revenues come from sales of cigars; 10% from moist snuff tobacco; and the remaining amount from chewing tobacco, roll-your-own, and pipe tobacco. In addition, the State sales tax of 6% is imposed on the final retail price of OTPs. **Exhibit 8** shows the OTP tax rates imposed in Maryland and surrounding states as of January 1, 2012, and the tax rate for moist snuff tobacco in those states that provide for a separate tax.

Small Business Effect: Meaningful. Small businesses that sell other tobacco products will be negatively impacted due to the decrease in the sales of these products resulting from the tax increases.

Exhibit 8
OTP and Moist Snuff Tobacco Tax Rates in Surrounding States

State	OTP Tax Rate	Moist Snuff Tobacco (per Ounce)
Delaware	15%	$0.54
District of Columbia	12%*	0.75
Pennsylvania	None	
Virginia	10%**	0.18
West Virginia	7%	
Maryland	15%	

*Applied to retail price.

**Applied to manufacturing price, chewing tobacco taxed per unit.

Source: Federation of Tax Administrators

Analysis prepared by: Robert J. Rehrmann

Recordation Tax – Indemnity Mortgages

Provision in the Bill: Applies the recordation tax to an "indemnity mortgage" in the same manner as if the guarantor were primarily liable for the guaranteed loan, unless the recordation tax is paid on another instrument of writing that secures the payment of the guaranteed loan or the indemnity mortgage secures a guarantee of repayment of a loan for less than $1.0 million. An indemnity mortgage includes any mortgage, deed of trust, or other security interest in real property that secures a guarantee of repayment of a loan for which the guarantor is not primarily liable.

Type of Action: Local revenue enhancement

State Effect: None; the counties and Baltimore City collect recordation taxes.

Local Effect: Local government revenues increase significantly beginning in fiscal 2013, depending on the number of transactions occurring each year and the value of each transaction. Based on estimates for recent transactions in some counties, total recordation tax revenues may increase by $39.7 million in fiscal 2013. However, any increases may vary from year to year depending on local economic development activity. Local expenditures are not affected.

Exhibit 9 shows the county recordation tax rates and revenue collections for each jurisdiction for fiscal 2010 through 2012. Applying local recordation taxes to indemnity mortgages is expected to increase local revenues by approximately $39.7 million in fiscal 2013, as shown in **Exhibit 10**, based on estimates provided by the counties and Baltimore City at the request of the Department of Legislative Services and the Maryland Association of Counties. Many counties have tracked the use of indemnity mortgages in recent years and have projected the lost revenue from such transactions. However, several counties either do not track the recording of indemnity mortgages or did not provide an estimate. In these instances, a 10% increase over fiscal 2012 recordation tax revenue is assumed. To the extent that the number of transactions varies going forward, the effect on county revenues will vary accordingly.

Current Law/Background: The counties and Baltimore City are authorized 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. Local recordation tax rates range from $2.50 per $500 in Baltimore, Howard, and Prince George's counties to $6.00 per $500 in Frederick and Talbot counties.

An indemnity mortgage works as follows. A lender agrees to loan money to a borrower on two conditions: (1) that a third party guarantees repayment of the loan; and (2) that the guarantor executes a mortgage on real property to secure the guarantee. An indemnity mortgage is the instrument that manifests the pledge of the property. An indemnity mortgage is recorded so as to establish a lien on the property.

This provision is intended to eliminate a purported tax avoidance transaction in which an entity, in order to avoid recordation tax on a deed of trust, creates a limited liability company (LLC) and has the LLC borrow money with a third party as the guarantor of the debt. In that case, no recordation tax is paid on the LLC borrowing or the third-party guarantee.

Recent History: HB 420 of 2011 received a hearing in the House Ways and Means Committee, but no further action was taken. SB 559/HB 260 of 2008 received hearings in the Senate Budget and Taxation Committee and House Ways and Means Committee, respectively, but no further action was taken on either bill. HB 409 of 2007 and HB 454 of 2006 received hearings in the House Ways and Means Committee, but no further action was taken on either bill.

