Agenda Item 6
May 13, 2009
Action

MEMORANDUM

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Action:** Expedited Bill 4-09, Development Impact Tax - Deferral

Management and Fiscal Policy Committee recommendation: enact with amendments.

Expedited Bill 4-09, Development Impact Tax - Deferral, sponsored by the Council President at the request of the County Executive, was introduced on February 10, 2009.

Original Bill As introduced, Bill 4-09 would allow building permit applicants subject to the Development Impact Taxes for Transportation and Public School Improvements to defer payment for 12 months. This deferral authority would apply starting 60 days after this Bill becomes law until the Bill sunsets on April 1, 2010 -- that is, anyone obligated to pay either impact tax during that period could defer payment for 12 months, even if the deferral would extend after April 1, 2010. The tax ultimately paid would be calculated, we presumed, at the rate and terms which applied when the tax was originally due.

Original fiscal impact Department of Finance staff estimated (see first fiscal impact statement on ©11) that the cost to the County in lost interest on revenue from taxes that would have been paid would be $400,000.

On February 3 the Council approved the following impact tax revenue assumptions for FYs 09-11:

	FY09	**FY10**	**FY11**	**FYs09-11**
Transportation Impact Tax	$7,000,000	$10,000,000	$13,758,000	$30,758,000
School Impact Tax	$11,000,000	$11,000,000	$20,336,000	$42,336,000
Total	**$18,000,000**	**$21,000,000**	**$34,094,000**	**$73,094,000**

If this Bill were enacted as introduced, a 12-month deferral would be in effect from June 1, 2009 (60 days after the bill is signed into law, likely by April 1, 2009) until March 31, 2010. We assume that 10% of the FY09 impact tax collections in FY09 would be deferred to FY10

(June is normally a higher-than-average month for impact tax collections) and that 70% of the FY10 impact tax collections would be deferred until FY11 (July through March is normally somewhat lighter than the spring months). Under these assumptions, all else being equal (i.e. the same levels of construction), anticipated revenue would be:

With 12-month deferral	**FY09**	**FY10**	**FY11**	**FYs09-11**
Transportation Impact Tax	$6,300,000	$3,700,000	$20,758,000	$30,758,000
School Impact Tax	$9,900,000	$4,400,000	$28,036,000	$42,336,000
Total	**$16,200,000**	**$8,100,000**	**$48,794,000**	**$73,094,000**

The Bill's effect, therefore, would be to reduce impact tax collections by $1.8 million in FY09 and $12.9 million in FY10 and to increase collections by $14.7 million in FY11.

Hearing A public hearing was held on March 3 (see testimony, ©12-25), along with Bills 3-09 and 5-09. The testimony provided by Executive staff and business interests unanimously supported this Bill, but no civic or taxpayer representative appeared at the hearing and the County Civic Federation submitted testimony (see ©24-25) which raised several salient questions. The Civic Federation noted the irony that, while the Executive's 11-point Economic Assistance Plan (see ©14) calls for "an economic and fiscal analysis as part of any legislative or regulatory change", this Bill was not accompanied by any economic analysis.

First Committee worksession The first Management and Fiscal Policy Committee worksession on this Bill was held on March 9. Committee members discussed with Executive staff and development community representatives whether this Bill is an appropriate action during a fiscal crisis and whether it would actually create or save jobs. In particular, **Committee members questioned whether it is in the County's interest at this point to stimulate new housing development, and whether this proposal should be limited to commercial construction**. The worksession ended without a Committee recommendation when Executive staff asked for more time to try to work out several issues surrounding the proposed fee deferral agreement and lien with representatives of the development community.

Executive amendments On April 8 Executive staff advised Council staff that, after discussions with representatives of the development community, the Executive proposed to modify Bill 4-09 to temporarily (through 2011) shift the imposition of the impact tax from building permit application to final building inspection approval. This change would resolve the security issue by eliminating the deferral agreement and lien on the property which development representatives had strongly objected to. It would also postpone County receipt of the tax from large developments for longer than the original 12 month deferral period or even the 2 years later proposed, but would require the tax for single-family homes and other smaller developments to be paid earlier than previously proposed.

The first revised fiscal impact statement from OMB on ©26-29 estimates that impact tax collections would be reduced by up to $32.5 million in FY10 and $12.6 million in FY11 if this Bill is enacted, although OMB notes that "the actual impact tax revenue forgone will be much lower than" these amounts because building activity has decreased.

Second Committee worksession At its second worksession on this Bill, held on April 14, the Committee recommended that the Bill be amended as the Executive proposed.

Issues/Committee recommendations

1) Cost/benefit analysis: What difference would deferring these taxes make?

Council staff analysis: Council staff can think of two valid *public* interests that could be served by deferring payment of development impact taxes in a severe economic recession:

- Send a signal of sympathy and support to hard-pressed development firms and their owners and employees.
- Stimulate, to some degree, a revival of development in the County.

The first reason (the need to "do something" to show that government understands how dire the situation is) presents a pure policy choice: would the symbolic value of this public gesture outweigh the attendant loss of revenue? This is a value judgment that is made first by County policy-makers, and eventually by the taxpayers who directly or indirectly foot the bill.

The second reason (to stimulate more development) allows a more reasoned cost/benefit analysis, albeit in a general way since precise data on development decision-making in recessions has not been provided and the ultimate answer may be equal parts fact and conjecture. Much of the testimony on this Bill documents the severity of the current construction recession, which no one disputes. However, while supporters of this Bill assume, without demonstrating, that deferring County impact taxes, alone or in combination with other stimulative measures, will cause some number of developers or builders to take actions that are not now economically feasible, they have not offered any evidence that such a result would follow.[1] As recent news reports underscore, the building industry recession appears to be caused primarily by cutbacks in occupant demand and unavailability of financing. Neither of these factors would be directly affected by a postponement or deferral of impact taxes. Thus, in our view, in purely cost/benefit terms, a persuasive case has not been made to defer any impact taxes.

