MFP ITEM 1
September 21, 2009
Worksession

MEMORANDUM

TO: Management and Fiscal Policy Committee

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession**: Expedited Bill 32-09, Taxation – Impact Taxes – Inflation Adjustment – Temporary Suspension

Expedited Bill 32-09, Taxation – Impact Taxes – Inflation Adjustment – Temporary Suspension, sponsored by Councilmember Elrich, was introduced on July 28. A public hearing was held on September 15.

Summary County Code §§52-57(f) and 52-90(f) require the Director of Finance to adjust the impact tax rates every other year to reflect the increase or decrease in the previous 2 years in a construction cost index selected by regulation. This Bill would roll back the increase in the tax rates that took effect on July 1, 2009, to provide temporary relief to applicants for building permits over the next 2 years.

The national economic downturn and local housing market conditions have significantly reduced the number of applications for building permits in the County. Under current law, the Director of Finance was required to (and did) adjust the impact tax rates effective July 1, 2009 by 7.16% to reflect the increase in the selected construction cost index over calendar years 2007 and 2008. This Bill would cancel this increase in the impact tax rates for 2009 and require the next scheduled adjustment in 2011 to reflect the increase or decrease in the construction cost index for the 4 full calendar years before July 1, 2011. This Bill does not change any impact tax rate adjustments to be made after 2011.

Fiscal impact On September 11 the Office of Management and Budget reported (see ©4-6) that the fiscal impact of the bill would be a loss of about $1.6 million on the transportation impact tax and $2.1 million on the school impact tax: a total of about $3.7 million. These estimates are based on:

- the reasonable assumption that reducing impact tax rates by 7.16% will have no discernible effect on the number of building permit applications; and
- realizing the impact tax revenue currently assumed in the Capital Improvements Program for FYs 2010 and 2011: $23,758,000 for the transportation impact tax and $31,336,000 for the school impact tax.

Unless there is a sharp turnaround in the local building industry, the second assumption is probably too optimistic. In FY 2009 the County collected only $2,450,681 in transportation impact tax revenue and $8,017,291 in school impact tax revenue, a total of just under $10.5 million. If, for example, the same amount were collected in both FY 2010 and FY 2011, a 7.16% rate reduction would translate to about $1.5 million less revenue, rather than $3.7 million less.

Index The construction cost index used – the Engineering News-Record Baltimore construction cost index – was selected, as the law requires, by Executive Regulations 8-09 and 9-09, both approved by the Council on July 28. The Council amended the impact tax laws in 2007 to switch to a construction cost index specified by regulation from the previous consumer price index (CPI) to better reflect the elements that influence the cost of building roads, transit, and schools. Ironically, using the CPI instead would have resulted in a larger increase (about 8.31%). Maryland-National Capital Building Industry Association (BIA) members have complained that this index does not accurately reflect construction costs in the Washington area and informally proposed alternative indices, but did not do so when these regulations were considered. If the Council concludes that the EN-R index is not satisfactory, it could amend the law to specify a different index or urge Executive staff to review other options and propose an amended regulation for later use. Part of the problem, of course, may be the lag time between the index and the increase it triggers, which could affect the result either way. This Bill does not affect the index.

Refund The BIA supported this Bill (see testimony, ©7) and requested an amendment to require the Finance Department to refund the amount of the increase to any taxpayer who paid the impact tax since July 1. In Council staff's view, this amendment is not necessary because the Bill would take effect *as of* July 1 (see ©2, line 19), automatically canceling the increase and requiring the County to refund that amount. However, if a more specific amendment would avoid administrative questions, the following could be inserted after line 16:

The Director of Finance must refund the amount of any impact tax collected on or after July 1, 2009, which reflects the adjustment for construction cost increases under Sections 52-57(f) and 52-90(f) that was temporarily in effect.

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Expedited Bill No. 32-09
Concerning: Taxation – Impact Taxes – Inflation Adjustment - Temporary Suspension
Revised: July 23, 2009 Draft No. 4
Introduced: July 28, 2009
Expires: January 28, 2011
Enacted: _____
Executive: _____
Effective: July 1, 2009
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Elrich

AN EXPEDITED ACT to:

(1) temporarily suspend the requirement to adjust certain impact tax rates for inflation; and

(2) generally amend the law governing impact tax rates.

By amending
Laws of Montgomery County 2009

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

The Laws of Montgomery County 2009 are amended as follows:

Sec. 1. Temporary Suspension of Impact Tax Rate Adjustments.