Analysis prepared by: Michael Sanelli

Exhibit 9
Local Recordation Taxes – Rates and Collections

County	Tax Rate	FY 2010	FY 2011	FY 2012
Allegany	$3.25	$1,235,868	$1,250,000	$1,070,079
Anne Arundel	3.50	28,975,957	30,000,000	33,000,000
Baltimore City	5.00	20,942,367	19,425,608	20,545,000
Baltimore	2.50	20,027,562	18,423,084	21,000,000
Calvert	5.00	5,690,348	5,700,000	5,500,000
Caroline	5.00	1,236,554	1,200,000	1,200,000
Carroll	5.00	9,154,578	8,000,000	8,000,000
Cecil	4.10	4,418,309	4,200,000	4,000,000
Charles	5.00	9,500,396	10,000,000	10,000,000
Dorchester	5.00	1,921,225	1,781,386	1,849,386
Frederick	6.00	10,686,142	10,442,200	10,442,200
Garrett	3.50	2,037,153	1,950,000	2,200,000
Harford	3.30	10,236,128	8,935,000	10,200,000
Howard	2.50	15,267,362	15,500,000	17,000,000
Kent	3.30	968,716	995,000	700,000
Montgomery	3.45	44,934,687	60,015,000	60,198,000
Prince George’s	2.50	27,028,937	26,065,800	24,587,100
Queen Anne’s	4.95	2,489,560	2,650,000	2,650,000
St. Mary’s	4.00	4,974,956	4,900,000	5,000,000
Somerset	3.30	556,498	318,000	400,000
Talbot	6.00	2,934,335	3,200,000	5,650,000
Washington	3.80	3,933,626	4,550,000	4,550,000
Wicomico	3.50	2,590,719	2,770,000	2,134,000
Worcester	3.30	6,195,293	5,250,000	5,750,000
Total		**$237,937,276**	**$247,521,078**	**$257,625,765**

Source: Department of Legislative Services

Exhibit 10
Estimated Recordation Tax Revenue Increase
Indemnity Mortgages

County	Fiscal 2013
Allegany*	$107,000
Anne Arundel	2,925,000
Baltimore City	400,000
Baltimore	2,100,000
Calvert*	550,000
Caroline	100,000
Carroll*	800,000
Cecil	2,195,000
Charles*	1,000,000
Dorchester*	185,000
Frederick	5,000,000
Garrett*	220,000
Harford*	1,020,000
Howard	2,903,000
Kent*	70,000
Montgomery	15,000,000
Prince George's	2,500,000
Queen Anne's*	500,000
St. Mary's	500,000
Somerset*	40,000
Talbot*	565,000
Washington*	455,000
Wicomico	350,000
Worcester	250,000
Total	**$39,735,000**

*Based on 10% increase over estimated fiscal 2012 recordation tax revenues.
Source: Maryland Association of Counties; Department of Legislative Services

Aging Schools Program – Enhanced Local Funding

Provision in the Bill: Increases mandated State funding for the Aging Schools Program beginning in fiscal 2013.

Agency: Public School Construction Program

Type of Action: Local revenue enhancement

Fiscal Impact:	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
	($ in millions)					
GF Exp	$0.0	$27.0	$27.0	$27.0	$27.0	$27.0

State Effect: Annual State funding for the Aging Schools Program will total $33.1 million beginning in fiscal 2013, representing a $27.0 million increase over current law as illustrated in **Exhibit 11**.

Local Effect: Local school systems will receive an additional $27.0 million annually under the Aging Schools Program beginning in fiscal 2013.

Current Law/Background: The Aging Schools Program provides State funding to local school systems for improvements, repairs, and deferred maintenance of public school buildings. These repairs are generally not covered by the capital school construction program and are necessary to maintain older public schools. The Aging Schools Program was initially established by the Baltimore City-State Partnership legislation, which provided $4.4 million for the program and specific allocations for local school systems. The following year, the School Accountability Funding for Excellence legislation increased the annual funding level by $6.0 million to $10.4 million. Budget reconciliation language in recent years has subsequently reduced the required annual funding level to $6.1 million.