At the hearing Councilmember Leventhal raised a related question: why should the County spend money to stimulate new housing demand when large numbers of existing houses remain unsold?[2] This inventory upsurge is a natural part of the housing construction cycle, and in staff's view the County has no particular interest in stimulating or meeting demand for *new* housing as distinct from housing generally (and in fact may have an environmental interest in maximizing use of existing housing units before new units are built). One option would be to amend this Bill to allow only impact taxes for commercial projects to be deferred.

Committee recommendation: enact the Bill.

---

[1]See, e.g., testimony from the Greater Bethesda-Chevy Chase Chamber of Commerce on ©16: "Presumably the legislation is designed to create construction industry jobs, which have all but disappeared in the current economic crisis." These kinds of assumptions do not qualify as evidence-based decision-making.

[2]See the data in the Maryland-National Capital Building Industry Association testimony on ©20.

2) When is payment due? In testimony presented at the hearing, business representatives proposed that the original deferral period – the time during which the impact tax payments would be postponed – be lengthened from the proposed 12 months until whenever the building is ready for occupancy. Readiness for occupancy would be measured by the issuance of a "final permit" – either a certificate of use and occupancy or, for those buildings (mainly single-family homes) which do not require a certificate, a final inspection report. The argument for extending the payment due date, made most succinctly by the Silver Spring Chamber of Commerce on ©22, is that "By allowing deferral to a point in the development process that is tied to sale and transfer, builders can conserve capital and delay out-of-pocket costs. This also defers the payment to a point in time when the applicant is likely to have money coming in with which to make the payment. Further, the cost of the payment will not become an additional part of the financing costs during construction."

The Executive amendment would essentially do what the development representatives advocated; it would make the tax due at final inspection rather than building permit issuance. This would postpone County receipt of impact tax revenue for an indefinite time. This time could be less than 12 months if a building is completed earlier, or it could be never if construction is abandoned. Under the current law (see County Code §52-50(c)), any building permit cannot be issued until all impact taxes due are paid. This assures that the County will be able to apply the impact tax revenue to needed infrastructure items before the development is completed and occupied. Under the Executive amendments, the applicant would pay the tax due when it receives a final building inspection, which may be higher than the tax due when it received a building permit because of inflation adjustments or other rate changes.

Several times during the 20+-year history of the impact tax, policy-makers have debated when the tax should be imposed, but have always returned to the building permit issuance date. **Committee recommendation:** temporarily shift the imposition of the tax to final inspection.

3) Length of applicability – Bill's sunset date Business representatives at the hearing also proposed that the Bill's sunset date be extended from April 1, 2010, to April 1, 2013. In other words, anyone obligated to pay an impact tax during the next 4 years could defer payment for 12 months (or whatever deferral period is selected; see previous issue), even if the deferral would extend after April 1, 2013. Needless to say, extending the Bill's sunset date would further postpone County receipt of this revenue. Either certain infrastructure construction would be postponed or tax funds could be diverted for that purpose.

The Executive amendments would split the difference by sunsetting the change in the tax due date in 2 years, on May 1, 2011. Council staff would prefer a year-by-year review. In our view, the most prudent approach (assuming a shift of the due date is accepted) is to limit it to the next year and reevaluate the situation then. **Committee recommendation:** sunset this Bill in July 2011.

Updated fiscal impact statement

At the April 21 worksession on Bill 4-09, Councilmembers raised questions about the effect of postponing the receipt of impact taxes on the Capital Improvements Program now before the Council. Councilmember Elrich noted that, while the fiscal impact statement showed reductions in impact tax revenue starting in FY10, it did not show a corresponding increase in later years when the deferred impact taxes would be paid. The Council deferred action on the Bill until Executive staff could review the revenue effects.

On April 30 OMB forwarded an updated fiscal impact statement (see ©30) which differed from their previous estimate mainly because it significantly increased the out-year (FY12-13) revenue that the impact taxes are expected to yield. In OMB's view, the revenue effect of postponing the receipt of impact taxes will be neutral over the next 4 years.

OMB's revised estimates of the effect on impact tax funds that would be available, by fiscal year, are:

Fiscal Year	Compared to Approved FY09 Budget	
	Transportation	Schools
10	-$10,000,000	-$11,000,000
11	-$7,141,333	-$9,336,000
12	$12,486,543	$20,336,000
13	$4,654,790	$0
14	$0	$0
Net	**$0**	**$0**

Also at the April 21 worksession Councilmember Trachtenberg asked Executive Branch staff to provide the project deferrals which would reflect deferring this revenue. To date Council staff has not received this list. Below is a list of projects that would likely be deferred in CIP reconciliation to reflect the projected revenue shift in the amended FY09-14 CIP. Each project would be deferred by one year beyond its current production schedule:

Project	Funds Deferred in FY10	
	Transportation	Schools
Nebel Street Extended	-$1,626,000	
Woodfield Road Extended	-$2,666,000	
Watkins Mill Road Extended	-$4,506,000	
State Transportation Participation	-$1,202,000	
Whetstone ES Addition		-$1,812,000
Brookhaven ES Addition		-$2,201,000
Montgomery Knolls ES Addition		-$1,976,000
Fox Chapel ES Addition		-$2,035,000
Fairland ES Addition		-$2,352,000
Harmony Hills ES Addition		-$1,264,000
Net Funding Deferral	**$10,000,000**	**$11,640,000**

Unless the Council is willing to amend the CIP to reflect these deferrals, **Council staff recommends** that Bill 4-09 not be enacted at this time.