Notwithstanding any provision of County Code Section 52-57(f) or 52-90(f) to the contrary:

(a) the Director of Finance must not adjust the rates of the development impact taxes for transportation or public school improvements to reflect inflation in construction costs, effective July 1, 2009;

(b) any impact tax rate adjustment that was published in 2009 as required by either Section 52-57(f) or 52-90(f) must not take effect as scheduled on July 1, 2009; and

(c) any tax rate adjustment that is scheduled to take effect on July 1, 2011, must reflect the annual average increase or decrease in a published construction cost index specified by regulation for the 4 full calendar years immediately preceding July 1, 2011, except to the extent the underlying rates have been modified by any amendment to Chapter 52 which takes effect after July 1, 2009.

Sec. 2. Expedited Effective Date; Applicability.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect as of July 1, 2009. This Act applies only to the impact tax rate adjustment that was scheduled to take effect on July 1, 2009 and the impact tax rate adjustment scheduled to take effect on July 1, 2011, as required by County Code Sections 52-57(f) and 52-90(f).

Approved:

Philip M. Andrews, President, County Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 32-09
Taxation – Impact Taxes – Inflation Adjustment – Temporary Suspension

DESCRIPTION:	County Code §§52-57(f) and 52-90(f) require the Director of Finance to adjust the impact tax rates every other year to reflect the increase or decrease in the construction cost index to reflect the changes in the cost of transportation and public school capital improvements. The Bill would roll back the increase that took effect on July 1, 2009 to provide temporary relief to applicants for building permits over the next 2 years.
PROBLEM:	The national economic downturn has significantly reduced the number of applications for new building permits in the County. Under current law, the Director of Finance was required to adjust the impact tax rate to reflect the increase in the construction cost index over calendar years 2007 and 2008. This increase in the impact tax rate is likely to further reduce applications for building permits in the County. This Bill would roll back this increase in the impact tax rate for 2009 and require the next scheduled adjustment to reflect the increase or decrease in the construction cost index for the 4 full calendar years immediately preceding July 1, 2011.
GOALS AND OBJECTIVES:	Provide a temporary stimulus for building permit applications in the County.
COORDINATION:	Department of Finance
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, Robert H. Drummer, Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Not applicable.

b32-09

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OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

September 11, 2009

2009 SEP 11 PM 12:18
RECEIVED
MONTGOMERY COUNTY
COUNCIL

TO: Phil Andrews, President, County Council

FROM: Joseph Beach, Director

SUBJECT: Expedited Bill 32-09, Taxation – Impact Taxes – Inflation Adjustment – Temporary Suspension

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

The proposed legislation rolls back the July 1, 2009 (FY10) impact tax rate increase to provide temporary relief to building permit applicants for the next two fiscal years (FY10-11). The legislation also requires the next scheduled rate adjustment (FY12) to reflect the change in construction costs for the four full calendar years preceding it. The goal is to provide a two-year temporary stimulus for County building permit applications.

FISCAL SUMMARY

By forgoing the impact tax construction cost index (CCI) inflation adjustment in FY10 and FY11 the County will reduce collection of Transportation Impact taxes by $667,900 in FY10 and $918,897 in FY11 (total of $1,586,797) and School Impact taxes by $734,690 in FY10 and $1,358,241 in FY11 (total of $2,092,931).[1] The impact tax rate will provide for four years of inflation in FY12-13; biennial inflation adjustments will be applied thereafter. Detail on these estimates is illustrated in the charts below. Even though the legislation provides for applying the FY10 and FY11 CCI in FY12 and FY13, it is estimated that this will not result in a revenue neutral impact since the existing revenue estimates already anticipated the rates would include the CCI in FY12 and FY13. It should also be noted, that due to current economic conditions the actual revenue loss as a result of this legislation will most likely be less than the amounts described in the table below, because actual total collections in FY10 and FY11 will be lower than estimated in the Amended FY09-14 CIP. Revised estimates of impact tax revenues will be available in the County Executive's Recommended FY11-16 CIP.

[1] The loss in revenue is measured in relation to estimates of impact tax revenues in the Amended FY09-14 Capital Improvements Program (CIP).

Office of the Director
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Bill 32-09 - Effect of Forgoing Biennial Impact Tax Rate Increase on County Transportation Impact Tax Revenues (Based on FY10 Approved Budget)			
Fiscal Year	Estimate with Rate Increase	Estimate without 2009 Rate Increase	Difference
2009 Actual	$2,450,681	NA	NA
2010	$10,000,000	$9,332,100	**($667,900)**
2011	$13,758,000	$12,839,103	**($918,897)**
2012	$14,341,000	$14,341,000	NA
2013	$14,384,000	$14,384,000	NA
2014	$15,000,000	$15,000,000	NA
2015	$15,000,000	$15,000,000	NA
2016	$15,000,000	$15,000,000	NA
Total	**$97,483,000**	**$95,896,203**	**($1,586,797)**

