

MEMORANDUM

November 1, 2016

TO: Government Operations and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession:** Bill 31-16, Taxation – Urban Agricultural Tax Credit - Established

Bill 31-16, Taxation – Urban Agricultural Tax Credit - Established, sponsored by Lead Sponsor Councilmember Huckler and Co-Sponsor Councilmember Elrich, was introduced on August 2, 2016. A public hearing was held on September 20.

Md. Tax-Property Code §9-253 provides that:

- (b) The Mayor and City Council of Baltimore City or the governing body of a county or of a municipal corporation may grant, by law, a tax credit against the county or municipal corporation property tax imposed on urban agricultural property.

Bill 31-16 would implement this authority by:

- (1) establishing an urban agricultural tax credit against real property tax;
- (2) defining an urban agricultural property and an urban agricultural purpose;
and
- (3) establishing eligibility for an urban agricultural tax credit

Background

Bill 31-16 would define an urban agricultural property as real property that is:

- (1) at least one-half of an acre and not more than 5 acres;
- (2) located in a priority funding area, as defined in Md. State Finance and Procurement Code §5-7B-02; and
- (3) used for urban agricultural purposes.

The Bill would define an urban agricultural purpose as:

- (1) crop production activities, including the use of mulch or cover crops to ensure maximum productivity and minimize runoff and weed production;
- (2) environmental mitigation activities, including stormwater abatement and groundwater protection;
- (3) community development activities, including recreational activities, food donations, and food preparation and canning classes;
- (4) economic development activities, including employment and training opportunities, and direct sales to restaurants and institutions; and

- (5) temporary produce stands used for the sale of produce raised on the premises.

A property owner must conduct at least 2 urban agricultural purposes on the property. The term of the credit would be 5 years. The credit would equal the property tax otherwise due on the property.

The County Attorney's Office reviewed the Bill and made some suggested amendments to clarify the intent. See the County Attorney's Bill Review Memorandum at ©9-11.

Public Hearing

All 4 witnesses supported the Bill. Aaron Rosenzweig supported the Bill as a way to help people learn where food is grown. (©20.) Gabriel Shapiro, representing Chesapeake Climate Action Network, supported the Bill as a way of making the community more green with urban agriculture. (©21-22.) Alyce Ortuzar, representing Well Mind Association of Greater Washington also supported the Bill, but added a concern about stormwater runoff. Finally, Lynn Koiner, representing the Koiner Farm in Silver Spring, supported the Bill as a measure to help her family keep their 40-year old urban farm operating. We also received written testimony in support of the Bill from several employees of Johns Hopkins Center for a Livable Future (©23-24) and the Montgomery County Agricultural Advisory Committee (©25).

After the public hearing, the Executive submitted comments on the Bill requesting that the broad scope of the Bill be narrowed to limit the potential fiscal impact. (©18-19)

Issues

1. What is the fiscal and economic impact of the Bill?

OMB, in the Fiscal and Economic Impact Statement (©12-17) noted that there are approximately 36,300 taxable properties between ½ and 5 acres that are not zoned as agricultural properties. However, OMB could not determine how many of these properties are currently used for "urban agricultural purposes." If each of these properties qualified for the tax credit, which is unlikely, the total loss of tax revenue could be \$436.4 million in FY17. The large potential tax credit discussed in the FEIS points out the need to better define and possibly limit the eligibility for the tax credit. This issue will be discussed below.

2. Should the definition of agricultural purposes be narrowed?

Although the Bill included crop production as an agricultural purpose, it also includes environmental mitigation activities, community development activities, economic development activities, and temporary produce stands. The addition of these non-farming activities, though environmentally desirable, broaden the potential tax credit to many property owners who are not farming and resulted in the OMB fear of a massive potential loss of property tax revenue. In fact, each of the witnesses at the public hearing supported the Bill to encourage property owners to use their property for farming. This appears to be the main purpose of the Bill.

After receiving the Executive's request to narrow the Bill, Lead Sponsor, Councilmember Hucker, and Council staff met with members of the Executive Branch to discuss the broad definition of agricultural purposes. Councilmember Hucker intends to introduce amendments to the Bill that would define agricultural purposes using the definition of urban farming in §3.2.9 of the County Zoning Code, as follows:

Urban agricultural purposes means

- (1) the cultivation of fruits, vegetables, flowers, and ornamental plants;
- (2) the limited keeping and raising of fowl or bees; or
- (3) the practice of aquaculture.

See proposed Bill 5 at ©26-29. This change in scope would limit the tax credit to urban farming and significantly reduce the potential fiscal impact of the credit. **Council staff recommendation:** amend the definition of urban agricultural purposes as set forth in proposed Bill 5.

3. Should there be a minimum value of sales from farming to receive the tax credit?

Baltimore City enacted an urban agricultural tax credit based upon the State enabling act. However, the Baltimore City ordinance requires the property owner to derive at least \$5000 each year from farming on the property. This provision eliminates eligibility for the suburban backyard tomato garden that produces tomatoes for the family. While it is desirable to encourage backyard vegetable gardens, the purpose of the tax credit is to encourage working farms on small residential lots that produce a significant amount of produce for sale. Councilmember Hucker's proposed amended Bill 5 would add this gross revenue requirement. **Council staff recommendation:** require a property owner to receive at least \$5000 in gross revenue from the sale of produce raised on the property to receive the tax credit.

4. Should the tax credit be for 100% of the County property tax owed?

The Bill would provide a 100% tax credit on the County property tax owed. While this would encourage urban farming, these property owners still receive County services like other taxpayers. The same result may be derived from a partial credit. Councilmember Hucker's proposed Bill 5 would limit the credit to 80% of the County property tax owed. **Council staff recommendation:** limit the tax credit to 80% of the County property tax owed up to a certain amount. There should be a limit on the amount of the tax credit.

