

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1102
Judiciary

(Delegate Wilson)

Commercial Tenants – Personal Liability Clauses – Enforceability and Landlord Relief

This emergency bill requires Baltimore City and each county to grant a refund to a commercial landlord for county property taxes paid during fiscal 2021 that were imposed on space subject to a commercial lease. In order to be eligible for the property tax refund, a commercial landlord may not enforce or attempt to enforce a specified personal liability clause. County governments may provide for (1) the amount of the property tax refund; (2) the conditions to qualify for the property tax refund; (3) the period of time during which an individual may apply for a property tax refund, provided that the commercial landlord must have at least one year to apply for the property tax refund; and (4) any other provision necessary to carry out the property tax refund. The provisions of the bill terminate September 30, 2023.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

Local Effect: Significant decrease in county revenues due to property tax refunds issued, depending on the number of commercial landlords that are eligible for the refund. County expenditures are not directly affected. **The bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful. Small businesses subject to a commercial lease may benefit from a refund from fiscal 2021 real property taxes paid.

Analysis

Bill Summary: A personal liability clause is a clause or provision in a commercial lease or an associated agreement that requires an individual who is not a commercial tenant under the commercial lease to become personally liable to the commercial landlord, in whole or in part, for fees or charges, including rent, taxes, utility fees, or fees for routine building maintenance, owed by the commercial tenant in the event of a default.

The bill establishes that a personal liability clause included in a commercial lease is unenforceable if the following conditions are met: (1) as a result of the Governor's declarations issued March 5, 2020, or other proclamations issued related to the COVID-19 outbreak, the tenant was required to *either* cease serving food or beverages for on-premises consumption *or* close to the public because of its status as a nonessential business or a specific provision contained in an executive order or proclamation; and (2) the default causing the individual to become wholly or partially personally liable occurred between March 23, 2020, and September 30, 2020, inclusive.

The bill prohibits a commercial landlord from attempting to enforce a personal liability clause that the landlord knows or reasonably should know is rendered unenforceable under the bill. A court may enter a judgment against a commercial landlord for reasonable attorney's fees and court costs for a violation of this restriction. A commercial landlord's lawful action for nonpayment of rent, lawful termination of a tenancy established by a commercial lease, lawful refusal to renew or extend a commercial lease or associated agreement, or lawful reentry and repossession of the covered property may not be construed as a violation.

Local Fiscal Effect: Local property taxes represent the leading revenue source for most local governments in Maryland. In addition, due to the triennial assessment process and the homestead assessments caps, the property tax remains a relatively stable and predictable revenue source for county governments. Revenue collections are projected to total \$9.1 billion in fiscal 2021. A considerable portion of these revenues are generated by commercial establishments. As shown in **Exhibit 1**, commercial real property accounts for approximately 25% of the total real property base. In Baltimore City, commercial real property accounts for over 40% of the total real property base. Requiring county governments to provide a property tax refund in fiscal 2021 to certain commercial landlords affected by the COVID-19 pandemic will have a significant negative impact on county revenues.

Exhibit 1
Real Property Base – Fiscal 2019

<u>County</u>	<u>Commercial Real Property</u>	<u>Total Real Property</u>	<u>% Commercial</u>
Allegany	\$983,411,141	\$3,647,463,426	27.0%
Anne Arundel	21,336,377,969	91,133,376,067	23.4%
Baltimore City	19,910,869,418	45,557,036,733	43.7%
Baltimore	24,978,591,308	87,945,647,348	28.4%
Calvert	1,361,803,590	12,184,658,610	11.2%
Caroline	408,078,102	2,625,018,052	15.5%
Carroll	2,636,162,950	20,099,491,617	13.1%
Cecil	2,275,859,595	10,181,215,060	22.4%
Charles	3,387,114,025	18,369,902,013	18.4%
Dorchester	525,149,231	2,877,705,939	18.2%
Frederick	6,366,822,557	31,978,786,534	19.9%
Garrett	477,260,496	4,413,279,645	10.8%
Harford	5,855,085,796	28,583,847,626	20.5%
Howard	12,397,250,972	53,313,887,877	23.3%
Kent	414,795,733	2,970,482,813	14.0%
Montgomery	46,217,229,938	195,345,501,347	23.7%
Prince George's	28,728,368,112	97,654,459,098	29.4%
Queen Anne's	1,055,072,365	8,397,765,444	12.6%
St. Mary's	1,811,217,943	12,594,358,576	14.4%
Somerset	273,368,437	1,376,668,778	19.9%
Talbot	1,094,068,494	8,493,110,859	12.9%
Washington	3,984,619,028	12,880,995,194	30.9%
Wicomico	1,642,878,307	6,306,778,804	26.0%
Worcester	2,702,769,121	15,893,364,746	17.0%
Total	\$190,824,224,628	\$774,824,802,206	24.6%