Eligible Aging Schools Program expenditures include asbestos and lead paint abatement; upgrade of fire protection systems and equipment; painting; plumbing; roofing; upgrade of heating, ventilation, and air conditioning systems; site redevelopment; wiring schools for technology; and renovation projects related to education programs and services. Projects must cost at least $10,000 to be funded through the program. The Maryland State Department of Education and the Public School Construction Program review aging schools project requests submitted by local school systems, approve eligible projects, and determine if additional review of any construction documents will be required.

Recent History: The fiscal 2012 capital budget provided a one-time increase of $2.5 million for the Aging Schools Program and included language that exempted the enhancement from a current law requirement that funding for the program be at least equivalent to funding in the prior fiscal year. Thus, required funding for the program returns to $6.1 million for fiscal 2013.

Analysis prepared by: Hiram L. Burch

Exhibit 11
Enhanced Funding for the Aging Schools Program
Fiscal 2013

County	**Current Law**	**Proposed Funding**	**Difference**
Allegany	$97,791	$478,000	$380,209
Anne Arundel	506,038	2,472,000	1,965,962
Baltimore City	1,387,924	6,781,000	5,393,076
Baltimore	874,227	5,874,000	4,999,773
Calvert	38,292	187,000	148,708
Caroline	50,074	245,000	194,926
Carroll	137,261	670,000	532,739
Cecil	96,024	469,000	372,976
Charles	50,074	245,000	194,926
Dorchester	38,292	187,000	148,708
Frederick	182,622	893,000	710,378
Garrett	38,292	187,000	148,708
Harford	217,379	1,062,000	844,621
Howard	87,776	429,000	341,224
Kent	38,292	187,000	148,708
Montgomery	602,651	4,603,000	4,000,349
Prince George’s	1,209,426	5,909,000	4,699,574
Queen Anne’s	50,074	245,000	194,926
St. Mary’s	50,074	245,000	194,926
Somerset	38,292	187,000	148,708
Talbot	38,292	187,000	148,708
Washington	134,904	659,000	524,096
Wicomico	106,627	521,000	414,373
Worcester	38,292	187,000	148,708
Total	**$6,108,990**	**$33,109,000**	**$27,000,010**

Office of Administrative Hearings – Fees for Driver's License Suspensions/Revocations

Provision in the Bill: Increases the maximum filing fee from $125 to $150 for an appeal of a decision by the Motor Vehicle Administration (MVA) to suspend or revoke a driver's license.

Agency: Office of Administrative Hearings

Type of Action: Revenue enhancement; fee increase

Fiscal Impact:	*(in dollars)* **FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**
GF Rev	$41,048	$497,500	$502,500	$507,525	$512,600	$517,725

State Effect: General fund revenues increase by $41,048 in the last month of fiscal 2012 due to the increase in the maximum filing fee that is effective on June 1, 2012. General fund revenues increase by $497,500 in fiscal 2013 and by over $500,000 in subsequent years. The estimate assumes that about 7% of fees are refunded back to applicants in accordance with the agency policy of refunding the filing fee to appellants if the administrative law judge took "no action" after the administrative hearing. The estimate also assumes that caseloads and refunds increase by 1% annually.

While the provision of current law amended by the bill authorizes the Chief Administrative Law Judge to charge a fee *not exceeding* a specified amount, it is expected that the Office of Administrative Hearings (OAH) will charge the maximum filing fee authorized by the bill.

Current Law: OAH provides an impartial hearing process for those who want to contest State agency actions. A citizen who disagrees with an action taken by a State agency (for example, a decision by MVA to suspend or revoke a driver's license) may file an appeal with OAH to overturn or modify the action. OAH is an independent agency and its administrative law judges are experienced attorneys licensed by the State of Maryland. Cases are heard at locations throughout the State.

