

SB476Testimony-Fav.pdf

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Position: FAV



Testimony for SB476

To: Senate Budget & Taxation Committee

From: Howard Perlow

Date: February 22, 2023

Position: Support for 2023 SB 476 Recordation Tax – Indemnity Mortgage Exemption
Threshold Amount

Chairman Guzzone and Members of the Senate Budget and Taxation Committee:

My name is Howard Perlow and I am the Executive Vice President of Residential Title & Escrow Company located in Owings Mills, MD, and I thank you for the opportunity to provide this testimony in support of Senate Bill 476.

I have been in the Real Estate industry in Maryland for almost 45 years, specifically in the settlement and title business for that time. Prior to my entry in this industry 45 years ago banks, small businesses, small home builders and real estate developers were allowed to use a type of mortgage to borrow from Savings & Loan, Banks and Private Investors using a mortgage known as an Indemnity Mortgage and this type of mortgage was not taxable by the State of Maryland with a Mortgage Recordation Tax.

During the first special session of 2012 Governor O'Malley, looking for a mechanism to raise revenue to help fund \$37million additional revenue for our State and County's Teacher Pension funds, removed this exemption except for projects up to \$1million. In 2013 the Legislature agreed to allow Indemnity Mortgages up to \$3million.

We are here today to ask the Legislature to consider increasing the cap on this type of mortgage to a maximum of \$15million. Of fifty states in the Union only 7 charge a mortgage tax, and along the East Coast of America – Florida, Georgia, North Carolina, South Carolina, Delaware, Pennsylvania, New Jersey, West Virginia and Ohio charge no tax to record a Mortgage or Deed of Trust. Our neighboring State of Virginia has a very low mortgage tax of 1/10th of 1%.

When the last increase for the use of Indemnity Mortgage was passed in 2013, the amount of revenue that all of the counties in Maryland received from the recordation tax was approximately \$237million in FY2012. In fiscal 2019 through 2021 the revenue generated from all counties in Maryland was between \$520million and \$637million.

Many of the opponents of this legislation have said for many years that this is a tax avoidance scheme, which is far from the truth. In reality, this is a tax credit to avoid paying a tax to borrow money from a lending institution to purchase a business, build an office or warehouse for conducting one's business, to build and renovate affordable housing throughout the State of Maryland, to pay for equipment to operate a car repair shop, a restaurant...all of this to stimulate economic growth in Maryland.

If such a mortgage is used to construct housing, or any commercial type of real estate, the builder has already provided the county where the property is located with: permit fees, impact fees, plan review fees, ordering permits...and the ultimate very substantial increase of the assessed value of the property, which of course provides the county substantial property tax revenue. All loans over \$15million will still be taxed at the current recordation tax rate for that county, for the entire loan amount, which will continue to provide substantial tax revenue for any product over the \$15million threshold.

Montgomery County, in their previous testimony, stated that they researched the year 2022 and approximately 60 transactions which took place would cost the county approximately \$4million in revenue. I would suggest that one new project almost completed in Montgomery County, the Ritz Carlton and 2 adjacent apartment buildings, generated over \$4.75million in county recordation tax and approximately \$4million in new property tax revenue. This legislation would not impact those larger projects.

This increase that we request is based on increased costs to operate small businesses, build and renovate buildings to operate these businesses, construct new elderly and affordable housing for the residents of the State of Maryland. Recently, the Baltimore Sun wrote an article that explained the huge shortage of affordable decent housing in our state due to increasing costs to rent or buy a home.

I would therefore suggest that the increase we are requesting to the current law to \$15million is a reasonable request after a 10-year growth in the revenue to allow for inflation and increased costs to the business community. We ask you for your support in approving this request.

Carrington 2023 Testimony SB476 - recordation tax.