5. What is the proper minimum and maximum size of a lot that should be eligible for the credit?

The Bill, as introduced, requires an urban agricultural property to be at least ½ acre, but no more than 5 acres. Councilmember Hucker's proposed Bill 5 would keep the minimum ½ acre size, but limit the maximum size to 3 acres. In addition, a property owner who owns more than one contiguous lot of less than ½ acre would be permitted to consider both lots together as one to meet the minimum lot size. **Council staff recommendation:** amend the minimum and maximum lot size as provided in Councilmember Hucker's proposed Bill 5.

6. Which County department should be responsible for certifying eligibility for the tax credit?

The Bill, as introduced, would require the Director of the Department of Finance to certify eligibility for the tax credit. The Executive Branch recommended charging the Office of Agriculture with the initial task of receiving an application and certifying eligibility to the Department of Finance. This appears to be within the scope of the duties and expertise of the Office of Agriculture. Councilmember Hucker's proposed Bill 5 would shift this duty to the Office of Agriculture and require the Director of Finance to base eligibility on the certification of the Office of Agriculture. **Council staff recommendation:** amend the Bill to require the property owner to apply to the Office of Agriculture for certification for the tax credit.

7. When should a property owner be required to apply for the credit?

The Bill, as introduced, would require a property owner to apply at least 90 days before the beginning of the tax year the credit is sought. The Department of Finance requested that the Bill be clarified that the property owner must apply on or before April 1 of the tax year before the tax year the credit is sought. Although this is the same date, it would make it easier for the tax payer to understand when the application is due. Councilmember Hucker's proposed Bill 5 would make this change. **Council staff recommendation:** amend the Bill to require an application on or before April 1 before the tax year the credit is sought.

8. Should the credit be limited to property in a residential zone?

The Bill, as introduced, does not limit the credit to property in a residential zone. The Department of Finance requested this limitation. This is consistent with the purpose of the tax credit. Councilmember Hucker's proposed Bill 5 would make this change. **Council staff recommendation:** amend the Bill to require the property to be in a residential zone.

9. The County Attorney's recommended amendments.

The County Attorney recommended several amendments in the Bill Review memo for clarity. See ©9-11. Several of the recommendations are taken care of if Councilmember Hucker's Bill 5 is approved. The following recommendations are not:

- a. *Add the phrase "In order to receive the credit" at the beginning of subsection (e).*
- b. *Add the word "tax" after the 5 in subsection (f) (1).*

Council staff recommendation: make both of these amendments for clarity.

10. Should the Bill be enacted?

Urban farming can be a benefit to the community. The Bill may create opportunities for farming in down County areas where most of our County residents live and work. Urban farming in these areas may also encourage the production of locally grown fresh food that is both healthy and desirable. However, the Bill, as introduced, is potentially too costly because it is too broad. Councilmember Hucker's proposed Bill 5 narrows the tax credit to promote urban farming yet not

overburden County taxpayers. The Committee may want to consider further limiting the amount of the credit by placing an upper limit on the dollar amount of the credit or lowering the percentage of the County property tax that is forgiven. **Council staff recommendation:** enact the Bill with the amendments described above.

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Bill No. 31-16
Concerning: Taxation – Urban
Agricultural Tax Credit - Established
Revised: August 15, 2016 Draft No. 3
Introduced: August 2, 2016
Expires: February 2, 2018
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Hucker and Co-Sponsor: Councilmember Elrich

AN ACT to:

- (1) establish an urban agricultural tax credit against real property tax;
- (2) define an urban agricultural property and an urban agricultural purpose;
- (3) establish eligibility for an urban agricultural tax credit; and
- (4) generally amend the law governing urban agricultural tax credits.

By adding

Montgomery County Code
Chapter 52, Taxation
Section 52-11D

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

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

1 **Sec. 1. Section 52-11D is added as follows:**

2 **52-11D. Urban Agricultural Tax Credit.**

3 (a) Definitions. In this Section:

4 Urban agricultural property means real property that is:

- 5 (1) at least one-half of an acre and not more than 5 acres;
 6 (2) located in a priority funding area, as defined in Md. State Finance
 7 and Procurement Code §5-7B-02; and
 8 (3) used for urban agricultural purposes.

9 Urban agricultural purposes means:

- 10 (1) crop production activities, including the use of mulch or cover
 11 crops to ensure maximum productivity and minimize runoff and
 12 weed production;
 13 (2) environmental mitigation activities, including stormwater
 14 abatement and groundwater protection;
 15 (3) community development activities, including recreational
 16 activities, food donations, and food preparation and canning
 17 classes;
 18 (4) economic development activities, including employment and
 19 training opportunities, and direct sales to restaurants and
 20 institutions; and
 21 (5) temporary produce stands used for the sale of produce raised on
 22 the premises.

23 (b) Credit required. The Director of Finance must allow each eligible
 24 taxpayer a credit against County real property taxes due in each tax year
 25 in which the taxpayer is eligible for the credit.

26 (c) Eligibility. An eligible taxpayer must conduct at least 2 urban agricultural
 27 purposes on urban agricultural property. The property must be used

28 solely for urban agricultural purposes, except an individual engaged in
29 crop production on the property may also reside on the property.

30 (d) Amount of credit. The credit must equal the property tax otherwise due
31 on the property.