Recent History: Until enactment of the Budget Reconciliation and Financing Act of 2004 (Chapter 430), the filing fee for all administrative hearings provided by OAH was $15. Chapter 430 established different maximum fees for administrative hearings based on the type of appeal that was filed. Accordingly, the MVA cases appealing driver's license suspensions or revocations were subject to a maximum filing fee of $125 beginning in fiscal 2005. All other cases were subject to a maximum filing fee of $50.

Analysis prepared by: Karen D. Morgan

Local Highway User Revenues – Enhanced Municipal Funding

Provision in the Bill: Increases mandated State funding for municipalities under the Local Highway User Revenues formula in fiscal 2013 only.

Agency: Maryland Department of Transportation

Type of Action: Local revenue enhancement

Fiscal Impact:	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
	($ in millions)					
GF Exp	$0	$3.0	$0	$0	$0	$0

State Effect: State funding for local highway user revenues will increase by $3.0 million in fiscal 2013, as illustrated in **Exhibit 12**.

Local Effect: Eligible municipalities will receive an additional $3.0 million in State funding under the local highway user revenues formula, with State funding increasing from $6.5 million under current law to $9.5 million under the bill. The funding allocation is based on municipal vehicle registration and road mileage.

Current Law: Highway user revenues may be used by all jurisdictions for debt service on outstanding bonds, the construction and maintenance of local roads, and the cost of transportation facilities as defined by State law. These funds also may be used to establish and maintain footpaths, bridle paths, horse trails, and bicycle trails.

Recent History: The State shares various transportation revenues, commonly referred to as highway user revenues, with local governments. To help balance the State's general fund budget, State funding for local highway user revenues was significantly reduced beginning in fiscal 2010, with State funding declining from $466.8 million in fiscal 2009 to $163.5 million. Prior to these reductions, local governments received 30% of highway user revenues. Due to budget reconciliation actions, local governments will receive 10% of highway user revenues in fiscal 2013 (8.1% for Baltimore City, 1.5% for counties, and 0.4% for municipalities). Accordingly, State funding for local governments under the local highway user revenues formula will total $163.0 million in fiscal 2013; Baltimore City will receive $132.0 million, county governments will receive $24.5 million, and municipal governments will receive $6.5 million.

Analysis prepared by: Hiram L. Burch

Exhibit 12
Enhanced Municipal Funding for Local Highway User Revenues
Fiscal 2013

County	Current Law	Additional Funding	Total Funding
Allegany	$347,215	$159,776	$506,991
Anne Arundel	278,530	128,170	406,700
Baltimore City	0	0	0
Baltimore	0	0	0
Calvert	79,852	36,745	116,597
Caroline	118,525	54,541	173,066
Carroll	376,662	173,327	549,989
Cecil	179,237	82,479	261,716
Charles	110,212	50,716	160,928
Dorchester	135,343	62,280	197,623
Frederick	716,699	329,800	1,046,499
Garrett	108,581	49,965	158,546
Harford	311,776	143,469	455,245
Howard	0	0	0
Kent	67,831	31,214	99,045
Montgomery	1,054,132	485,076	1,539,208
Prince George's	1,365,637	628,420	1,994,057
Queen Anne's	45,012	20,713	65,725
St. Mary's	22,154	10,194	32,348
Somerset	51,790	23,832	75,622
Talbot	174,859	80,464	255,323
Washington	433,256	199,370	632,626
Wicomico	313,589	144,303	457,892
Worcester	228,491	105,144	333,635
Total	**$6,519,383**	**$3,000,000**	**$9,519,383**

Corporate Income Tax – Credit for Telecommunications Property Taxes

Provision in the Bill: Repeals the corporate income tax credit for 60% of State and local property taxes paid on certain telecommunications property.