This packet contains	Circle
Expedited Bill 4-09 with Committee amendments	1
Legislative Request Report	9
Memo from County Executive	10
Fiscal impact statement	11
Public hearing testimony	12
Revised fiscal impact statement	26
Updated fiscal impact statement	30

F:\LAW\BILLS\0904 Development Impact Tax - Deferral\Action Memo 5-13-09.Doc

Expedited Bill No. 4-09
Concerning: Development Impact Tax [[Deferral]] Imposition
Revised: 4-14-09 Draft No. 5
Introduced: February 10, 2009
Expires: August 10, 2010
Enacted: _____
Executive: _____
Effective: [[May]] July 1, 2009
Sunset: [[April 1, 2010]] [[May]] July 1, 2011
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

(1) [[authorize the deferral of]] temporarily postpone the imposition of certain development impact [[tax payments]] taxes for a certain period; and
(2) generally amend the law regarding payment of impact taxes.

[[By adding
Montgomery County Code
Chapter 52, Taxation
Section 52-51A]]

By amending
Montgomery County Code
Chapter 52, Taxation
Sections 52-49, 52-50 and 52-89

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:

1 **[[Sec. 1. Section 52-51A is added as follows:**

2 **52-51A. Deferral of payments.**

3 (a) *Definitions.* In this Section, the following words have the meanings
4 indicated:

5 (1) *Department* means the Department of Permitting Services.

6 (2) *Director* means the Director of the Department of Permitting
7 Services.

8 (3) *Impact tax* or *tax* means the Taxes imposed under this Article and
9 Article XII.

10 (4) *Owner* means a person who has a legal record title interest in real
11 property, including a creditor with a recorded lien on the
12 property, on which taxable development is proposed.

13 (b) *Authorization to defer.* An owner may defer payment of all impact
14 tax due, if the requirements of this Section are met, for 12 months
15 after a building permit is issued.

16 (c) *Conditions of deferral.*

17 (1) An owner must apply for deferral of the impact tax to the
18 Director on a form supplied by the Department.

19 (2) As part of the application, the owner must execute a written
20 agreement with the Director. The agreement must confirm that
21 the owner consents to all terms and conditions of the deferral,
22 including collection of the deferred impact tax through the tax
23 sale process and recordation of the agreement or notice of the
24 agreement in the County land records.

25 (3) The Director must record the agreement or notice of the
26 agreement in the County land records. The notice must include a

2

27 conspicuous statement that indicates it is being recorded by or on
28 behalf of the County.
29 (d) *Events accelerating payment.* All deferred impact taxes and
30 accumulated interest and penalty, if any, become immediately payable
31 when:
32 (1) the ownership of the property which is subject to a lien for
33 repayment of the impact taxes is transferred; or
34 (2) the property becomes subject to tax sale.
35 (e) *Payment; early payment; termination of lien.*
36 (1) An owner must pay all deferred impact taxes on or before the end
37 of the deferral period.
38 (2) After the owner pays the deferred impact tax and any accrued
39 interest and penalty, the Director must record a notice of
40 termination of the tax deferral lien in the County land records.
41 The notice must include a conspicuous statement that indicates it
42 is being recorded by or on behalf of the County.
43 (f) *Interest and penalty for delinquent taxes.* Impact taxes paid after the 12
44 month deferral period expires accrue interest and penalty on the amount
45 of the deferred taxes until paid at the rate which applies to delinquent
46 real property taxes.
47 (g) *Lien on real property and collection.* All taxes deferred and any
48 accrued interest and penalty constitute a first lien on the real property
49 to which the taxes apply until paid and must be enforced as provided
50 in Section 52-50(j). Except for a creditor which holds a lien on the
51 property, the deferred taxes constitute a personal liability of the owner
52 of the property.

53 (h) *Penalties for false or fraudulent information.* A person who
54 knowingly submits a false or fraudulent application or statement, or
55 withholds information in order to obtain a deferral under this Section:
56 (1) has committed a Class A violation;
57 (2) is liable for and must repay to the County any deferred impact
58 taxes plus interest and penalty at the rate which applies to
59 delinquent real property taxes from the date of the deferral to the
60 date of payment; and
61 (3) is liable for all court costs and expenses of the County, including
62 attorney's fees, in a civil action brought by the County.
63 (i) *Regulations.* The County Executive may adopt regulations under
64 Method (2) to administer this tax deferral program.]]
65 **Sec. 1. Sections 52-49, 52-50 and 52-89 are amended as follows:**
66 **52-49. Imposition and applicability of development impact taxes.**
67 (a) (1) [[A]] Except as provided in paragraph (a)(2), a development
68 impact tax must be imposed before a building permit is issued
69 for development in the County.
70 (2) For any development that is issued a building permit on or after
71 [[May]] July 1, 2009, and before [[May]] July 1, 2011, a
72 development impact tax must be imposed:
73 (A) before a final building inspection is approved; or
74 (B) if a final building inspection is not required, before any
75 part of the development is occupied.
76 (b) An applicant [[for a building permit]] must pay a development impact
77 tax in the amount and manner provided in this Article, unless a credit

in the full amount of the applicable tax applies under Section 52-55 or an appeal bond is posted under Section 52-56.

* * *

52-50. Collection of development impact taxes.

(a) The Department of Permitting Services must determine the amount of the applicable development impact tax.

(b) [[Applicants for building permits for development that is not exempt from the development impact tax]] An applicant that must pay a development impact tax must supply to the Department of Permitting Services [[for each requested building permit]] all information necessary to determine the tax due, including:

(1) the number and type of dwelling units for residential development; and

(2) the gross floor area and type of development for nonresidential development.

The applicant must submit for inspection relevant support documentation as the Department requires.