32 (e) Application. A property owner must apply for the credit at least 90 days
33 before the beginning of the first year the tax credit is sought on a form
34 containing the information required by the Director. A property owner
35 must apply to continue the credit at least 90 days before the beginning of
36 each subsequent tax year.

37 (f) Term of credit.

38 (1) The term of the credit is 5 years, unless renewed.

39 (2) A taxpayer may apply to renew the credit no later than 90 days
40 before the expiration of the credit for another 5 tax years.

41 (g) Continuous agricultural use required. If, at any time during the term of
42 the credit or the renewal of the credit, the property is no longer used for
43 agricultural purposes:

44 (1) the credit granted to the property must be terminated; and

45 (2) the owner of the property is liable for all property taxes that would
46 have been due during that 5-year term if the credit had not been
47 granted.

48 (h) The Director must take all actions necessary to apply the credit to each
49 eligible taxpayer who applies for the credit. A taxpayer may appeal a
50 final decision by the Director denying or terminating the credit to the
51 Maryland Tax Court within 30 days after receiving a notice of denial or
52 termination from the Director.

53 **Sec. 2. Evaluation.** The Director must submit a report to the Executive and the
54 Council on or before January 1, 2020 evaluating the effectiveness of the tax credit in
55 promoting urban agricultural purposes.

56

57 *Approved:*

58

Nancy Floreen, President, County Council

Date

59 *Approved:*

60

Isiah Leggett, County Executive

Date

61 *This is a correct copy of Council action.*

62

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 31-16

Taxation – Urban Agricultural Tax Credit - Established

DESCRIPTION: Bill 31-16 would establish an urban agricultural tax credit against real property tax.

PROBLEM: Using property for urban agricultural purposes is becoming less common in the County.

GOALS AND OBJECTIVES: Encourage urban agricultural purposes in the County.

COORDINATION: Finance, County Attorney

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: None.

West's Annotated Code of Maryland
Tax-Property
Title 9. Property Tax Credits and Property Tax Relief
Subtitle 2. Statewide Optional

MD Code, Tax - Property, § 9-253

§ 9-253. Urban agricultural property; tax credits

Effective: June 1, 2014

Currentness

(a)(1) In this section the following words have the meanings indicated.

(2) "Urban agricultural property" means real property that is:

(i) at least one-eighth of an acre and not more than 5 acres;

(ii) located in a priority funding area, as defined in § 5-7B-02 of the State Finance and Procurement Article; and

(iii) used for urban agricultural purposes.

(3) "Urban agricultural purposes" means:

(i) crop production activities, including the use of mulch or cover crops to ensure maximum productivity and minimize runoff and weed production;

(ii) environmental mitigation activities, including stormwater abatement and groundwater protection;

(iii) community development activities, including recreational activities, food donations, and food preparation and canning classes;

(iv) economic development activities, including employment and training opportunities, and direct sales to restaurants and institutions; and

(v) temporary produce stands used for the sale of produce raised on the premises.

(b) The Mayor and City Council of Baltimore City or the governing body of a county or of a municipal corporation may grant, by law, a tax credit against the county or municipal corporation property tax imposed on urban agricultural property.

(c)(1) Except as provided in paragraph (2) of this subsection, a tax credit under this section shall be granted for 5 years.

(2)(i) If the Mayor and City Council of Baltimore City or the governing body of a county or of a municipal corporation grants a tax credit under this section, the jurisdiction granting a tax credit shall evaluate the effectiveness of the credit after 3 years.

(ii) If the jurisdiction granting the tax credit determines that the tax credit is ineffective in promoting urban agricultural purposes, the jurisdiction granting a tax credit may terminate the tax credit.

(iii) The jurisdiction granting a tax credit under this section may extend the tax credit for an additional 5 years.

(d) The Mayor and City Council of Baltimore City or the governing body of a county or of a municipal corporation may provide, by law, for:

(1) the amount of the tax credit under this section;

(2) additional eligibility criteria for the tax credit under this section;

(3) regulations and procedures for the application and uniform processing of requests for the tax credit; and

(4) any other provision necessary to carry out the credit under this section.

(e) At any time during the period for which a property tax credit under this section is granted for urban agricultural property, if

§ 9-253. Urban agricultural property; tax credits, MD TAX PROPERTY § 9-253

the property ceases to be used for urban agricultural purposes, the owner of the property shall be liable for all property taxes that would have been imposed if a property tax credit for urban agricultural property had not been granted.

Credits

Added by Acts 2010, c. 721, § 1, eff. June 1, 2010. Amended by Acts 2013, c. 660, § 1, eff. June 1, 2013; Acts 2014, c. 390, § 1, eff. June 1, 2014.

MD Code, Tax - Property, § 9-253, MD TAX PROPERTY § 9-253

Current through all legislation from the 2016 Regular Session of the General Assembly in effect through July 1, 2016

End of Document

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OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Alexandre A. Espinosa, Director
Department of Finance

VIA: Edward B. Lattner, Chief 
Division of Government Operations

FROM: Scott R. Foncannon, Acting Chief 
Division of Finance and Procurement

DATE: August 10, 2016

RE: Bill 31-16, Taxation – Urban Agricultural Tax Credit - Established

I have reviewed Bill 31-16, Taxation – Urban Agricultural Tax Credit – Established. This bill creates an urban agricultural real property tax credit for County real property taxes, provided the real property is used for two of the five listed urban agricultural purposes or activities. The tax credit is for five tax years with a possible renewal for an additional five years. The bill also contains language that allows the County to recapture tax for the five-year period of time, if the property is no longer used for urban agricultural purposes, or is no longer eligible for the credit during that five-year period.

The tax credit is created pursuant to an enabling State law in Section 9-253 of the Tax-Property Article, of the Annotated Code of Maryland.

