



House Bill 371

Recordation Tax - Indemnity Mortgage Exemption - Threshold Amount

MACo Position: **OPPOSE**

To: Ways and Means Committee

Date: February 14, 2023

From: Kevin Kinnally

The Maryland Association of Counties (MACo) **OPPOSES** HB 371. 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.

HB 371 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 HB 371.