

Department of Legislative Services  
Maryland General Assembly  
2023 Session

FISCAL AND POLICY NOTE  
Enrolled - Revised

House Bill 371  
Ways and Means

(Delegate Attar)

Budget and Taxation

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**Recordation Tax - Indemnity Mortgage Exemption - Threshold Amount**

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This bill increases the exemption threshold for certain indemnity mortgage transactions from \$3.0 million to \$12.5 million. The bill requires either the tax collector or Clerk of the Circuit Court in a jurisdiction that provides the tax exemption to submit a specified report each year. **The bill takes effect July 1, 2024, and applies to instruments of writing recorded on or after July 1, 2024.**

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**Fiscal Summary**

**State Effect:** General fund revenues decrease beginning in FY 2025 as a result of commissions not being collected by the clerks of the circuit court, to the extent the exemption is granted. Expenditures are not affected.

**Local Effect:** Potential significant reduction in local recordation tax revenues beginning in FY 2025, to the extent the exemption is granted. Reporting requirements can be handled with existing local government resources.

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Bill Summary:** The bill requires either the tax collector or Clerk of the Circuit Court in each jurisdiction that provides the recordation tax exemption to submit an annual report to the Senate Budget and Taxation Committee and the House Ways and Means Committee beginning July 1, 2025, and each July 1 thereafter. The report must include the following: (1) the total number of indemnity mortgages recorded that were exempt from recordation tax; (2) the amount of debt secured by each indemnity mortgage that was exempt from

recording tax; and (3) the amount of recording tax revenue forgone by the county due to the indemnity mortgage exemption.

**Current Law:** Chapters 267 and 268 of 2013 (1) increased the value of an indemnity mortgage that is exempt from recording tax to \$3.0 million; (2) required that a series of indemnity mortgages that are part of the same transaction must be considered as one for purposes of the recording tax; (3) allowed indemnity mortgages recorded before July 1, 2012, to be amended without incurring the recording tax on the original loan amount; (4) altered the definition of supplemental instrument of writing to include an instrument of writing that amends and restates a previously recorded instrument of writing regardless of whether the recording tax was paid on such an instrument of writing; (5) specified that an indemnity mortgage that is recorded in multiple counties is not subject to the recording tax on the full value of the mortgage in each county; (6) required that recording tax be paid on the difference between the unpaid principal balance of the original loan and the amount of any new loan; and (7) allowed commercial mortgages, including indemnity mortgages, to be refinanced without incurring recording tax in the same manner as residential mortgages.

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.

**State Fiscal Effect:** As of July 1, 2019, the clerks of the circuit court collect local recording taxes in 10 counties – Allegany, Calvert, Dorchester, Garrett, Kent, Queen Anne’s, Somerset, St. Mary’s, Washington, and Worcester. In the other 14 jurisdictions, local finance offices are responsible for the collection of recording taxes.

The clerks of the court who collect the tax are entitled to a commission of between 3% and 5% of all public monies collected, which, unless otherwise specified, are remitted to the State general fund. As a result, any decrease in local recording tax revenue will also decrease the amount of the commissions collected by the clerks and remitted to the general fund.

**Local Fiscal Effect:** Local recording tax revenues may decrease by a potentially significant amount beginning in fiscal 2025, to the extent the tax exemption is granted. However, the exact amount of the revenue decrease cannot be reliably estimated and depends on (1) the number of jurisdictions granting the recording tax exemption; (2) the number of transactions that occur each year; and (3) the value of the consideration for these transactions.

Local recordation tax revenues are projected to total \$609.0 million in fiscal 2023. Recordation tax rates range from \$2.50 per \$500 of transaction in Baltimore and Howard counties to \$7.00 per \$500 of transaction in Frederick County. A majority of counties have tax rates set between \$3.00 and \$5.00.

Additional information on local recordation tax rates and revenues can be found in the [County Revenue Outlook report](#). A copy of the report is available on the Department of Legislative Services website.

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### **Additional Information**

**Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** SB 476 (Senators Zucker and Guzzone) - Budget and Taxation.

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

**Fiscal Note History:** First Reader - February 13, 2023  
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