I have several comments concerning the tax credit bill.

1. First, under the definitions section of urban agricultural purposes, it is difficult to determine if these purposes can be considered individually, or property must comply with all of the purposes to qualify for the credit, because between No. 4 and 5 there is an "and." I believe this word should be "or."
2. Under the credit required, line 23, it directs the Director of Finance to allow each eligible taxpayer a credit against County real property taxes due in each tax year in which the

taxpayer is eligible for the credit. The very next subsection, subsection (c), line 26, describes eligibility and states that an individual engaged in crop production may also reside on the property. It is not clear to me whether the tax credit applies to just the land or, also the improvements on the land that may be used for residential purposes.

3. Also, the bill does not define a taxpayer in a way which would limit the tax credit to just individuals that own properties or whether the tax credit is available to properties that may be owned by a corporate entity, an LLC, a partnership, or a trust. In subsection (c), line 28, the bill refers to an "individual engaged in crop production", which typically denotes a human being, not an entity.

4. The bill mentions the term of the credit is five years and can be renewed for another five years (line 39). It is not clear if ten years is the maximum term or if it can be renewed perpetually.

5. I would recommend the following amendments to Bill 31-16 to help clarify the bill and make it consistent with State law.

- a. Line 9 would read as follows: Urban agricultural purposes means property that is used for.
- b. Line 20 would be modified to delete the word "and" and add the word "or".
- c. Section (c), beginning at line 26 would be amended as follows: Eligibility. To receive the credit an eligible taxpayer must use the property for [[conduct]] at least 2 of the urban agricultural purposes [[on urban agricultural property]] during the term of the credit. The property must be used solely for urban agricultural purposes, except an individual engaged in crop production on the property may also reside on the property.
- d. Section (e), beginning at line 34 would be amended as follows: Application. In order to receive the credit a property owner must apply for the credit at least 90 days before the beginning of the first year the tax credit is sought on a form containing the information required by the Director. In order to receive the credit a property owner must apply to continue the credit at least 90 days before the beginning of each subsequent tax year.
- e. Section (f) at line 41 would add the word "tax" between the number 5 and the words years.
- f. Section (g), beginning at line 44 would be amended as follows: Continuous agricultural use required. If, at any time during the term of the credit or the renewal of the credit, the property is no longer eligible for the credit or used for 2 Urban

Alexandre A. Espinosa
August 11, 2016
Page 3

Agricultural Purposes.

Subject to the comments above and the proposed amendments, I am recommending in the attached edited copy of the bill, the credit is authorized by state law and this bill is within the authority of the Council and is otherwise legally sufficient.

cc: Bonnie A. Kirkland, Assistant Chief Administrative Officer
Marc P. Hansen, County Attorney
Bob Drummer, Legislative Attorney
Amanda Mihill, Legislative Attorney

SRF
16-007149 - Bill review



ROCKVILLE, MARYLAND

MEMORANDUM

September 16, 2016

TO: Nancy Floreen, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Alexandre A. Espinosa, Director, Department of Finance

SUBJECT: FEIS for Council Bill 31-16, Taxation – Urban Agricultural Tax Credit -
Established

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:mc

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Alexandre A. Espinosa, Director, Department of Finance
Mike Coveyou, Department of Finance
Jane Mukira, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Bill 31-16, Taxation – Urban Agricultural Tax Credit - Established

1. Legislative Summary

Provides for a real property tax credit for “urban agricultural” property, defined as properties that are not agriculturally zoned, that are between ½ and 5 acres, that are used for “urban agricultural purposes” and that are in State-defined Priority Funding Areas.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Using the 2016 billing data from the County’s property tax database, there are over 36,300 real property tax accounts that are: (1) taxable; (2) between ½ and 5 acres; and (3) are not zoned as agricultural properties. Most of these properties are likely located in Priority Funding Areas, as most of the County’s parcels are located in Priority Funding Areas. There is no data on how many of these properties are currently used for “urban agricultural purposes.” Additionally, the bill does not articulate whether each property must be used in whole for agricultural purposes, or if the bill applies to a property if any part of that property is used for agricultural purposes. The total amount of County taxes billed for these 36,300+ accounts is over \$436.4 million dollars for FY17. Some portion of this amount of tax will be credited, but it is not possible to reliably estimate how many properties will be eligible for the credit.

Since the bill is vague as to what is defined as urban agricultural purpose, a very broad level and array of activities could qualify a property for this proposed tax credit. Therefore, the potential FIS, is the total tax revenue associated with these properties - \$436.4 million.

This legislation requires that the Department of Finance (Finance) administer the bill. However, Finance does not have expertise to determine whether a property is used for an “urban agricultural purpose.” Therefore, Finance would have to hire additional staff with expertise in “urban agricultural purposes” including crop production activities, environmental mitigation activities, and community development activities. Further, Finance would have to hire additional staff to make site visits to determine if a property has a temporary produce stand on it. The required number of new Finance staff cannot be determined at this time because it is unknown how many property owners would be eligible and apply for the credit. However, with 36,300 eligible properties, the workload would be significant since it would require not only initial verification, but periodic checks to ensure the agricultural use continues.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

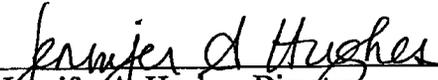
See #2 above. As noted above, there is the potential for a broad array of activities to be eligible for this tax credit. If all 36,300+ properties qualified, the annual fiscal impact could be approximately \$436.4 million annually or \$2.6 billion over six years. Additionally, there will be more personnel expenditures for additional County staff in the Department of Finance, but that cannot be estimated at this time.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.
Not Applicable.
5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.
Not Applicable.
6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.
Not Applicable.
7. An estimate of the staff time needed to implement the bill.
Unknown at this time, but significant due to the number of potential properties eligible.
8. An explanation of how the addition of new staff responsibilities would affect other duties.
This bill cannot not be administered by current Finance staff. Additional staff would be required.
9. An estimate of costs when an additional appropriation is needed.
See #2 above.
10. A description of any variable that could affect revenue and cost estimates.
See #2 and #3 above.
11. Ranges of revenue or expenditures that are uncertain or difficult to project.
All revenue and expenditures are uncertain for this legislation.
12. If a bill is likely to have no fiscal impact, why that is the case.
Not Applicable.
13. Other fiscal impacts or comments.
None.

