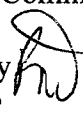



MEMORANDUM

January 24, 2017

TO: Government Operations and Fiscal Policy Committee
Planning, Housing and Economic Development Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 
Glenn Orlin, Deputy Council Administrator 

SUBJECT: **Worksession:** Expedited Bill 51-16, Taxation – Development Impact Tax – Local Area Transportation Review Mitigation Payment - Established

Expedited Bill 51-16, Taxation – Development Impact Tax – Local Area Transportation Review Mitigation Payment – Established, sponsored by Lead Sponsor Council President Berliner, was introduced on December 13, 2016. A public hearing was held on January 17.

Bill 51-16 would:

- establish a local area transportation review mitigation payment;
- authorize the Council to set the rates by resolution after a public hearing; and
- amend the law concerning the development impact tax for transportation improvements.

Background

When the Council replaced Policy Area Transportation Review (TPAR) payments in the 2016-2020 Subdivision Staging Policy (SSP) with a higher transportation impact tax, it concurrently deleted the Transportation Mitigation Payment section of the transportation impact tax law in Bill 37-16, believing it was no longer needed. However, Council staff now acknowledges that this assumption was incorrect: a Transportation Mitigation Payment section is still needed in the Code to continue to give authority for Local Area Transportation Review (LATR) payments, including the White Oak LATR Improvements Program and rate recently proposed by the Department of Transportation, and for the rates to be set in the future for the Urban Mobility Programs (UMPs) in other areas.

Enacting this bill would provide the legal authority to impose these LATR payments. It is an expedited bill so that it could take effect on March 1, 2017, when Bill 37-16 takes effect. The LATR mitigation payments due in each local area would be established by the Council by resolution after a public hearing. The Office of the County Attorney found the Bill to be constitutional. See ©4.

Public Hearing

Raquel Montenegro, representing the Maryland Building Industry Association (©10-11), testified that a local area transportation mitigation payment is reasonable and that, consequently, they do not oppose the Bill. Richard D. Wilder, representing Citizens to Save South Valley Park and Whetsone Run (©12) and Margaret Schoap, representing the Transit Alternatives to the Mid-County Highway Extended (TAME), expressed concern about a planned County road project known as M-83 without taking a position on the Bill.

Discussion

A local area transportation mitigation payment would require property owners to pay a pro-rata share of the costs of transportation improvements necessary because of development on their property. It is a reasonable method of imposing these costs on the people benefitting the most by these improvements. It becomes a cost of doing business that may be passed on to the final purchasers of the property after development. Bill 37-16 mistakenly omitted the authority to impose these costs. Bill 51-16 would reinstate this authority. **Council staff recommendation:** approve the Bill as introduced.

This packet contains:

	<u>Circle #</u>
Expedited Bill 51-16	1
Legislative Request Report	3
County Attorney Bill Review Memorandum	4
Fiscal and Economic Impact statement	5
Public Hearing Testimony	
Raquel Montenegro	10
Richard D. Wilder	12

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Expedited Bill No. 51-16
Concerning: Taxation – Development
Impact Tax – Local Area
Transportation Review Mitigation
Payment - Established
Revised: December 8, 2016 Draft No. 3
Introduced: December 13, 2016
Expires: June 13, 2018
Enacted: _____
Executive: _____
Effective: March 1, 2017
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President Berliner

AN EXPEDITED ACT to:

- (1) establish a local area transportation review mitigation payment;
- (2) authorize the Council to set the rates by resolution after a public hearing; and
- (3) amend the law concerning the development impact tax for transportation improvements.

By amending

Montgomery County Code
Chapter 52, Taxation
Section 52-51

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 52-51 is amended as follows:

52-51. [Reserved] Local Area Transportation Review Mitigation Payment.

- (a) In addition to the tax due under this Article, an applicant for a building permit for any building on which an impact tax is imposed under this Article must pay to the Department of Finance a Mitigation Payment if this payment is required for a building included in a preliminary plan of subdivision that was approved under the Local Area Transportation Review provisions in the County Subdivision Staging Policy.
- (b) The Council, by resolution after a public hearing advertised at least 15 days in advance, must establish the rates for the Mitigation Payment required in this Section.
- (c) The Payment must be paid at the same time and in the same manner as the tax under this Article, and is subject to all provisions of this Article for administering and collecting the tax.
- (d) The Department of Finance must retain funds collected under this Section in an account to be appropriated for transportation improvements that result in added transportation capacity or improved mobility in the area where the development for which the funds were paid is located.

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on March 1, 2017.

