

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 873  
Economic Matters

(Delegate Kramer)

Judicial Proceedings

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Corporations – Transfer of Assets and Exchange of Shares of Stock

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This bill alters provisions of law pertaining to specified transfers of assets and the exchange of stocks. The bill repeals provisions of law requiring the execution and filing of articles of transfer and makes numerous conforming changes. The bill also specifies that, unless the charter or bylaws of a corporation provide otherwise, stockholder approval is not required for the transfer of assets by a corporation that is dissolved.

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Fiscal Summary

**State Effect:** General fund revenues decrease by approximately \$21,100 annually beginning in FY 2019. Expenditures are not affected.

**Local Effect:** The bill eliminates a requirement that specified articles of transfer be filed, but this change does not eliminate the payment of any local taxes or fees. As a result, local revenues and expenditures are not affected.

**Small Business Effect:** Minimal.

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Analysis

**Bill Summary:** The bill repeals provisions of law requiring the execution and filing of articles of transfer and makes conforming changes, including repealing a \$100 nonrefundable processing fee charged by the State Department of Assessments and Taxation (SDAT) for filing articles of transfer. The bill allows the transfer of assets and the liability of a successor for the debts and obligations of a transferor to be governed by an agreement between the transferor and the successor rather than by articles of transfer.

The bill specifies that a transfer of assets by a corporation occurring before October 1, 2018, is not invalid solely because of a failure to file articles of transfer with SDAT. The bill also clarifies a provision of current law requiring that a deed by a Maryland corporation be considered valid and effective whether or not articles of transfer have been filed applies only to deeds taking effect before October 1, 2018.

**Current Law:** Business entities are required to file specified documents with SDAT including: articles of incorporation; articles of amendment; articles of extension; articles of restatement of charter; articles of amendment and restatement; articles supplementary; articles of share exchange; articles of consolidation, merger, or transfer; articles of dissolution; articles of revival for stock corporation; articles of revival for nonstock corporation; articles of conversion; and articles of dissolution. These entities are required to pay a \$100 nonrefundable processing fee. In addition, a \$5 nonrefundable processing fee must be paid for the return of an original document.

#### *Consolidation, Merger, and Transfer of Assets of Nonstock Corporations*

A nonstock corporation may consolidate or merge only with another nonstock corporation. A consolidation, merger, or transfer of assets of a nonstock corporation must be completed in accordance with requirements under Title 3 of the Corporations and Associations Article. Except as specified, a proposed consolidation, merger, or transfer of assets of a nonstock corporation organized to hold title to property for a labor organization, and for related purposes, must be approved by the same affirmative vote of the members of the corporation that the constitution or bylaws of the labor organization requires for the same action.

Stockholder approval and articles of transfer or share exchange are not required for a transfer of assets by a corporation registered as an open-end investment company under the Investment Company Act of 1940.

**Background:** SDAT's charter unit is the central repository of all records for business entity formation and filings, such as charters, limited liability companies, partnerships, and trusts. The charter unit provides resident agent information for service of process on these entities and accepts service in certain instances on their behalf. The charter unit also records trade names and is the filing place for most financing statements under the Uniform Commercial Code. The charter unit administers the State's annual corporate filing fee, as well as other business transaction fees. Revenue collected is deposited into the State general fund.

The Maryland State Bar Association reports that Maryland is the only state that requires corporations to file articles of transfer.

## *Recordation and Transfer Taxes*

The counties and Baltimore City are authorized to impose locally established recordation tax rates on any business or person (1) conveying title to real property or (2) creating or giving notice of a security interest (*i.e.*, a lien or encumbrance) in real or personal property, by means of an instrument of writing.

The State and most counties impose a transfer tax. The State transfer tax rate is 0.5% of the consideration payable for an instrument of writing conveying title to, or a leasehold interest in, real property (0.25% for first-time Maryland homebuyers). In some jurisdictions, a local property transfer tax may be imposed on instruments transferring title to real property. A distinction is made in the local codes between instruments transferring title such as a deed and certain leaseholds and instruments securing real property such as a mortgage.

For purposes of local recordation taxes, which are applied to each \$500 or fraction of \$500 of consideration payable or of the principal amount of the debt secured for an instrument of writing, the consideration includes the amount of any mortgage or deed of trust assumed by the grantee. For purposes of the State transfer tax, the consideration includes the amount of any mortgage or deed of trust assumed by the grantee.

County governments collected \$891.7 million in local recordation and transfer taxes in fiscal 2016 and are expected to collect \$909.3 million in fiscal 2018.

**State Fiscal Effect:** SDAT reports that 211 articles of transfer were filed with the department in fiscal 2017. As a result, general fund revenues decrease by approximately \$21,100 annually beginning in fiscal 2019 from business entities no longer paying the \$100 fee, assuming a similar number of filings each year.

**Local Fiscal Effect:** The bill eliminates the requirement that business entities file articles of transfer, and the associated \$100 filing fee, with SDAT. The bill does not eliminate other requirements for real estate transactions, including the obligation to record a deed in the land records and pay the appropriate taxes and fees associated with these transactions.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 659 (Senator Feldman) - Judicial Proceedings.

**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 20, 2018  
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