14. The following contributed to and concurred with this analysis:

Mike Coveyou, Finance

Jane Mukira, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget

9/15/16
Date

Economic Impact Statement
Bill 31-16, Taxation – Urban Agricultural Credit – Established

Background:

Bill 31-16 provides for a real property tax credit for “urban agricultural” property, defined as properties that are not agriculturally zoned, that are between ½ and 5 acres, that are used for “urban agricultural purposes” and that are in Priority Funding Areas.

A property owner must conduct at least 2 urban agricultural purposes on the property. The term of the credit would be 5 years. The credit would equal the property tax otherwise due on the property.

1. The sources of information, assumptions, and methodologies used.

Finance estimated for the fiscal impact of the bill that there are over 36,300 real property tax accounts that are (1) taxable; (2) between ½ and 5 acres; and (3) are not zoned as agricultural properties using 2016 billing data from the County’s property tax database. Most of these properties are likely located in Priority Funding Areas, as most of the County’s parcels are located in Priority Funding Areas.

Since there are no data on how many of these properties are used for “urban agricultural purposes” it is not possible to estimate with specificity the total potential loss of property taxes to the County. The total amount of County taxes billed for these 36,300 plus accounts is over \$436.4 million dollars for FY17. Some portion of this amount of tax will be credited, but it is not possible to reliably estimate how many properties will be eligible for the credit.

Finance estimates the average County-only tax for the 36,300 plus properties in question is slightly more than \$12,000 for FY17—the median tax is over \$5,800 for FY17. For each 1% of participation, based on the average tax, the credit would cost approximately \$4.4 million.

As noted in the fiscal impact statement for the bill, since the proposed language is vague as to what is defined as urban agricultural purpose, a very broad range of activities could qualify a property for this credit. Therefore, the potential fiscal impact, according to the Fiscal Impact Statement, is \$436.4 million or the total tax revenue associated with these properties.

2. A description of any variable that could affect the economic impact estimates.

Urban agricultural land potentially benefits the County through eliminating blight and improving access to healthy food. The primary variables that would affect the County’s economy positively would be potential increases in property values as neighborhoods are improved. Given the limited scope of the bill from an acreage perspective, sites with large assessed value will be excluded from the credit. Since the current language of the bill includes such a broad range of activities that could qualify for the credit, the primary variable in determining the economic impact of the bill is the number of properties that ultimately qualify for the credit.

Economic Impact Statement
Bill 31-16, Taxation – Urban Agricultural Credit – Established

- 3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**

Given a lack of specificity of data regarding both current properties used for urban agricultural purposes and those intended to be used in the future, it is difficult to accurately quantify with any degree of precision the total economic impact to the County as a result of this bill.

- 4. If a Bill is likely to have no economic impact, why is that the case?**

This legislation will have an economic impact. See paragraph #3

- 5. The following contributed to or concurred with this analysis:** David Platt, Dennis Hetman, and Robert Hagedoorn, Finance.



Alexandre A. Espinosa, Director
Department of Finance

9/16/16

Date



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

MEMORANDUM

September 21, 2016

Isiah Leggett
County Executive

TO: Tom Hucker, Councilmember
County Council

FROM: Isiah Leggett 
County Executive

SUBJECT: Bill 31-16, Taxation – Urban Agricultural Tax Credit – Established

I have reviewed Bill 31-16, Taxation – Urban Agricultural Tax Credit – Established. The bill creates an urban agricultural real property tax credit for County real property taxes, provided the real property is used for two of the five listed urban agricultural purposes or activities, and the property is between ½ acre and five acres in size.

The tax credit is authorized by an enabling State law in Section 9-253 of the Tax Property Article, of the Annotated Code of Maryland. As drafted, the bill is vague in its definition of “urban agricultural purposes.” Due to this lack of specificity, the definition of urban agricultural purposes – particularly, environmental mitigation activities, community development activities, and economic development activities – could encompass a potentially unlimited range of activities eligible for the credit. Because the eligible uses are so open-ended, the Department of Finance would be in the position of approving virtually every application.

Further, it is unclear what the bill is intended to achieve. Unlike many other jurisdictions in the State, Montgomery County has numerous programs designed to address environmental, community development, and economic development goals. To try to further address these goals through our tax policy must be considered in that broader context. The impact on the County’s tax revenues and taxpayers must also be considered. Given the current definition of “urban agricultural purposes” under this bill the impact would be very costly to the County in terms of lost property tax revenue.

Specifically, the following areas of the bill should be addressed:

- Urban agricultural purposes – Identify a clear purpose of what the bill is intended to achieve and clearly define urban agricultural purposes in a manner that can be effectively administered.