Uploaded by: Darrell Carrington

Position: FAV



CARRINGTON & ASSOCIATES, LLC

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**SB476 – Recordation Tax - Indemnity Mortgage Exemption - Threshold
Amount**

FAVORABLE

Carrington & Associates, LLC, requests a FAVORABLE report for SB476. This bill increases the threshold amount for certain indemnity mortgage transactions that are exempt from the recordation tax from \$3,000,000 to \$15,000,000.

We would like to thank the Committee for hearing this important legislation. Our firm has worked with, and/or represented the mortgage industry since 2006. Our Managing Director, Darrell Carrington, has been a Loan Officer, Vice-President of Government Relations, and has testified before our powerful Ways & Means, Economic Matters, Finance and Budget & Taxation Committees throughout that time on a variety of issues facing the mortgage industry.

This commonsense bill recognizes that lenders will be reluctant, in fact, unable to extend mortgages to borrowers with high Loan to Value (LTV) ratios. Most mortgagees will levy a Higher Lending Charge, known as the Mortgage Indemnity Guarantee (MIG), when the LTV is over 75%.

If we are honest, it is important to know that whilst the cost of the MIG is borne by the borrower, the MIG is an insurance policy in favor of the lender. That said, without an MIG, lenders would not provide mortgages at such high LTVs, so most people are willing to pay this extra cost, and obtain a larger mortgage with a smaller deposit requirement as a result.

For the stated reasons, we ask for a FAVORABLE report on SB476.

Please feel free to contact Darrell Carrington, at darrell.carrington@verizon.net, if you would like any additional information.

MBIA Letter of Support SB476.pdf

Uploaded by: Lori Graf

Position: FAV

February 20, 2023

The Honorable Guy Guzzone
Senate Budget and Taxation Committee
Miller Senate Office Building,
3 West Wing 11 Bladen St.,
Annapolis, MD, 21401

RE: Support of SB 0476 Recordation Tax – Indemnity Mortgage Exemption – Threshold Amount

Dear Chairman Guzzone:

The Maryland Building Industry Association, representing 100,000 employees statewide, appreciates the opportunity to participate in the discussion surrounding **SB 0476 Recordation Tax – Indemnity Mortgage Exemption – Threshold Amount**. MBIA **Supports** the Act in its current version.

This bill Increases the threshold amount for certain indemnity mortgage transactions that are exempt from the recordation tax from \$3,000,000 to \$15,000,000. MBIA supports this measure. We believe that an increase in the threshold amount is long overdue and would help small to medium size developers with various projects. Raising the threshold will benefit our builders without creating any issues for the teachers' pension funding and plenty of revenue will still be generated by the recordation tax despite the increase.

Maryland is facing a housing crisis. We need to create more housing. Increasing housing supply will assist in decreasing the overall cost of housing as well as provide new housing stock. According to Metrostudy, Baltimore is under-built by an estimated 26,000 units. Additionally, the Council of Governments estimated the Washington, DC region is expected to be under-built by 115,000 units by 2045. The State Legislature needs to provide as many tools as possible to encourage new housing in Maryland.

SB478 will also assist in decreasing the overall cost of housing to the residents of the State. Ultimately, the recordation tax is getting passed on to the Home buyer. According to a 2020 National Association of Homebuilders study, for every \$1000 increase in the price of a median -priced new home, 2,881 Marylanders are priced out of the market. This is one step to make housing more affordable.

For these reasons, MBIA respectfully requests the Committee give this measure a **Favorable** report. Thank you for your consideration.

