

Department of Legislative Services  
Maryland General Assembly  
2012 Session

**FISCAL AND POLICY NOTE**

Senate Bill 574

(Chair, Anne Arundel County Senators)

Budget and Taxation

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**Recordation Tax - Public Utilities - Indemnity Mortgages**

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This bill applies the recordation tax to an “indemnity mortgage” on an electric plant of an electric company or a gas plant of a gas company in the same manner as if the guarantor of a loan were primarily liable for the loan, unless the recordation tax is paid on another instrument of writing that secures the payment of the guaranteed loan. 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.

The bill takes effect July 1, 2012.

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**Fiscal Summary**

**State Effect:** None.

**Local Effect:** Local government revenues increase beginning in FY 2013, depending on the number of transactions occurring each year and the value of each transaction. Local expenditures are not affected.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** 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.

**Background:** 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.

The bill 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.

County governments are estimated to collect \$257.6 million in local recordation taxes in fiscal 2012. This amount is higher than amounts collected in fiscal 2010 and 2011. However, these amounts are significantly lower than the amounts collected in fiscal 2005 and 2006 when the soaring real estate market yielded recordation taxes totaling \$525.4 million in fiscal 2005 and \$619.0 million in fiscal 2006. **Exhibit 1** shows the local recordation tax rates and revenue collections for each jurisdiction for fiscal 2010 through 2012.

On February 17, 2012, the Public Service Commission announced, with conditions, the approval of an application to merge Exelon Corporation, Constellation Energy Group, Baltimore Gas and Electric, and Exelon Energy Delivery Company, LLC. As part of the approval process, it is reported that two electricity generating plants – H.A. Wagner and Brandon Shores – located in Anne Arundel County will transfer ownership. Under the bill, these facilities will not be able to transfer and avoid the recordation tax through the use of indemnity mortgages after July 1, 2012.

**Local Fiscal Effect:** The bill may increase local government revenues beginning in fiscal 2013. However, the amount of any increase cannot be reliably estimated and depends on the number of transactions involving electric and gas plants that occur each year and the value of each transaction. There are currently 42 power plants in Maryland.

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**Exhibit 1**  
**Local Recordation Taxes – Rates and Collections**

<b>County</b>	<b>Tax Rate</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
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
<b>Total</b>		<b>\$237,937,276</b>	<b>\$247,521,078</b>	<b>\$257,625,765</b>

Source: Department of Legislative Services

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## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 914 (Delegate Kipke)(By Request - Anne Arundel County Administration) - Ways and Means.

**Information Source(s):** Anne Arundel County, Baltimore City, State Department of Assessments and Taxation, Judiciary (Administrative Office of the Courts), Public Service Commission, Department of Legislative Services

**Fiscal Note History:** First Reader - February 20, 2012  
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