(c) (1) [[The]] Except as provided in paragraph (c)(2), the Department of Permitting Services must not issue a building permit for any development that [[is not exempt from]] must pay the development impact tax unless:

[[(1)]](A) the applicant has paid the applicable [[development impact]] tax;

[[(2)]](B) the applicant is entitled to a credit under Section 52-55 in the amount of the applicable [[development impact]] tax; or

104 [[(3)]] (C) an appeal has been taken and a bond or other
105 surety has been posted under Section 52-56.
106 (2) If paragraph 52-49(a)(2) applies:
107 (A) the Department of Permitting Services must not approve
108 a final building inspection for any development that must
109 pay the development impact tax unless:
110 (i) the applicant has paid the applicable tax;
111 (ii) the applicant is entitled to a credit under Section
112 52-55 in the amount of the applicable tax; or
113 (iii) an appeal has been taken and a bond or other
114 surety has been posted under Section 52-56.
115 (B) If a final building inspection is not required, a person
116 must not occupy any part of a development that must pay
117 the development impact tax unless:
118 (i) the applicant has paid the applicable tax;
119 (ii) the applicant is entitled to a credit under Section
120 52-55 in the amount of the applicable tax; or
121 (iii) an appeal has been taken and a bond or other
122 surety has been posted under Section 52-56.
123 (d) (1) [[When]] Except as provided in paragraph (d)(2), when a
124 person applies to a municipality in the County for a building
125 permit for a building or dwelling unit, the applicant must show
126 that all payments due under this Section with respect to the
127 building or unit have been paid. The Director of Finance must
128 promptly refund any payment made for any building or part of a

129 building for which a building permit is not issued by the
130 municipality.
131 (2) If paragraph 52-49(a)(2) applies, before a person obtains a final
132 building inspection from a municipality in the County, the
133 applicant must show that all payments due under this Section
134 have been paid.
135 * * *
136 **52-89. Imposition and applicability of tax.**
137 (a) (1) [[An]] Except as provided in paragraph (a)(2), an applicant for
138 a building permit for a residential development must pay a
139 development impact tax for public school improvements in the
140 amount and manner provided in this Article before a building
141 permit is issued for any residential development in the County
142 unless:
143 [[(1)]](A) a credit for the entire tax owed is allowed under
144 Section 52-93; or
145 [[(2)]](B) an appeal bond is posted under Section 52-56.
146 (2) For any residential development that is issued a building permit
147 on or after [[May]] July 1, 2009, and before [[May]] July 1, 2011,
148 an applicant for a final building inspection must pay a
149 development impact tax for public school improvements in the
150 amount and manner provided in this Article before a final
151 building inspection is approved unless:
152 (A) a credit for the entire tax owed is allowed under Section
153 52-93; or
154 (B) an appeal bond is posted under Section 52.56.

155 * * *

156 **[[Sec. 2. Sunset.**

157 County Code Section 52-51A, inserted by Section 1 of this Act, expires on
158 April 1, 2010.]]

159 **Sec. [[3]] 2. Expedited Effective Date.**

160 The Council declares that this legislation is necessary for the immediate
161 protection of the public interest. This Act takes effect [[60 days after it becomes
162 law]] on [[May]] July 1, 2009.

163 *Approved:*

164

Philip M. Andrews, President, County Council Date

165 *Approved:*

166

Isiah Leggett, County Executive Date

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

168

Linda M. Lauer, Clerk of the Council Date

169

LEGISLATIVE REQUEST REPORT

Expedited Bill 4-09
Development impact tax deferral

DESCRIPTION:	Adds new Sections to the Transportation and School Impact Tax law to allow the deferral of the payment of impact tax for development for 12 months.
PROBLEM:	The current economic climate impacts the ability of builders to pay the impact taxes prior to construction.
GOALS AND OBJECTIVES:	By deferring payment of impact taxes the legislation will encourage new construction.
COORDINATION:	Department of Permitting Services.
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	Subject to the general oversight of the County Council and County Executive.
EXPERIENCE ELSEWHERE:	Not applicable
SOURCE OF INFORMATION:	Tom Street, Assistant Chief Administrative Officer (240-777-2559)
APPLICATION WITHIN MUNICIPALITIES:	Yes.
PENALTIES:	Class A violation.

Bill

has - MF
cc
SBF
has - LL
BD
AM
has - GO

040294

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

February 4, 2009

TO: Phil Andrews, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Proposed Legislation – Deferral of Impact Taxes

I am attaching for the Council's consideration a bill which would allow a business to defer payment of the transportation and school impact taxes for 12 months. I am also attaching a Legislative Request Report for the proposed bill.

This bill is one of four legislative proposals which I am submitting to the Council to implement the 11-point economic plan which I announced in December 2008. Each legislative proposal is designed to ease some of the difficulties experienced by local businesses as a result of the national economic downturn. The current economic climate impacts the ability of builders to pay impact taxes before construction. Allowing a builder to defer payment of impact taxes will help to encourage new construction which is aimed at retaining existing jobs and creating new job opportunities. This deferral is only temporary and enables the payment to be made at a point in the development process that is closer to when a builder can expect to receive income from a project. This will reduce carrying costs for a project.

My 11-point economic plan included a proposal to provide an economic impact analysis for all legislative and regulatory changes which would analyze the impact of each proposed change on local businesses. We are in the process of completing an economic impact analysis for this bill and will forward it to Council in the near future along with the normal fiscal impact statement for the bill. I look forward to working with Council as it considers this bill and my other three legislative proposals which provide opportunities for some measure of relief to our business community and residents.

IL:dg

Attachments (2)

BILL

NAN
CC
SBF
LL
MF
BD
AM

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

040372

February 4, 2009

TO: Phil Andrews, County Council President

FROM: Joseph F. Beach, Director, Office of Management and Budget

SUBJECT: Expedited Bill XX – Development Impact Tax Deferral

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

LEGISLATION SUMMARY

The proposed legislation authorizes deferral of the Development Impact Tax for Transportation Improvements and Public School Improvements for 12 months after a building permit is issued.

FISCAL SUMMARY

Department of Finance estimates lost interest earnings for Transportation and Schools Impact Taxes for the 12 month deferral period is $400,000.

Mike Coveyou with the Department of Finance contributed to and concurred with this analysis.