Approved:

Roger Berliner, President, County Council

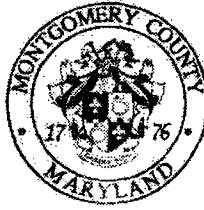
Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 51-16

Taxation – Development Impact Tax – Local Area Transportation Review Mitigation Payment - Established

DESCRIPTION:	The Bill would establish a local area transportation review mitigation payment and authorize the Council to set the rates by resolution after a public hearing.
PROBLEM:	Bill 37-16 deleted the Transportation Mitigation Payment section of the transportation impact tax law, but a version of that section is needed to provide the authority for Local Area Transportation Review (LATR) mitigation payments, including for the White Oak Local Area Transportation Improvements Program and future Urban Mobility Programs.
GOALS AND OBJECTIVES:	To establish a local area transportation review mitigation payment, and to authorize the Council to set the rates by resolution after a public hearing.
COORDINATION:	Departments of Permitting Services, Finance, County Attorney, Transportation
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Glenn Orlin, Montgomery County Council staff
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	None



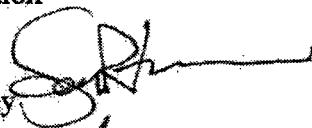
OFFICE OF THE COUNTY ATTORNEY


Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Chris Conklin, Deputy Director
Office of Transportation Policy
Department of Transportation

FROM: Scott R. Foncannon 
Associate County Attorney

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

DATE: December 16, 2016

RE: Expedited Bill 51-16, Taxation – Development Impact Tax – Local Area
Transportation Review Mitigation Payment – Established

I have reviewed Expedited Bill 51-16, Taxation – Development Impact Tax – Local Area Transportation Review Mitigation Payment – Established. This bill re-establishes a local area transportation review mitigation payment which was deleted by Bill 37-16. This bill is not vague, it will not increase or decrease the County's the liability exposure and is constitutional. In order to make it clear that this is a tax I recommend that the Bill be amended to add an uncodified provision that states, this Section is authorized by the County's general taxing authority in Section 52-17 of the County Code. The bill is within the authority of the County Council and is legally sufficient.

I have no further comments on this bill.

cc: Bonnie A. Kirkland, Assistant Chief Administrative Officer
Marc P. Hansen, County Attorney

16-010373 – Bill Review



ROCKVILLE, MARYLAND

MEMORANDUM

January 13, 2017

TO: Roger Berliner, President, County Council

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

SUBJECT: FEIS for Bill 51-16, Taxation – Development Impact Tax – Local Area
Transportation Review Mitigation Payment - Established *AE*

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

JAH:fz

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
Al Roshdiah, Director, Department of Transportation
David Platt, Department of Finance
Dennis Hetman, Department of Finance
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Expedited Bill 51-16, Taxation - Development Impact Tax –
Local Area Transportation Review Mitigation Payment – Established

1. Legislative Summary

The proposed bill establishes a local area transportation review (LATR) mitigation payment and authorizes the County Council to set the rates and fees by resolution after a public hearing.

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.

The proposed bill itself has no impact on County revenues or expenditures. The proposed bill authorizes Council to adopt specific rates; subsequent resolutions adopting these rates will impact County revenues.

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

Not applicable.

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.

The proposed bill authorizes Council to set the LATR rate by resolution after a public hearing. The rates adopted by Council will affect County revenues.

7. An estimate of the staff time needed to implement the bill.

The Department of Finance and Department of Transportation do not report any additional staff time needed to implement the proposed bill.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

9. An estimate of costs when an additional appropriation is needed.

Not applicable.

10. A description of any variable that could affect revenue and cost estimates.

Revenue estimates are affected by the specific rates adopted by Council as authorized under the proposed bill.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Revenue estimates are difficult to project at this time without additional information on the specific rates adopted by Council.

12. If a bill is likely to have no fiscal impact, why that is the case.

The proposed bill merely authorizes the Council to establish a LATR payment and rate.

13. Other fiscal impacts or comments.


None.

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

Christopher Conklin, Department of Transportation

Dennis Hetman, Department of Finance

Naeem Mia, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget

1/12/17
Date

Economic Impact Statement
Expedited Bill 51-16, Taxation – Development Impact Tax – Local Area Transportation
Review Mitigation Payment – Established

Background:

Expedited Bill 51-16 would:

- establish a local area transportation review mitigation payment;
- authorize the Council to set the rates by resolution after a public hearing; and
- amend the law concerning the development impact tax for transportation improvements.

This bill provides authority for Local Area Transportation Review (LATR) mitigation payments, including the White Oak Local Area Transportation Improvements Program and future Urban Mobility Programs, that were incorrectly deleted in Bill 37-16. The bill would take effect on March 1, 2017, when Bill 37-16 takes effect.

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

- Montgomery County Planning Department's Local Area Transportation Review and Transportation Policy Area Review Guidelines January 2013

Expedited Bill 51-16 addresses an oversight in the adopted version of the SSP and Development Impact Taxes without changing the basic policy or intent of the items adopted with Bill 37-16. This legislation does not have an economic impact since it only authorizes Finance to collect LATR payments from developers and establishes the process for when developers are to make the payments. LATR rates are established in a separate resolution that is not covered by this legislation.