Tom Hucker, Councilmember
September 21, 2016
Page 2

- Application and certification of urban agricultural purposes – The Department of Finance does not have the subject matter expertise to accept applications and certify urban agricultural purposes for the tax credit.
- Amount of the credit – The bill should clearly specify that it is only the land that is eligible for the credit, not any improvements on the land. The bill does not provide a compelling reason to credit the full property tax amount. Additionally, there should be some minimum agricultural use test applied to the property. As currently drafted, even the most minimal agricultural plots could qualify a property for this credit.

As noted above, I am concerned the bill is too broad and is not the most appropriate and direct way of encouraging urban agriculture in the County. If the intent is to promote agricultural activities in the urban areas of the County, the bill should be more narrowly focused on incentivizing agricultural activities. The other implied goals of the bill – environmental, community development, and economic development – should be addressed either through existing programs or more direct initiatives. The benefit of providing an urban agricultural tax credit should be weighed against the increased burden this places on other taxpayers in the County, the cost to the County to administer the credit, and any unintended consequences it may create.

Aaron Rosenzweig
1 Thorburn Road, Gaithersburg MD 20878
240-421-2520

September 16, 2016

Councilmembers,

I support Hucker and his bill to widen the scope of tax credits to encourage urban farming on lots less than 5 acres in size.

This bill:

https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/bill/2016/Packets/20160802_7A.pdf

What can you produce on 1/2 an acre? Quite a lot.

The "Dervaes" family produce 6,000 lbs of food per year on 1/10 of an acre:

<https://www.youtube.com/watch?v=NCmTJkZy0rM>

<http://inhabitat.com/this-family-produces-6000-pounds-of-food-per-year-on-4000-square-feet-of-land/>

<http://tinyhousetalk.com/family-grows-6000-lbs-of-food-on-110th-acre-urban-farm/>

<http://urbanhomestead.org>

They are not alone nor are they unique.

"What we found, bottom line, is that organic vegetable production on a small plot of land can be profitable," he said. "It's a lot of work, but one family can earn a \$45,000 annual salary on a 3-acre plot."

<http://today.agrilife.org/2012/06/13/organic-vegetable-economics/>

Certainly growing food is not for everyone but for those who do it is immensely rewarding. The benefits don't stop there. Neighbors learn the value of where food comes from without having to leave their neighborhoods. One of the best things Montgomery County has done is in creating the Agricultural Reserve. Within a short driving distance we are connected with nature and we don't have the sprawl that Virginia has as a result. This bill is simply the next step. Instead of a drive, a simple walk can take you to where food is grown.

It is important to encourage diversity in all its forms but in food production it is particularly smart. We don't want to have to ship our food across the country nor do we want to be dependent on large scale production. This bill will help encourage citizens to reconnect with nature and inspire neighbors to start by simply growing tomatoes and potatoes on lots less than 1/2 acre in size. Anyone can do it!

My family moved out of Montgomery County jurisdiction and into the City limits of Gaithersburg simply so we could legally raise a handful of chickens. They are pets with benefits but more than that, they help build community spirit. Children and families love visiting the chickens just like they will thoroughly enjoy urban farms on 1/2 acre or more as this bill proposes.

Please encourage this bill and others like it. Let's even develop new HOA communities with a farm at its core as a shared community resource such as the Belward Farm on Route 28:

<http://www.teamgaithersburg.org/assets/Belward-agrihood-FINAL.pdf>

<http://thefarmatagritopia.com>

Thank you,

Aaron Rosenzweig



10

Bill 31-16, Taxation - Urban Agricultural Tax Credit

Montgomery County Council

Date: September 20, 2016

Position: Support

Comments:

CCAN supports tax incentives for urban agriculture projects because land use is a critical aspect of a municipality's response to the climate emergency we are currently facing. This bill provides Montgomery County with an opportunity to become a nation-wide leader on green city planning and development.

Urban agriculture would make the community more green. Green space in urban settings has an immediate effect on residents, consumers and tourists visiting the area. The space provided by urban agricultural projects allows for community growth, renewal and health, through food preparation and canning classes, harvest days, farm stands and ongoing collaboration, cooperation, dialogue and collective management.

On a technical level, urban agriculture provides many tangible benefits for the city itself.

Climate change brings unpredictable and extreme weather events, and we have just seen the beginning of it. Stormwater infrastructure is only capable of diverting a certain amount of the runoff that results from heavy rain during severe storms. Soil used in urban farming improves in quality over time, due to composting and tilling. This soil becomes increasingly effective at trapping and storing rain-water. It also acts as a filter for the water, addressing growing concerns over water contamination in urban spaces.

The list of green stormwater infrastructure strategies promoted by the EPA also includes downspout disconnection, rain-water harvesting, rain gardens, planter boxes, bio-swales, permeable pavements, green streets and alleys, green roofs, urban tree canopy, and land conservation.¹

Additionally, cities experience much higher temperatures than rural and suburban settings because of the amount of solar heat that gets trapped in buildings and pavement and in between buildings because

¹"Urban Agriculture as a Green Stormwater Management Strategy." *The Freshwater Society* (2013): n. pag. Web. 19 Sept. 2016.

of radiation, an effect known as the Urban Heat Island. Green roofs and urban farming have been proven to combat the effects of overheating cities. A single degree of cooling thanks to urban farming can directly affect a city's electricity consumption during increasingly hot summer months, due a decrease in air conditioner use.²

Other positive climate and environmental impacts associated with urban farming include: decreased food transportation miles, decreased household waste through composting and fewer packaged items, decreased energy consumption and cost spent on storing food, improval of the localized green economy, improved air quality, increased plant and animal biodiversity and much more.

CCAN supports this bill wholeheartedly and looks forward to a greener and cleaner Montgomery County.