JFB:brg

c: Tom Street, Assistant Chief Administrative Officer
Kathleen Boucher, Assistant Chief Administrative Officer
Dee Gonzalez, Office of the County Executive
Jennifer Barrett, Director, Department of Finance
Mike Coveyou, Department of Finance
Bryan Hunt, Office of Management and Budget
Brady Goldsmith, Office of Management and Budget

(11)

ROCKVILLE, MARYLAND

Public Hearing - March 3, 2009

Bill 3-09, Local Small Business Reserve Program - Amendments
Bill 4-09, Development Impact Tax -- Deferral
Bill 5-09, Permit Fees – New Construction – Deferral

Testimony of Assistant Chief Administrative Officer Kathleen Boucher

Good afternoon. I am Kathleen Boucher, Assistant Chief Administrative Officer with the Office of the County Executive. I want to thank Council President Andrews for sponsoring Bills 3-09, 4-09, and 5-09 on behalf of the County Executive, and the full Council for its timely consideration of these items.

Bill 3-09 proposes changes to the County's Local Small Business Reserve Program. Bills 4-09 and 5-09 amend the law governing impact taxes and fees related to new construction which are collected by the Department of Permitting Services (DPS).

Over the past two years, the County has experienced the severe impacts of the recession that has gripped our entire nation. Except for a slight increase in February and September of 2008, the leading economic indicator for the Washington, D.C. metropolitan region (which is used to predict future economic activity) has declined steadily since April 2007 (down 4% during the period). That decrease suggests that the region's economy will experience slower growth during the first half of 2009 and not re-accelerate until early summer at the earliest, depending on the breadth and depth of the national recession. The coincident economic indicator for the region (which measures the current performance of the economy and reflects consumer confidence) has also declined steadily since the spring of 2007 (down 12% during the period). Other signs of extreme stress in the County's economy include: no growth in resident employment during the past two years; a decline in home sales of more than 20% in each of the last 3 years (20.5% in 2006, 23.4% in 2007, and 20.6% in 2008); and an average 7.9% decline in home sale prices in 2008 (based on preliminary data).

These data and others point to a need for local government action to help our residents and businesses during this difficult economic time. On December 18, 2008, the Executive announced an 11-Point Economic Assistance Plan, which included the three bills that are the subject of today's hearing. A summary of the Plan is attached to this testimony. The Executive views his 11-point plan as a modest first step to help ease some of the difficulties experienced by local businesses as a result of the national economic downturn. The Executive will continue to work to find additional ways to assist County businesses and looks forward to working with the business community, the Council, and others to identify additional measures that can effectively and efficiently assist local businesses.

Generally, the Plan is an attempt to increase business opportunities for County-based businesses by:

- Allowing deferral of fees and taxes related to new construction;

- Extending expiration periods for building permit applications and inactive building permits related to new construction;
- Broadening the definition of "small local business" for the purpose of the County's Small Local Business Reserve Program; and
- Increasing the percentage of County contracting opportunities that are directed to small local businesses.

The current economic climate impacts the ability of builders to pay impact taxes and fees for permits, inspections, licenses, and engineering before construction. By allowing a builder to defer payment of these taxes and fees, Bill 4-09 and Bill 5-09 will encourage new construction that will help to retain existing jobs and create new job opportunities. This deferral is only temporary and enables a builder to pay the taxes or fees at a point in the development process that is closer to when a builder can expect to receive income from a project. In essence, deferral of impact taxes and fees will reduce carrying costs for a project.

The current economic climate impacts local small businesses disproportionally to other businesses. By increasing the percentage of contracts that the County awards to local small businesses, Bill 3-09 will encourage greater participation in the program and help retain existing jobs and create opportunities for new jobs.

The following is a summary of the key components of Bill 3-09, Bill 4-09, and Bill 5-09.

Bill 3-09: This bill increases from 10% to 20% the combined dollar value of certain contracts that County departments must award to local small businesses.

Bill 4-09: This bill authorizes the deferral of impact tax payments (for both schools and transportation) for up to twelve months after their current due date. Currently, these taxes are due when the building permit for the associated property is issued by DPS. Bill 4-09 outlines conditions of deferral and circumstances that would lead to accelerated payment. These provisions are necessary in order to ensure that the County eventually receives payment of the deferred taxes and e that deferred taxes are paid prior to the transfer of ownership of the associated property.

Bill 5-09: This bill authorizes the deferral of permit, inspection, license, and engineering fees associated with new construction for a period of 12 months from the time they are normally due. The bill also extends the time limit for abandonment of a building permit application from 6 to 12 months, and extends the time for recording an initial building inspection from 12 to 18 months after issuance of a building permit. As with Bill 4-09, and for the same reasons, this bill outlines conditions of deferral and circumstances that would lead to accelerated payment.

Thank you for the opportunity to testify in support of these bills. We look forward to working with the Council as it considers this package.

Montgomery County Executive Isiah Leggett's Eleven Point Economic Assistance Plan
December 18, 2008

1. Increase Local, Small Business Reserve Program (LSBRP) gross annual sales thresholds for local small businesses in the wholesale, retail and services sectors to $5 million from the current levels of $2 million for wholesale businesses or $2.5 million for retail goods and non-construction services, and to $14 million from $7 million for construction services and manufacturing. Also proposed is to increase the employee complement limits from 15 to 30 for wholesale and retail businesses, from 20 to 40 for manufacturing businesses, and from 25 to 50 for businesses in the service and construction sectors.

2. Increase the required percentage of Local, Small Business Reserve Program (LSBRP) participation in annual contracting from the present level of 10% to 20%.

3. Generally, delay up to 18 months, the effective dates of new legislation and regulations that have a substantial economic impact on business.

4. Allow, upon request, deferral of payment of permitting fees and impact taxes for a period of twelve months from their current due date.

5. Increase permit application expiration period to twelve months for those permits associated with new residential and commercial construction.

