



1000 Wilson Boulevard  
Suite 2100  
Arlington, Virginia 22209  
Direct 571.481.9427  
Mobile 240.426.2027

March 29, 2023

[www.ryan.com](http://www.ryan.com)

VIA Electronic Submission @ MyMGA

Maryland General Assembly  
Senate Budget and Taxation Committee  
Chair, Senator Guy Guzzone  
Vice Chair, Senator Jim Rosapepe  
3 West  
Miller Senate Office Building  
Annapolis, MD 21401

RE: SB0885 (HB0896) – Property Tax Appeals – Commercial and  
Industrial Property – Fees - **OPPOSE**

Dear Chair Guzzone, Vice Chair Rosapepe, and Members of the Senate Budget and Taxation Committee,

Thank you for the opportunity to offer testimony regarding Senate Bill 0885 (House Bill 0896), which would impose mandatory filing fees on certain owners of commercial or industrial property exercising their rights to determine the fair value or proper classification of their properties before a Property Tax Assessment Appeal Board (“PTAAB”) or the Maryland Tax Court, and as amended would provide for the refund of such fees upon a “successful” appeal.

My name is Shawn Eskow, and I am a Director in the Property Tax Practice at Ryan, LLC, which represents commercial and residential property owners in ensuring their properties are fairly valued and properly classified. I am an attorney licensed in Maryland, Virginia, and Washington, D.C., a licensed Certified Public Accountant in Virginia, and a life-long Maryland resident. My professional practice includes providing real and personal property tax consulting services, focused on Maryland property owners.

As explained below, we submit this testimony to **OPPOSE** SB0885/HB0896 for the following reasons:

- The legislation violates the Maryland Constitution’s guarantee of uniform rules in the assessment and classification of property.
- The legislation will unduly burden commercial and industrial property owners and impair their access to justice in property tax appeals.
- The legislation imposes a mandatory collection function on already limited government resources.

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- The legislation fails to address common issues that arise in commercial and industrial property tax appeals that could further exacerbate the burdens the legislation imposes on property owners.
- The amendment to the bill text to allow for a refund of the filing fees upon a “successful” appeal fails to cure the above deficiencies and adds yet another layer of confusion and complexity.

SB0885/HB0896 would require owners of commercial or industrial property assessed at more than \$1 million to pay a filing fee of \$50 to challenge the assessed value or classification of their properties before the PTAAB where the property is located and a filing fee of \$100 to bring such a challenge before the Maryland Tax Court. These fees are only imposed on owners of commercial or industrial property assessed at more than \$1 million and appear to be a targeted attempt to discourage or prevent legitimate property tax appeals from certain classes of taxpayers.

### **SB0885/HB0896 violates the Maryland Constitution**

As an initial matter, SB0885/HB0896 contains a fatal constitutional flaw: it violates the Maryland Constitution, specifically Article 15 of the Declaration of Rights, which states “that the General Assembly shall, *by uniform rules*, provide for the separate assessment, classification and sub-classification of land, improvements on land and personal property.” (emphasis added). The Constitution does not permit commercial or industrial property to be assessed or classified using rules or imposing constraints different from those governing the assessment or classification of residential or other classes of property. Imposing a fee that only applies to commercial or industrial property owners violates this guarantee of uniformity in property tax assessment and classification.

### **SB0885/HB0896 imposes undue burdens on property owners with legitimate grievances**

In addition to the constitutional infirmity, SB0885/HB0896 unduly burdens commercial and industrial property owners. It is important to remember that the purpose of providing a right to a tax appeal is to arrive at the fair market value of a property, so that taxpayers are paying an appropriate level of tax, not more than their fair legal share. To charge a fee to access the forum where one can exercise this right – on top of the time-intensive process of pursuing appeals to begin with – is unduly and overly burdensome.

The imposition of fees for access to property tax appeals creates a barrier to justice for taxpayers seeking to correct what may be ministerial errors in property tax assessments. Currently, there are no fees for taxpayers seeking to appeal their property tax assessments, including at the Maryland Tax Court, which hears appeals in many types of tax matters other than property tax. Although it is reasonable to expect ministerial errors to be corrected without the need for an appeal to a PTAAB or Tax Court, in our experience, that is not always the case. For example, in Prince George’s County, for the last several years, taxpayers with routine questions about assessments are given little to no consideration at the Supervisor level and often told to file an appeal to the PTAAB.

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This barrier to justice is likely to have a disproportionate impact on small business owners who own property assessed at more than \$1 million but are already saddled with substantial debt related to their ownership. The fees proposed in SB0885/HB0896 are likely to put the cost of achieving a fair assessment value for small commercial or industrial property owners out of reach. In addition, the more than \$1 million threshold at which these fees would be triggered is arbitrary and may not reflect an owner's true interest in the property or the property's actual market value.

I am not aware of any rationale for the legislation that has been proffered by the sponsors. This leaves impacted stakeholders unable to determine the purported need for legislation that would significantly hamper access to justice for one group of property tax taxpayers.

### **SB0885/HB0896 imposes unfunded burdens on PTAABs and the Tax Court**

The proposed fees in SB0885/HB0896 may not be waived by the PTAAB or Tax Court, and thus the law mandates the agencies to manage and staff a collection function, which may exacerbate current staffing challenges and require the procurement of banking services contracts, among others. For appeal boards with few commercial and industrial property tax appeals, the costs associated with implementing the legislation will further burden limited government resources and may be prohibitive. To the extent the legislation is motivated by a desire to ease the burdens on already stretched resources at the PTAABs and Tax Court, the legislation misses the mark by creating a new set of tasks and processes that must be carried out to collect the fees imposed.

### **SB0885/HB0896 fails to consider the practical realities of property tax appeals**

The legislation fails to address common issues that arise in commercial and industrial property tax appeals that could further exacerbate the burdens the legislation imposes on property owners. For example, it is unclear if the fee would be imposed per parcel or per operating unit. For a property that consists of multiple parcels, such as a shopping center, the cost to appeal could be significant.

### **The amendment to SB0885/HB0896 fails to remedy any of the bill's defects.**

To address the valid concerns raised about the bill, a provision was added to allow for a refund of filing fees if the PTAAB or Tax Court changes the assessment in the appellant's favor. Such a provision fails to account for situations in which the PTAAB or Tax Court agrees with the appellant before a decision is required to be issued and the matter is withdrawn. It also fails to address changes in classification, which may be the basis for the appeal.

A larger concern, however, is the impact that such a change would have on the dismally low fiscal impact of approximately \$96,800 this bill would have on State revenues. Per the fiscal notes for the bill ([https://mgaleg.maryland.gov/2023RS/fnotes/bil\\_0006/hb0896.pdf](https://mgaleg.maryland.gov/2023RS/fnotes/bil_0006/hb0896.pdf)), this provision would impose the additional burden on already strained PTAABs and Tax Courts to refund over 1,000 fees to successful taxpayers. This number may be higher if it does not account for withdrawn cases that also result in a successful appeal.

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Thank you again for the opportunity to testify before the Committee, and I urge the Committee not to take up SB0885/HB0896. I will make myself available at any members' convenience to answer any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Eskow". The signature is written in a cursive style with a large initial "S" and a long horizontal stroke extending to the right.

Shawn Eskow  
Ryan, LLC