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

There are two tests for determining transportation adequacy that include the variables that could affect economic impact estimates when a separate resolution specifying rates is enacted — the Local Area Transportation Review (LATR) test and the policy area test called Transportation Policy Area Review (TPAR).

LATR determines the adequacy of local roads by measuring congestion at roadway intersections based on critical lane volume (CLV) and volume to capacity ratio (v/c). The estimated vehicle trips generated by a proposed development are compared to the applicable policy area standard to evaluate likely future congestion. The development's trips that contribute to nearby intersections exceeding the standard must be mitigated in some fashion. The TPAR test first considers whether a policy area is considered inadequate for transit or roadways (or both). If the area is inadequate, a development in the area must make a Traffic Mitigation Payment based on the number of dwelling units or square footage of nonresidential space, or make improvements that increase capacity in the policy area to address identified specific roadway and transit inadequacies.

Economic Impact Statement
Expedited Bill 51-16, Taxation – Development Impact Tax – Local Area Transportation
Review Mitigation Payment – Established

Given this bill does not set rates but instead simply authorizes the Council to establish LATR payments, there is not an economic impact to estimate until rates are ultimately formulated in a separate resolution.

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


The proposed bill authorizes the Council to establish a LATR payment and rate. LATR guidelines are intended to ensure that development in Montgomery County is accompanied by appropriate and sufficient transportation facilities. They are used by the Planning Board and staff to estimate the impacts of development on the transportation network and determine effective ways to mitigate that impact. Quantifying the economic impact to the County and development will require specific rate structures to be determined in a separate resolution from this bill.

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

Please see the answer to question 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

1/11/2017
Date

Testimony on Expedited Bill 51-16**Taxation - Development Impact Tax -****Local Area Transportation Review Mitigation Payment - Established****Presented by Raquel Montenegro****On Behalf of the Maryland Building Industry Association (MBIA)****January 17, 2017**

Good afternoon President Berliner and members of the County Council. My name is Raquel Montenegro and I am testifying as a representative of the Maryland Building Industry Association. The MBIA represents over 1000 companies dedicated to developing and building communities in more than 20 Counties in Maryland; over 300 member companies work and live in Montgomery County, creating the fabric for neighborhoods, communities, and jobs. Thank you for the opportunity to present comments on this Bill

The Building Industry has over the years consistently recognized that new developments have an impact on the existing infrastructure, and that new development should be assessed the proportional impact it has on the county. The building industry has consistently attempted to work with the County to realistically assess its impact on schools and transportation, and has frequently disagreed with both the dollar evaluation and the percentage that is attributed to the new development. This was the case with the recently-approved Subdivision Staging Policy which eliminated the Transportation Policy Area Review (TPAR) and increased the over-all transportation Impact Tax, generating more revenue for the County, and increasing the cost for development anywhere from 20% to 123%.

Continued next page

Given Council's action and the recent increase, the initial read of this Bill created a negative response among industry members. Upon closer reading of the Bill, it became clear that the intent of Bill 51-16 is to restore the legislative authority to exact LATR payments which was mistakenly eliminated in Bill 37-16. Given that the Local Area Transportation Review more equitably assesses the impact on an individual development, as was specifically done for the development of White Oak, resulting in a more predictable mitigation fee and avoiding having the cost burden fall on the latest applicants, the MBIA does not oppose Bill 51-16.

14
1/17/2017

Testimony on Expedited Bill 51-16 Transportation Development Mitigation Tax by Richard D. Wilder representing Citizens to Save South Valley Park and Whetstone Run

While we applaud the Council on adding transit to the Sub-division Staging Policy we have the following comments about this bill:

- (1) Is this transportation development tax to be used for transit and/or roads?
- (2) What is the necessity for a transportation mitigation tax?
- (3) What will the transportation mitigation tax funds be used for?
- (4) How will the designated funds be protected to ensure that they will be used for the desired purpose?
- (5) How will development near transit be given priority over development near roads?

These important questions need to be answered before we can support this bill.

We are also members of Transit Alternatives to Midcounty Highway Extended (TAME) and are concerned about the delayed MCDOT M-83 Alternatives Study which has been presented to the County Executive but not the Council or public. The original study has been compromised by allowing an additional 2-lane reversible parkway alternative, which is not a parkway but another attempt to keep this pre Clean Air and Clean Water Acts alignment alive. This alignment will never be the Least Environmentally Damaging Practicable Alternative (LEDPA). We are concerned that if the Council does not act upon this issue immediately then County Budget priorities will further delay any Council action.

In respect to Senator Edmund Muskie and Leon Billings who gave us the Clean Air and Clean Water Acts and Aldo Leopold who gave us a Land Ethic "which reflects a conviction of individual responsibility for the health of the land. Health is the capacity of the land for self-renewal. Conservation is our effort to understand and preserve this capacity", this M-83 #9 damaging alternative alignment needs to be removed from our master plans.

Richard D. Wilder and

Jane Ann S. Wilder (co-chairs and founders of Citizens to Save South Valley Park and Whetstone Run)

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