6. Increase expiration period for inactive building permits to eighteen months.

7. Extend the validity period for existing Adequate Public Facility reviews from five (5) years to seven (7) years.

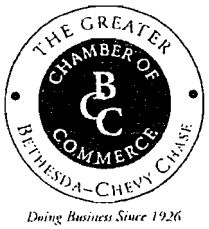
8. Provide an economic and fiscal impact analysis as part of any legislation or regulatory change. The analysis to include an assessment of the impact on both the County and the parties being regulated.

9. Unbundle large County contracts. County requirements that have traditionally been bundled together for administrative and cost savings benefit should be scrutinized as candidates for unbundling.

10. Assist local Chambers of Commerce in providing Business Networking Forums for small businesses to connect with potential partners.

11. Partner with local Chambers of Commerce to hold business fairs at several county locations.

3



The Greater Bethesda-Chevy Chase Chamber of Commerce

7910 Woodmont Avenue, Suite 1204, Bethesda MD, 20814 • Ph (301) 652-4900 • Fax (301) 657-1973 • Email staff@bccchamber.org • Web www.bccchamber.org

Your Business Is
Our Only Business

Testimonies of

Patrick L. O'Neil and

Frank Amantia

On Behalf of

The Greater Bethesda-Chevy Chase

Chamber of Commerce

Before the

Montgomery County Council

Regarding Bill Nos. 3-09, 4-09 and 5-09

March 3, 2009

THE GREATER BETHESDA-CHEVY CHASE CHAMBER OF COMMECE
TESTIMONY REGARDING BILL NOS. 3-09, 4-09 AND 5-09
BEFORE THE MONTGOMERY COUNTY COUNCIL
MARCH 3, 2009

Good afternoon. My name is Patrick O'Neil and I am the Vice President of Economic Development and Government Relations for the Greater Bethesda-Chevy Chase Chamber of Commerce. On behalf of the Chamber, I am here to thank the County Executive for his efforts in Bill Nos. 3-09, 4-09 and 5-09 to address the economic impact of the current national recession on small businesses and development entities in the County. We are generally supportive of the proposals in the legislation and, through our testimony today, offer suggestions in some cases to make a good thing even better.

We begin with Bill 3-09 and the corresponding Executive Regulations (2-09) that propose meaningful changes to the Local Small Business Reserve Program. The legislation proposes, and we support, threshold increases to allow more local businesses to participate in the program; the doubling of the required participation percentage for each department and the deletion of the current sunset date for the program. Notably the proposed legislation transfers the responsibility for administering the program to the Department of General Services. We agree with this change and believe that DGS is the right County entity to oversee and promote the program.

Bill Nos. 4-09 and 5-09 propose to defer the payment of impact taxes and building permit fees and costs for up to twelve months. For our purposes, these bills are interrelated and we address them together. Like the changes to the Local Small Business Reserve Program, the bills' proposed deferral opportunities are well-intentioned. Presumably the legislation is designed to create construction industry jobs, which have all but disappeared in the current economic crisis. As such, the legislation encourages the development of approved projects that have been stalled by the absence of available financing. However, the additional bureaucratic hurdles imbedded in these bills could serve to defeat their purposes.

In particular, the requirements for executed deferral agreements and for the filing of security interests on affected properties would discourage a developer from taking advantage of the deferral opportunities. I have asked Frank Amantia of the Mid-Atlantic Federal Credit Union to

address these lien impacts from a construction lending perspective. Mr. Amantia has over 20 years of lending experience in the County.

Mr. Amantia opines that Bills 4-09 and 5-09 provide effective stimulus for developers to re-enter the marketplace, but they ignore the regulatory and procedural requirements of lenders who provide needed funding to bring the developers' plans to fruition. The primary area of concern is the Bills' requirement that deferred taxes and fees be perfected in the form of a lien, filed in the land records. This lien, which is given priority status, prevents the lender from achieving first position. The second point of concern is the Bills' requirement that any deferral be memorialized in a "written agreement" filed in the land records. The terms of this agreement diminish the effectiveness of the lender's loan documents. If the Bills were revised to preserve the rights and remedies of the lenders, without whose funds the developers' plans would generally not be possible, the Bills would spur both developers and lenders alike.

In light of the unintended effects of the lien requirements and the written agreements, and in an effort to provide a more meaningful incentive for would-be developers, we propose a simpler deferral option. This option has been cooperatively developed by our Chamber, the Montgomery County Chamber, the Greater Silver Spring Chamber and others. A copy of our collective efforts is attached. We propose the deferral of all impact taxes and permit fees and costs until the project is ready for occupancy. The Department of Permitting Services would not issue final occupancy approvals until the outstanding fees and costs are paid.

Our proposal is easier to understand and more enticing to a prospective developer than the current legislation. Our proposed deferral is easy to obtain because it is automatic – no deferral agreement or approval is required. More importantly, our proposal provides a clear benchmark for when payments are due and provides meaningful County leverage to ensure that the fees and costs are ultimately paid. If the goal is job creation through development opportunities, Bills 4-09 and 5-09 are more likely to achieve the goal with our proposed changes.

On behalf of the Greater Bethesda-Chevy Chase Chamber of Commerce, thank you for the opportunity to present these comments.

(March 3, 2009)

IMPACT TAXES

52-51A. Deferral of payments

(a) *Definitions.* In this Section the following words have the meanings indicated:

(1) *Final permit* means a certificate of use and occupancy or, if a certificate of use and occupancy is not required for the development, a final inspection report.

(2) Impact tax or tax means the Taxes imposed under this Article and Article XII.

(3) *Owner* means a person who has a legal record title interest in real property, including a creditor with a recorded lien on the property, on which development is proposed that is subject to the impact tax.

(b) *Authorization to defer.* An owner may defer payment on all impact tax due until the issuance of a final permit needed to occupy any portion of the development. A payment that has been deferred pursuant to this section must be paid before the final permit will be issued.

(c) *Sunset.* The opportunity to obtain a deferral of payment under this Section expires on April 1, 2013.

