Montgomery County
Office of Intergovernmental Relations

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SB 476 **DATE: February 22, 2023**

SPONSOR: Senators Zucker and Guzzone

ASSIGNED TO: Budget and Taxation

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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.