Type of Action: Revenue enhancement; tax credit elimination; fund swap

Fiscal Impact:	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
	($ in millions)					
GF Rev	$0	$7.4	$7.7	$7.9	$8.3	$8.6
SF Rev	0	2.2	2.2	2.3	2.2	2.2
GF Exp	0	(0.6)	(0.6)	(0.6)	(0.6)	(0.6)
SF Exp	0	0.7	0.7	0.8	0.8	0.8

State Effect: General fund revenues increase by a total of $7.4 million in fiscal 2013 due to the repeal of the credit. Transportation Trust Fund (TTF) revenues increase by $1.6 million, and Higher Education Investment Fund (HEIF) revenues increase by $575,400 in fiscal 2013. The additional HEIF revenues will be spent in support of State-operated institutions of higher education to partially backfill for a $630,000 general fund expenditure reduction that is contingent on the enactment of this bill.

Future years reflect 3% annual revenue growth, ongoing reductions to general fund spending in proportion to the additional HEIF revenues, and approximately $150,000 per year in additional special fund spending for local highway user revenues.

Local Effect: As a result of the repeal of the credit, highway user revenues increase by $158,700 in fiscal 2013, $156,900 in fiscal 2014, $161,600 in fiscal 2015, $146,800 in fiscal 2016, and $151,200 in fiscal 2017.

Current Law: The Telecommunications Tax Reform Act of 1997 (Chapter 629) subjected income derived from a public utility's telecommunications business to the corporate income tax and created a credit against the corporate income tax for certain State and local property taxes paid by a public utility. Cables, lines, poles, and towers of telecommunications companies were also reclassified as operating personal property.

A telecommunications company that is a public utility is allowed a credit for a portion of the total property taxes paid by the company on its operating real property in Maryland, other than operating land, used in its telecommunications business. The credit may only be claimed against the corporate income tax. The credit is 60% of the total State and local property taxes paid by the public utility on the specified property. The credit cannot exceed the State income tax imposed in the year, and any unused amount may not be carried forward to any future tax years.

Analysis prepared by: Robert J. Rehrmann

Sales and Use Tax – Exemption for Cylinder Demurrage Charges

Provision in the Bill: Repeals the State sales and use tax exemption for demurrage charges in the nature of a penalty for failure to return a gas cylinder within a designated time period.

Type of Action: Revenue enhancement; tax exemption elimination

Fiscal Impact:	*(in dollars)* **FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**
GF Rev	$0	$700,000	$700,000	$700,000	$700,000	$700,000

State Effect: General fund revenues increase by approximately $700,000 annually beginning in fiscal 2013 due to the elimination of the tax exemption.

There is very little data available upon which to base a reliable estimate of the revenue impact of repealing this exemption. As the exemption was first enacted in 1965, it is possible that the market structure regarding fees and charges for compressed gas cylinders has changed over time. For example, some companies that sell propane tanks have partnerships with retailers to host propane tank exchanges whereby customers buy a full propane tank and exchange the empty tank for a new tank when needed.

The Department of Budget and Management's *Maryland Tax Expenditures Report* for fiscal 2012 estimates that the exemption reduces general fund revenues by approximately $700,000 per year. Repealing the exemption, therefore, can be expected to increase annual general fund revenues by this amount. However, to the extent that the market structure related to the sale and use of compressed gas cylinders has changed over time, this amount will vary accordingly. Industry representatives estimate that as much as 80% of the industry now uses a rental method for selling compressed gas in cylinders as opposed to a demurrage method.

Current Law: The State sales and use tax does not apply to any demurrage charges in the nature of a penalty for failure to return a gas cylinder within a designated time period. A person failing to return a gas cylinder (tank) on time can be subject to a late fee, and that late fee is not subject to the sales tax.

A company selling compressed gas in cylinders typically sells the gas via two methods: (1) a rental method in which the company rents the cylinders owned by the company to the customer; or (2) a demurrage method by which the company provides the cylinders to the customer for free and then imposes a demurrage charge. For gas that is sold in rented cylinders, the customer pays for the compressed gas and a cylinder rental charge upon which the sales tax is imposed. For gas that is sold in cylinders via the demurrage method, however, the customer typically receives an invoice for the price of the compressed gas as well as a demurrage invoice for the cylinders. If the customer retains the company's cylinders at the end of a specified invoice period (typically a month), the customer is charged a specified demurrage fee per cylinder. As noted above, as much as 80% of the industry is using the rental method.