PERMITS

No changes are proposed for the proposed amendments for Section 8-24 (Application for permit) and 8-25 (Permits).

2-42C. Permit fees - new construction - deferrals.

(a) *Definitions.* In this Section the following words have the meanings indicated:

(1) *Fee or fees* mean any permit fee, license fee, inspection fee, or engineering fee required to be paid before a permit or license is issued or an inspection is made under Chapter 8, 17, 19, 27A, or 49.

(2) *Final permit* means a certificate of use and occupancy or, if a certificate of use and occupancy is not required for the new construction, a final inspection report.

(3) *New Construction* means:
(A) any new building; and
(B) any addition or renovation of an existing building that replaces 50% or more of the existing first floor exterior walls, measured around the perimeter of the building.

(4) *Owner* means a person who has legal record title to the real property on which the new construction is proposed that is subject to the fee.

(b) *Authorization to defer.* An owner or other applicant may defer payment on a fee associated with new construction until the issuance of a final permit needed to occupy any portion of the new construction.

(c) *Sunset.* The opportunity to obtain a new construction deferral under this Section expires on April 1, 2013.

6112959_v2

MARYLAND-NATIONAL CAPITAL BUILDING INDUSTRY ASSOCIATION
1738 Elton Road, Suite 200, Silver Spring, Maryland 20903
(301) 445-5400 / Fax (301) 445-5499
Email : communications@mncbia.org
Website : www.mncbia.org

EXECUTIVE COMMITTEE
THOMAS M. FARASY
President
(Terra Verde Communities, LLC)

JAMES KETTLER
Vice President/Calvert County
(Kettler Brothers Homes LLC)

DOUG MEEKER
Vice President/Charles County
(Elm Street Development)

FRANK BOSSONG IV, P.E.
Vice President/Montgomery County
(Rodgers Consulting Inc.)

MARTY MITCHELL
Vice President/Prince George's County
(Mitchell & Best Homebuilders LLC)

GUY CURLEY
Vice President/St. Mary's County
(Liberty Home Builder Inc.)

AJ JACKSON
Vice President/Washington DC
(EYA LLC)

ROBERT A. JACOBS
Associate Vice President
(Acacia FSB)

BOB LARKIN
Treasurer
(SunCal Companies)

CHAS STUART JR.
Secretary
(Miller & Smith Homes)

WILLIAM SHIPP
Life Director
(O'Malley Miles Nylen & Gilmore, P.A.)

RICHARD A. SULLIVAN JR.
Immediate Past President
(Alliance Homes Inc.)

STEPHEN P. BLUMENDORF
Legal Counsel
(Linowes and Blocher, LLP)

DIANE K. SWENSON, CAE
Executive Vice President

BOARD OF DIRECTORS
BILL BILO
Dico, Inc.
HILLARY COLT CAHAN
Kontterra
MIKE CONLEY
Winchester Homes
TONY CRANE
Crane Homes
TIM DUGAN
Shulman Rogers Gandal Pordy & Ecker PA
ROBERT HARRIS
Holland & Knight LLP
HOWARD KATZ
Michael Harris Homes
GARY KRET
Stewart-Kret Homes
ANDREA LEAHY-FUCHECK
Leahy & Desmet
DAVID LUNDEN
Timberlake Homes
STEVE NARDELLA
Winchester Homes
DAVID O'BRYAN
Charles P. Johnson & Assoc.
STEPHEN PAUL
Mid-Atlantic Builders, Inc
NANCI PORTEN
The Porten Companies
STEVE PROCTOR
G.S. Proctor & Associates Inc.
MARC ROSE
Michael T. Rose Companies
ANDY ROSENTHAL
Rosenthal Homes
GARY RUBINO
Greenhorne & O'Mara, Inc
TED SMART
Maryland Development Co. LLC
RAY SOBRINO
The Porten Companies
STEVE SPANO
Loiederman Soltesz Associates, Inc.
CLARK WAGNER
The Bozzuto Group
PEGGY WHITE
Axiom Engineering Design LLC
BRYAN WHITTINGTON
Whittington DesignBuild
CARTER WILLSON
Carter Inc.

Maryland National Capital Building Industry Association (MNCBIA)
Testimony Before the Montgomery County Council
On
Expedited Bill 4-09: Development Impact Tax – Deferral
Expedited Bill 5-09: Permit Fees – New Construction - Deferral

March 3, 2009

Good afternoon. My name is Tom Farasy.

I am the 2009 President of Maryland-National Capital Building Industry Association. The BIA represents builders and developers in Prince George's, Montgomery, St. Mary's, Charles and Calvert counties. We have 600 + members today.

The MNCBIA supports the County Executive's Emergency Bill Nos. 4-09 and 5-09, with amendments.

Bills 4-09 and 5-09 as drafted creates a bureaucracy that is costly to the County, cumbersome to the applicant, and burdensome to both; it provides under the ***most optimum*** of circumstances, eight months breathing room to an industry underwater and struggling to stay afloat.

Given the national regional and local forecasting, eight months is clearly not enough.

I do not need to brief the Council on the severity of the recession that we are all experiencing. It is in the news everyday and none of us have ever experienced this type of recession. The County's drop in revenues mirrors the precipitous drop in the housing market. Unfortunately, the forecast by industry experts does not offer any relief until well beyond 2009.

As you may remember, sales and building starts in 2008 were dramatically reduced as compared to 2007. Hanley Wood, the research company that tracks new home sales in residential projects over 10 units, reports for Montgomery County:

* Net sales were 894 in 2008 vs. 1159 in 2007 vs. 2621 in 2006;
* The average new home sales in 2008 vs. 2006 were as follows:

Type	2008	2007	2006
Single Family	$792,120	$888,850	$905,795
Townhouse	$437,806	$513,764	$507,692
Condominium	**$339,113**	**$506,130**	**$473,736**

* The vacant lot inventory has grown to a 12.2 month supply as of December 31, 2008 vs. an average of 2.2 months supply in calendar 2006; the normal lot inventory is 2 months, so we are six (6) times the norm.