Bill 32-09 - Effect of Forgoing Biennial Impact Tax Rate Increase on County Schools Impact Tax Revenues (Based on FY10 Approved Budget)			
Fiscal Year	Estimate with Rate Increase	Estimate without 2009 Rate Increase	Difference
2009 Actual	$8,017,292	NA	NA
2010	$11,000,000	$10,265,310	**($734,690)**
2011	$20,336,000	$18,977,759	**($1,358,241)**
2012	$21,974,000	$21,974,000	NA
2013	$23,324,000	$23,324,000	NA
2014	$25,359,000	$25,359,000	NA
2015	$25,500,000	$25,500,000	NA
2016	$25,500,000	$25,500,000	NA
Total	**$152,993,000**	**$150,900,069**	**($2,092,931)**

ECONOMIC IMPACT STATEMENT

This bill will provide a temporary savings, in avoided building permit costs, to the development community for the two fiscal years (FY10-11) affected by this bill. Detail is illustrated in the two charts below. The avoided costs (savings) to the development community are shown in the far right-hand columns. The extent to which this legislation will stimulate additional economic activity can not be readily quantified since there are other confounding factors affecting the pace and level of development activity including the scarcity of available project financing and reduced market demand.

Bill 32-09 - Effect of Forgoing Biennial Impact Tax Rate Increase on County Transportation Impact Tax Revenues (Based on FY10 Approved Budget)			
Fiscal Year	Estimate with Rate Increase	Estimate without 2009 Rate Increase	Difference
2010	$10,000,000	$9,332,100	**($667,900)**
2011	$13,758,000	$12,839,103	**($918,897)**
Total	**$23,758,000**	**$22,171,203**	**($1,586,797)**

Bill 32-09 - Effect of Forgoing Biennial Impact Tax Rate Increase on County Schools Impact Tax Revenues (Based on FY10 Approved Budget)			
Fiscal Year	Estimate with Rate Increase	Estimate without 2009 Rate Increase	Difference
2010	$11,000,000	$10,265,310	**($734,690)**
2011	$20,336,000	$18,977,759	**($1,358,241)**
Total	**$31,336,000**	**$29,243,069**	**($2,092,931)**

The following contributed to and concurred with this analysis: Michael Coveyou, Department of Finance, Scott Foncannon, Office of the County Attorney, and Bryan Hunt, Office of Management and Budget

JFB:bh

c: Jennifer E. Barrett, Director, Department of Finance
Kathleen Boucher, Assistant Chief Administrative Officer
Michael Coveyou, Department of Finance
Scott Foncannon, Office of the County Attorney
John Cuff, Office of Management and Budget

#7 #1

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Maryland National Capital Building Industry Association
Testimony
On
Expedited Bill 32-09
Taxation – Impact Taxes – Inflation Adjustment – Temporary Suspension
Before the Montgomery County Council
September 15, 2009

Good Afternoon Council President Andrews and Councilmembers:

I am Tom Farasy, representing the Maryland National Capital Building Industry Association (MNCBIA) as their President. The MNCBIA represents over 600 member firms involved in the building industry here in Montgomery County and throughout the five county-region of suburban Maryland and the District of Columbia.

The building industry has been a key component of this County's economic engine; unfortunately, the economic turmoil that has swept through this country has severely impacted the building industry in this County, and the County has shared equally in the economic downturn as evidenced in the record low number of building starts and real estate transactions, decline in unit production, and falling revenues.

We want to express our appreciation to Councilman Elrich for sponsoring Bill 32-09. These are demanding times and we appreciate his leadership and foresight on this matter.

Bill 32-09 recognizes the current state of the building industry and that any increase in the cost of doing business, no matter the historical precedent, can add to further delays in the construction of new homes and the creation of jobs.

Bill 32-09 recognizes that the data that supports the July 01 7% increase is separated from the reality that we have all experienced since September of last year. Construction prices have been falling and demand for work is highly competitive; subcontractors are willing to aggressively cut their overhead and profit expectations in order to obtain work.

The proposal to suspend the 7% increase acknowledges that even though there are signs of recovery, the recovery is fragile ... and there will be an 18 – 24 month overhang. It is important to remember that we will really not have a recovery until there is job growth.

We believe that this two-year suspension can benefit the industry, promote job growth, and by extension can benefit the County. We believe that the proposal to protect the mandatory regulatory review of the costs in 2011 is a practical solution that balances the temporary suspension.

We ask that the Council support this Bill, and that a provision be added that will provide a refund of the 7% increase, in the event a building permit was issued that included the July 01 increase.

Thank you for the opportunity to provide comments; our members are available to answer any questions during the upcoming worksession.

BUILDING HOMES, CREATING NEIGHBORHOODS