Source: State Department of Assessments and Taxation

Of the 2.4 million real property tax accounts in the State, approximately 2.5% are either improved commercial accounts (47,700) or improved commercial condominium accounts (15,800). A portion of these accounts may be subject to a commercial lease. As shown in **Exhibit 2**, the average real property assessment is \$2.1 million for commercial accounts and \$721,700 for commercial condo accounts. The average local property tax amount for these accounts total \$25,300 for commercial real property and \$8,600 for commercial

condo real property. If for illustrative purposes only, 7.5% of these accounts are subject to a commercial lease in fiscal 2021 and meet the other criteria of the bill, local property tax refunds could total approximately \$100 million in fiscal 2021.

Exhibit 2
Commercial and Commercial Condo Real Property Accounts
July 2020

County	Commercial Real Property			Commercial Condominium Real Property		
	Accounts	Value	Avg. Value	Accounts	Value	Avg. Value
Allegany	2,033	\$819,950,975	\$403,321	51	\$2,633,400	\$51,635
Anne Arundel	4,014	12,541,073,574	3,124,333	1,701	738,442,901	434,123
Baltimore City	7,955	11,809,975,616	1,484,598	695	1,508,098,830	2,169,926
Baltimore	6,265	11,956,855,486	1,908,516	469	810,733,166	1,728,642
Calvert	553	758,266,546	1,371,187	146	39,970,995	273,774
Caroline	511	258,823,497	506,504	0	0	n/a
Carroll	1,651	1,921,249,897	1,163,689	345	97,711,199	283,221
Cecil	1,318	1,188,439,662	901,699	182	15,643,600	85,954
Charles	1,055	1,990,673,638	1,886,894	674	182,520,421	270,802
Dorchester	709	380,002,708	535,970	0	0	n/a
Frederick	2,097	4,007,082,388	1,910,864	693	264,464,228	381,622
Garrett	808	382,472,265	473,357	250	31,584,000	126,336
Harford	2,197	3,426,238,776	1,559,508	157	90,292,433	575,111
Howard	1,179	5,282,329,132	4,480,347	1,368	694,140,298	507,412
Kent	509	357,727,700	702,805	12	5,984,167	498,681
Montgomery	2,927	22,963,239,791	7,845,316	3,821	5,351,718,399	1,400,607
Prince George's	3,543	11,937,267,704	3,369,254	2,938	888,429,836	302,393
Queen Anne's	601	747,184,099	1,243,235	573	56,528,867	98,654
St. Mary's	1,113	1,149,494,318	1,032,789	142	70,439,731	496,054
Somerset	646	199,838,937	309,348	23	2,913,199	126,661
Talbot	930	853,530,539	917,775	212	54,060,419	255,002
Washington	1,781	2,264,385,743	1,271,413	110	136,550,527	1,241,368
Wicomico	1,541	1,029,168,763	667,858	339	68,841,156	203,071
Worcester	1,729	2,365,456,663	1,368,107	850	254,955,027	299,947
Total	47,665	\$100,590,728,417	\$2,110,369	15,751	\$11,366,656,799	\$721,647

Avg.: average

Source: State Department of Assessments and Taxation

Additional information on local property tax rates and revenue amounts for Maryland counties and Baltimore City can be found in the [County Revenue Outlook](#) report. A copy of the fiscal 2021 report can be found on the Department of Legislative Services [website](#).

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Montgomery and Prince George's counties; Judiciary (Administrative Office of the Courts); State Department of Assessments and Taxation; Department of Legislative Services

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