² Knizhnik, Heather L. "The Environmental Benefits of Urban Agriculture on Unused, Impermeable and Semi-Permeable Spaces in Major Cities With a Focus on Philadelphia, PA." (n.d.): n. pag. *University of Pennsylvania - Department of Earth and Environmental Science*. Web. 19 Sept. 2016.

October 27, 2016

Government Operations Committee
Montgomery County Council
100 Maryland Avenue, MD 20850

The opinions expressed herein are our own and do not necessarily reflect the views of The Johns Hopkins University.

My name is Anne Palmer and I direct the Food Communities and Public Health program at the Johns Hopkins Center for a Livable Future (CLF) at the Bloomberg School of Public Health as well as a Research Associate in the Health, Behavior and Society Department. The CLF is an interdisciplinary academic center that conducts research, educates students, and directs programs that focus on the relationships among diet, food production, the environment and public health. I direct a project called Food Policy Networks that seeks to build the capacity of new and existing food policy councils and similar organizations to advance state and local food system policies. In addition, I work with several food policy councils in the Chesapeake region, including the Montgomery County Food Council.

The Montgomery County Council is considering a legislation that would provide a tax credit to promote urban agriculture (UA) for land between one-half and five acres. In light of the proposed legislation, I am writing to provide information and analysis on what I have learned about urban agriculture, the well-established benefits it provides, and the areas of promise. I have several years of experience working with urban agriculture projects in Baltimore City – non-profit, for profit and hybrid models. In addition, I am a co-author on a recently released review of peer-reviewed literature entitled “Vacant Lots to Vibrant Plots: A Review of the Benefits and Limitations of Urban Agriculture.”

Our literature review noted several evidence-based benefits – social, health and environmental – that stem from UA activities. By creating green space where neighbors can gather to grow food, exercise, and socialize, UA increases social capital, community wellbeing, and civic engagement with the food system. It serves as a catalyst for community organizing and larger community improvement, including a place for young people to engage in a constructive activity while learning job skills. Green space is also associated with lower crime rates and a greater sense of neighborhood pride. UA activities have been used to teach youth about science, environmental stewardship, cultural heritage, and healthy eating, while also offering valuable lessons in interpersonal skills, responsibility, and delayed gratification.

The evidence suggests that urban agriculture provides numerous health benefits, as well. People engaged in UA report greater access to fresh, organic, or culturally appropriate produce for gardeners and community members; cost savings on groceries and access to foods otherwise unaffordable in supermarkets; and increased consumption of produce. Harder to measure but equally important are the mental health benefits including reducing stress, providing purposeful activity, stimulating cognitive function, creating a sense of pride and accomplishment, and connecting to nature in an urban environment.

The evidence of environmental benefits includes increased biodiversity (supporting environments with a greater variety of flora and fauna species, which provides habitats and forage for pollinators such as bees and other beneficial organisms); reduced air pollution; increased rainwater drainage; reduced risk of flooding, ground water contamination, and depleted groundwater levels; and composting organic matter.

In addition, some studies have found that UA contributes to measurable economic gains such as employment and workforce training opportunities, particularly for low-income and socially excluded populations; and an increase in property values surrounding community gardens, particularly in economically disadvantaged neighborhoods.

The CLF commends the Montgomery County Council government for assuming a leadership role in using urban agriculture as a vehicle for making the County an even more desirable place to live. Supporting UA activities is one of many steps toward improving public health, enhancing the environment, and providing opportunities for communities to grow their own food.

For more information, please contact me at apalmer6@jhu.edu or at 410-502-7577.

Sincerely,

Anne Palmer
Program Director
Johns Hopkins Center for a Livable Future
Research Associate
Department of Health, Behavior, and Society
Bloomberg School of Public Health

Keeve Nachman
Assistant Professor
Department of Environmental Health and Engineering
Bloomberg School of Public Health
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Brent Kim
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Johns Hopkins Center for a Livable Future
Bloomberg School of Public Health

Raychel Santo
Program Coordinator
Johns Hopkins Center for a Livable Future
Bloomberg School of Public Health



AGRICULTURAL ADVISORY COMMITTEE

September 19, 2016

The Honorable Nancy Floreen
Montgomery County Council President
100 Maryland Avenue
Rockville, MD 20850

Dear Council President Floreen: **Bill 31-16- Taxation-Urban Agricultural Tax
Credit-Established**

On behalf of the Montgomery County Agricultural Advisory Committee-AAC, please accept this letter as our comments for Bill 31-16 Taxation-Urban Agricultural Tax Credit-Established.

The AAC believes the Bill 31-16 may create opportunities to encourage farming in down County areas where a majority of our citizens live and work. Encouraging farming down County can also help to promote the production of locally grown fresh food that continues to be important and a popular trend for many residents in the County.

When the County Council approved ZTA 13-04 Zoning Rewrite- Revisions in October of 2014, the Council recommended the use of farming be continued as a use in most of the zones down county. Both the AAC and the Montgomery County Farm Bureau were very appreciative of this outcome because we stated that the County should always encourage farming especially if the property owners desired to continue farming.

The AAC recognizes that Bill 31-16 may also have a negative impact on the collections of property taxes at a time when the County's economy is still recovering from the Great Recession.

The AAC thanks the County Council for this opportunity to present our views on Bill 31-16 and please let us know if you have any questions.

Sincerely,

David Weitzer, Chairman

Bill No. 31-16
Concerning: Taxation - Urban
Agricultural Tax Credit - Established
Revised: October 31, 2016 Draft No. 5
Introduced: August 2, 2016
Expires: February 2, 2018
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Hucker and Co-Sponsor: Councilmember Elrich

AN ACT to:

- (1) establish an urban agricultural tax credit against real property tax;
- (2) define an urban agricultural property and an urban agricultural purpose;
- (3) establish eligibility for an urban agricultural tax credit; and
- (4) generally amend the law governing urban agricultural tax credits.