For more information about this position, please contact Lori Graf at 410-800-7327 or lgraf@marylandbuilders.org.

cc: Members of the Senate Budget and Taxation Committee

SB476_Zucker_FAV.pdf

Uploaded by: Senator Craig Zucker

Position: FAV

CRAIG J. ZUCKER
Legislative District 14
Montgomery County



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Budget and Taxation Committee
Chair, Capital Budget Subcommittee

Chair, Senate Democratic Caucus

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony of Senator Craig J. Zucker
Senate Bill 476 – Recordation Tax - Indemnity Mortgage Exemption - Threshold Amount
Budget and Taxation
February 22, 2023
1:00 PM
Position: FAV

Good afternoon, Chairman Guzzone, Vice Chairman Rosapepe, and distinguished members of the committee. It is my pleasure to testify today in **support of Senate Bill 476 - Recordation Tax - Indemnity Mortgage Exemption - Threshold Amount Budget and Taxation.**

Senate Bill 476 raises the exemption threshold for indemnity mortgage from \$3,000,000 to \$15,000,000. With the increased costs to running small businesses and to construct/renovate affordable housing, increasing the cap on this type of mortgage will serve to stimulate economic growth in Maryland.

In 2013, when the last use of indemnity mortgage was passed, the revenue generated was approximately \$237 million. The projected recordation tax revenues are projected to total \$609 million in FY 2023.

In the past 10 years, accounting for inflation and the increased costs to business community, increasing the threshold would provide great relief to small businesses and serve to stimulate economic growth in Maryland. All loans over \$15 million will still be taxed at the current recordation tax rate for that county, for the entire loan amount, which will continue to provide the county with tax revenue.

For these reasons, I urge a favorable report on Senate Bill 486. Thank you for your kind consideration

SB 476- Recordation Tax - Indemnity Mortgage Exemp

Uploaded by: Tom Ballentine

Position: FAV



February 21, 2023

The Honorable, Guy Guzzone, Chair
Senate Budget and Taxation Committee
Miller Senate Office Building, 3 West
Annapolis, Maryland 21401

Favorable: SB 476 – Recordation Tax - Indemnity Mortgage Exemption – Threshold Amount

Dear Chair, Guzzone and Committee Members:

The NAIOP Maryland Chapters representing 700 companies involved in all aspects of commercial, industrial and mixed-use real estate recommends your favorable report on Senate Bill 476 which increases the amount of an Indemnity Mortgage that is exempt from the recordation tax.

What is an Indemnity Mortgage?

An Indemnity Mortgage, sometimes called a “*Guaranty*” Deed of Trust, is a method of collateralizing a loan where a third party accepts a future, contingent liability on a piece of real property in order to guarantee a primary loan taken out by another person or entity. The Indemnity Mortgage is different than a conventional mortgage because no debt is incurred when an Indemnity Mortgage is recorded. Commercial construction is often guaranteed through an Indemnity Mortgage.

Increasing the Exemption Threshold

The legal principal behind the recordation tax exemption for Indemnity Mortgages has been that someone who guarantees a loan should not be taxed in the same way as a primary borrower. In 2013 the General Assembly exempted Indemnity Mortgages of up to \$3 million from the recordation tax. HB 371 would increase the threshold to Indemnity Mortgages valued at up to \$15 million.

Rationale and Policy Considerations

Commercial real estate generates more net tax revenues to local government than any other property type. Revenues to local government from commercial real estate have increased substantially since the current threshold was established. When the current \$3 million threshold was established in 2013, recordation tax revenues were \$282 million. In FY2023 recordation tax revenues had risen to \$609 million.



Over that same time period the assessable base of commercial real property increased from \$145.3 billion to \$203 billion resulting in considerably higher revenues from commercial real estate taxes.

At the same time, the rising cost of construction means the exemption has become less meaningful. Between January of 2013 and December of 2022, the St. Louis Federal Reserve Bank’s index of New Office Building Construction costs (graph above) increased 69% while the amount of exemption was unchanged.

Applying the recordation tax to debt is a first cost that creates a barrier to investment capital and complicates project economics. These considerations weigh on development decisions in an uncertain market where the slow return to office and the shift to remote work are already delaying or scaling back construction projects.

Increasing the threshold will incentivize capital investments that increase the assessments of commercial buildings and in turn raise recurring annual real estate taxes.

Because the exemption is used in land development and construction it reduces the repetitive application of recordation tax during the land development and construction process.