Analysis prepared by: Michael Sanelli

Maintenance of Effort

Provision in the Bill: Reduces the additional fiscal 2016 public school maintenance of effort (MOE) amounts counties are required to provide in the Budget Reconciliation and Financing Act of 2012 (SB 152) by the amount of the additional Aging Schools Program funding provided in this bill. The reduction for each county will be proportional to its share of the total program funding in excess of $6,100,000.

Agency: Maryland State Department of Education

Type of Action: Local relief

Fiscal Impact:	($ in millions) **FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**
GF Exp	$0	$0	$0	$0	$0	($2.5)

State Effect: General fund expenditures for education aid may decrease by an estimated $2.5 million in fiscal 2017 due to the impact of reduced county school appropriations on the guaranteed tax base (GTB) State aid program. County school appropriations from fiscal 2016 will affect the calculation of fiscal 2017 GTB aid. General fund savings are likely to continue in subsequent years.

Local Effect: County minimum public school MOE levels will be reduced by a combined total of $27.0 million in fiscal 2016. For fiscal 2017 and subsequent years, the annual MOE level will be set based on the prior year's appropriation, so county savings may continue in future years.

The GTB program provides State aid to school systems in low-wealth jurisdictions based on local appropriations from the prior fiscal year. In fiscal 2013, nine school systems – Baltimore City and Allegany, Caroline, Cecil, Charles, Dorchester, Somerset, Washington, and Wicomico counties – qualify for State aid under the program. Due to a potential for lower school appropriations in fiscal 2016, State aid to local school systems that qualify for GTB aid may decrease by $2.5 million collectively in fiscal 2017.

Current Law/Background: Under the MOE requirement, each county government (and Baltimore City) must provide on a per pupil basis at least as much funding for the local school board as was provided in the prior fiscal year. However, SB 152, as passed by the Senate, increases county MOE amounts in proportion to a shift of teacher pension costs from the State to local school boards. The school boards will pay the pension costs, but the counties must provide additional funds to the school boards through set increases in their MOE amounts for fiscal 2013 through 2016. This bill reduces the MOE increase for fiscal 2016 from a combined $216.5 million to $189.5 million, as shown in **Exhibit 13**.

Exhibit 13
Fiscal 2016 Additional County Maintenance of Effort Amounts
($ in Thousands)

County	SB 152 MOE Increase	MOE Relief in This Bill	SB 523 and SB 152 Additional MOE Amounts
Allegany	$2,203	$380	$1,823
Anne Arundel	18,694	1,966	16,728
Baltimore City	17,901	5,393	12,508
Baltimore	24,843	5,000	19,843
Calvert	4,754	149	4,605
Caroline	1,182	195	987
Carroll	6,702	533	6,169
Cecil	3,944	373	3,571
Charles	6,591	195	6,396
Dorchester	932	149	783
Frederick	9,858	710	9,148
Garrett	955	149	806
Harford	8,803	845	7,958
Howard	17,284	341	16,943
Kent	533	149	384
Montgomery	44,357	4,000	40,357
Prince George’s	29,632	4,700	24,932
Queen Anne’s	1,763	195	1,568
St. Mary’s	4,015	195	3,820
Somerset	610	149	461
Talbot	943	149	794
Washington	4,842	524	4,318
Wicomico	3,239	414	2,825
Worcester	1,952	149	1,803
Total	**$216,530**	**$27,002**	**$189,528**

Although this provision in isolation is likely to reduce fiscal 2017 GTB aid from the State, the net impact on GTB aid is positive due to the MOE increases required by SB 152 (as passed by the Senate).

Analysis prepared by: Mark W. Collins