By adding

Montgomery County Code
Chapter 52, Taxation
Section 52-11D

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

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

Sec. 1. Section 52-11D is added as follows:

52-11D. Urban Agricultural Tax Credit.

(a) Definitions. In this Section:

Urban agricultural property means real property in a residential zone that is:

- (1) at least one-half of an acre and not more than ~~[[5]] 3~~ acres;
- (2) located in a priority funding area, as defined in Md. State Finance and Procurement Code §5-7B-02; and
- (3) used for urban agricultural purposes.

Urban agricultural purposes means

- (1) the cultivation of fruits, vegetables, flowers, and ornamental plants;
- (2) the limited keeping and raising of fowl or bees; or
- (3) the practice of aquaculture. ~~[[~~:
 - (1) crop production activities, including the use of mulch or cover crops to ensure maximum productivity and minimize runoff and weed production;
 - (2) environmental mitigation activities, including stormwater abatement and groundwater protection;
 - (3) community development activities, including recreational activities, food donations, and food preparation and canning classes;
 - (4) economic development activities, including employment and training opportunities, and direct sales to restaurants and institutions; and
 - (5) temporary produce stands used for the sale of produce raised on the premises.]]

- 28 (b) Credit required. The Director of Finance must allow each eligible
 29 taxpayer a credit against County real property taxes due in each tax year
 30 in which the taxpayer is eligible for the credit.
- 31 (c) Eligibility. [[An eligible taxpayer must conduct at least 2 urban
 32 agricultural purposes on urban agricultural property.]] A property owner
 33 is eligible for the tax credit each year:
- 34 (1) [[The]] the urban agricultural property [[must be]] is used solely
 35 for urban agricultural purposes, except an individual [[engaged in
 36 crop production on the property]] may also reside on the property;
- 37 (2) the property owner has more than \$5000 in gross income from the
 38 sale of products grown or raised on the urban agricultural property;
 39 and
- 40 (3) the property owner files a timely application for the credit with
 41 proof of eligibility.
- 42 (d) Amount of credit. The credit must equal 80% of the County property tax
 43 otherwise due on the property.
- 44 (e) Application. A property owner must apply for the credit with the Office
 45 of Agriculture [[at least 90 days]] on or before April 1 of the tax year [[the
 46 beginning of]] before the first tax year the tax credit is sought on a form
 47 containing the information required by the [[Director]] Office of
 48 Agriculture. A property owner must apply to continue the credit [[at least
 49 90 days]] on or before [[the]] April 1 of the tax year before [[beginning
 50 of]] each subsequent tax year. The Director of Finance must determine
 51 taxpayer eligibility for the credit based upon the recommendation from
 52 the Office of Agriculture.
- 53 (f) Term of credit.
- 54 (1) The term of the credit is 5 years, unless renewed.

55 (2) A taxpayer may apply to renew the credit no later than 90 days
 56 before the expiration of the credit for another 5 tax years.

57 (g) Continuous agricultural use required. If, at any time during the term of
 58 the credit or the renewal of the credit, the property is no longer used for
 59 agricultural purposes:

60 (1) the credit granted to the property must be terminated; and

61 (2) the owner of the property is liable for all property taxes that would
 62 have been due during that 5-year term if the credit had not been
 63 granted.

64 (h) Contiguous lots. A property owner may combine 2 or more contiguous
 65 subdivision lots under common ownership into one property to satisfy the
 66 minimum lot size for an urban agricultural property in subsection (a).

67 (i) Appeal. The Director must take all actions necessary to apply the credit
 68 to each eligible taxpayer who applies for the credit and is certified as
 69 eligible by the Office of Agriculture. A taxpayer may appeal a final
 70 decision by the Director denying or terminating the credit to the Maryland
 71 Tax Court within 30 days after receiving a notice of denial or termination
 72 from the Director.

73 **Sec. 2. Evaluation.** The Director must submit a report to the Executive and the
 74 Council on or before January 1, 2020 evaluating the effectiveness of the tax credit in
 75 promoting urban agricultural purposes.

76

77 *Approved:*

78

Nancy Floreen, President, County Council

Date

GO Item 2
November 3, 2016

Worksession
ADDENDUM

MEMORANDUM

November 1, 2016

TO: Government Operations and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession/ADDENDUM:** Bill 31-16, Taxation – Urban Agricultural Tax Credit – Established

We received an email message from Assistant CAO Bonnie Kirkland about this Bill after the packet went to print. Ms. Kirkland explained the Executive's position as follows:

There are some additional ways that the bill could be further narrowed, but at this time, it is nearly impossible to estimate what the fiscal impact would be. We simply do not know how many properties would fall within the parameters of the bill.

Rather than a tax credit program, the County Executive suggests that Council consider accomplishing the intent of the bill with a grant program. A grant program would be easier to administer, would better enable the County to control the costs and make the program more predictable. The Office of Agriculture is capable of administering such a program. Further, a grant program would have a more direct tie to the program goals, rather than using the tax code to further such purpose.

Thank you for your consideration.

Ms. Kirkland, Finance Director Alexandre Espinosa, Mike Coveyou, Finance, and Associate County Attorney Scott Foncannon are expected to attend the worksession for the Executive Branch. The Committee may want to discuss the Executive's suggestion of a grant program at the worksession. A grant program would have a more predictable cost, but would require an appropriation in the budget each year for funding.