For these reasons NAIOP respectfully requests your favorable report on Senate Bill 476.

Sincerely,

A handwritten signature in blue ink, appearing to read "T.M. Ballentine".

Tom Ballentine, Vice President for Policy

NAIOP – Maryland Chapters, *The Association for Commercial Real Estate*

cc: Budget and Taxation Committee Members

Nick Manis – Manis, Canning Assoc.

SB 476_realtors_fav.pdf

Uploaded by: William Castelli

Position: FAV



Senate Bill 476 – Recordation Tax – Indemnity Mortgage Exemption – Threshold Amount

Position: Favorable

Maryland REALTORS® support SB 476 which increases the recordation tax exemption threshold for Indemnity Mortgages or deeds of trust often referred to as IDOTs.

Under Maryland law, indemnity mortgages are exempt from recordation tax if the guaranteed amount is less than \$3 million dollars. SB 476 will increase the exemption amount to \$15 million.

Given the many challenges in commercial real estate due to COVID and business' new real estate needs with remote work options, an IDOT exemption can help small and medium sized commercial real property save money when redeveloping or restructuring their property.

Maryland REALTORS® recommends a favorable report.

**For more information contact lisa.mays@mdrealtor.org or
christa.mcgee@mdrealtor.org**

Frederick County DFox Testimony SB476.pdf

Uploaded by: Diane Fox

Position: UNF



FREDERICK COUNTY GOVERNMENT

Jessica Fitzwater
County Executive

DIVISION OF FINANCE
Department of Treasury

Erin White, CPA, Division Director
Diane E. Fox, CPA, Director

SENATE BILL 476 – RECORDATION TAX – INDEMNITY MORTGAGE EXEMPTION – THRESHOLD AMOUNT

DATE: February 21, 2023

COMMITTEE: Budget and Taxation

POSITION: Opposed

FROM: Diane Fox, Director of Treasury, Finance, Frederick County Government

Thank you for your consideration of Senate Bill 476 – Recordation Tax – Indemnity Mortgage Exemption – Threshold Amount. As the Director of Treasury in the Finance Division in Frederick County, I urge the committee to give Senate Bill 476 an unfavorable report.

The purpose of the bill is to alter the threshold amount for certain indemnity mortgage transactions by increasing the threshold from \$3,000,000 to \$15,000,000. This bill will provide exemptions to previously taxed documents and will have an unfair and broad negative revenue impact of approximately \$1,000,000 to \$3,000,000 annually in Frederick County.

The indemnity mortgage is simply a loophole used to avoid recordation tax by borrowing money through a third party, typically a pop-up LLC that is formed just for this purpose. This loophole was closed by the 2012 General Assembly. At the same time, the State required counties to begin paying the cost of teacher pensions, and the revenue generated from removing the IDOT exemption was part of the offset that helped the counties fund the cost. Reversing that action while not adjusting local government expenditures will create significant budget challenges for counties.

Thank you for your consideration of Senate Bill 476. On behalf of Frederick County Government, I urge an unfavorable report.

Diane Fox, CPA
Director of Treasury
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Frederick, MD 21701
301-600-1114
dfox@frederickcountymd.gov

SB0476-BT_MACo_OPP.pdf

Uploaded by: Kevin Kinnally

Position: UNF



Senate Bill 476

Recordation Tax - Indemnity Mortgage Exemption - Threshold Amount

MACo Position: **OPPOSE**

To: Budget and Taxation Committee

Date: February 22, 2023

From: Kevin Kinnally

The Maryland Association of Counties (MACo) **OPPOSES** SB 476. This bill would restore and invigorate a tax avoidance scheme for commercial property owners to avoid paying Maryland taxes on substantial real estate transactions. Doing so is unwise and unfair tax policy, granting a tax break not promoting socially beneficial behavior, but merely rewarding complex paper schemes unavailable to homeowners and other taxpayers.

SB 476 would meaningfully re-open a tax loophole for the financing of commercial transactions through indemnity deeds of trust (IDOTs). In addition to shifting a greater share of the tax burden onto homeowners in favor of large companies, this bill would have an unfair, sweeping, negative effect on local revenues sorely needed to fund schools, housing, public health, public safety, roadway maintenance, and other essential public services.

Unique to Maryland, IDOTs are a tricky method to borrow money through a third party (most often a pop-up “disregarded entity” corporation just for this purpose) to avoid paying taxes that would apply to conventional mortgages. MACo has argued that these business relationships, and the artificial “distance” they create, are for the sole purpose of avoiding taxes. The General Assembly promoted tax fairness in 2012 when it closed this loophole, effectively saying that commercial transactions should be treated and taxed the same regardless of the structural arrangement.

The 2012 General Assembly directed counties to begin paying to the State Pension Fund, via the local board of education, the normal-cost portion of the K-12 teacher pension contribution. The local revenue generated from closing the IDOT loophole became part of the offsets of the teacher pension costs transferred to counties. But the tax fairness accomplished by doing so withstands the time passed since its enactment. Closing tax loopholes is good tax policy, and promotes fairness for all taxpayers.

MACo feels strongly that the closing of this unfair loophole was part of a larger policy matter and should be maintained in its current form. Accordingly, MACo urges the Committee to issue an **UNFAVORABLE** report on SB 476.

SB 476 - MoCo_Coveyou_ OPP (GA 23).pdf

Uploaded by: Michael Coveyou

Position: UNF



Montgomery County

Office of Intergovernmental Relations

ROCKVILLE: 240-777-6550

ANNAPOLIS: 240-777-8270

SB 476

DATE: February 22, 2023

SPONSOR: Senators Zucker and Guzzone

ASSIGNED TO: Budget and Taxation

CONTACT PERSON: Michael Coveyou (Michael.Coveyou@montgomerycountymd.gov)

POSITION: OPPOSE (Department of Finance)

Recordation Tax – Indemnity Mortgage Exemption – Threshold Amount

The sole purpose of Indemnity Deeds of Trust (IDOT) is to avoid paying the recordation taxes that every other taxpayer has to pay. Since only commercial property owners use this tactic, the burden of taxation is shifted to residential taxpayers. The recordation tax is authorized under State law, but is a local tax, and this bill reduces local tax revenues.

In 2012 the Maryland General Assembly partially remediated this tax avoidance tactic by limiting it to properties where the consideration paid is \$1 million or less. In 2013, that threshold was changed to allow projects to use IDOTs if the project cost was \$3 million or less, a more suitable level for the projects they wanted to subsidize. However, the fact remains that IDOTs, allowable only in Maryland, are still just a tool to avoid taxes and shift the tax burden to homeowners.

This bill enhances the IDOT recordation tax avoidance loophole for substantial commercial transactions (it can be used for improvements to properties that are worth much more than \$3 million or \$15 million, as long as the cost is less than the threshold amount). As a result, the bill would have a negative effect on local taxing authority and revenues.

Before 2012, when commercial entities structured substantial real estate transactions, they typically employed an IDOT to create ambiguity in the borrowing process and legally avoid paying taxes on the value of the transaction.

The General Assembly promoted tax fairness in 2012 when it closed this loophole, effectively saying that commercial transactions should be treated and taxed the same regardless of the structure of the financing for a project. Since the General Assembly took action, there is no longer a loophole related to the IDOT structure for securing loans at and above \$3 million since transactions structured with IDOTs were correctly made taxable to the same extent as conventional mortgages.

Under current law the tax loophole is still available for projects that are \$3 million or less, but it is still a loophole and if this bill passes it will be an even larger loophole that benefits those who wish to merely avoid the taxes that others will pay and that harms homebuyers and local governments.

I respectfully request that you give Senate Bill 476 an unfavorable report.