Two recent reports by Zelman & Associates affirm that this recession will not recede anytime soon; to highlight a few details:

Hope Now: Delinquency and Foreclosure Report, January 2009

- This month's foreclosure rate marks the highest level since July 2007
- In December 2008, 203,000 homes entered the foreclosure process, up from 169,000 in November 2008

Foreclosures Presenting Unprecedented Conditions, January 26, 2009

- 2009 new sales to decrease 40%
- Due to unprecedented competition from foreclosures, Zelman projects ***new home sales to be less than 7% of real estate home sales*** vs. an historical median of 16%
- Zelman is lowering new housing starts from 750,000 to 575,000 for 2009
- ***No increase in housing starts until 2011***

(The Hanley Wood and the Zelman Reports are attached to my testimony for your convenience)

Many of our suppliers, builders and developers have had 4, 5 or more rounds of layoffs. Last week alone, a concrete supplier reported he went from 100 employees a year ago to 30 today; one of our builders reported to me, his payroll has gone from 72 employees a year ago to 17 today. Such stories go on and on.

While we anticipate a recovery, and anticipate that the President's Stimulus Bill will have an effect, what we know is that this recovery will not be traditional, and there is no ***guaranteed*** trigger date. This is the reality that frames the industry's comments today.

Bills 4-09 and 5-09 are well intentioned; however:

1. The legislation requires a lien on the property. A lien will require lender consent. Unfortunately, many lenders are not available for such conversations; when available, they are not making decisions. This process requires asking lenders to agree to an action that increases their risk; we believe that lenders would not respond to this request, nor agree to the placing of a lien, thereby negating the deferral provided by the legislation.

2. The legislation sunsets on April 01, 2010 providing less than 1 year window for applicants who have dared, or who dare, to initiate any development or construction.

3. The legislation requires an agreement between the applicant and the Department of Permitting Services. This is an expensive, onerous and lengthy proposition; in addition there is no certainty ... by the time the agreement is drafted, negotiated amongst the parties, agreed to by the parties, consent obtained from the lender any period of benefit if one ever gets to the finish line might be 3 months of relief at best. We are in a recession cycle that is going to last for years, not 3 months.

20

Our amendments are simple:

- Utilizing DPS's current system of inspections, require that all deferred fees and taxes be paid before an Occupancy Permit can be issued; when an Occupancy Permit is not required, require that fees and taxes be paid prior to final inspection.
- Given the unpredictability in the current economy to guarantee any significant recovery in the next 36 months, provide a sunset date of April 01, 2013.

The industry needs relief, quickly, simply, Not a lien, not an agreement, not for less than one year. Our proposal assures that the County will be paid its impact taxes, as well as its permit, inspection, license, and engineering fees.

Our members look forward to participating in the Council's worksessions on these Bills. Thank you for the opportunity to present the industry's perspective today.

21

GREATER SILVER SPRING
CHAMBER OF COMMERCE

March 3, 2009

The Honorable Phil Andrews, President
and Members of the Montgomery County Council
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Re: Public Hearing - Expedited Bills 4-09 and 5-09 (the "Legislation")

Dear President Andrews and Members of the Council:

The Greater Silver Spring Chamber of Commerce is pleased to submit this letter as its testimony in the Council's public hearing on the above referenced Legislation scheduled for today, March 3, 2009.

On behalf of the Board of the Chamber, I wish to express our support for the efforts of the County Executive and the County Council to provide regulatory relief and economic assistance to County businesses in this extraordinarily difficult economic climate. This assistance is especially needed by the residential and commercial development industry that would specifically benefit from this Legislation.

Members of the Chamber's Economic Development Committee and representatives of our development and land use sectors have reviewed these bills and agree that this Legislation is a good first step. However, they also point out that it does not go far enough, given the depth of the hardship to the development community that has been caused by the current economic downturn, the uncertainty for recovery, and the importance to the County for vibrant and sustained development activity.

In this regard, the Chamber respectfully requests that the Council consider the following revisions to the Legislation to make it more effective in providing meaningful/usable assistance to the development community during this period of significant economic uncertainties and difficulties:

- Amend Bill 4-09 (Impact Tax Deferral) and Bill 5-09 (Permit Fees, Deferrals and Permit Validity Period Extensions) to extend the deferral of the Impact Tax Payments and permit fees until the issuance of the final permit/inspection or certificate of occupancy needed for occupancy, rather than only 12 months, with a corresponding extension to the sunset date. ***The additional time for deferral is requested in recognition of the extended nature of the downturn and the uncertain timing of a recovery. By allowing deferral to a point in the development process that is ties to sale and transfer, builders can conserve capital and delay out-of-pocket costs. This also defers the payment to a point in time when the applicant is likely to have money coming in with which to make the payment. Further, the cost of the payment will not become an additional part of the financing costs during construction.***

8601 Georgia Avenue, Suite 203, Silver Spring, Maryland 20910
Phone: 301-565-3777 • Fax: 301-565-3377 • info @gsscc.org • www.silverspringchamber.com

- Eliminate the requirement in both Bill 4-09 and 5-09 that applicants for a deferral of Impact Taxes and/or permit fees enter into an agreement with the County and place a lien for such deferred payments on the subject property. ***This requirement is cumbersome for agency staff to monitor and may interfere with project financing. Moreover, the County can ensure payment of deferred fees by withholding use and occupancy permits and/or final inspections. These are already points in the process where the County acts as the gatekeeper.***

- Amend 5-09 to allow for 24 months for a first inspection and 26 months for a second inspection, but also allow extensions for these inspections. ***Given the uncertainty of the time frame for recovery and the lack of stable market conditions necessary for development to commence, it is essential to provide realistic time frames for development that are long enough to avoid multiple extension requests.***

We believe these requested revisions are reasonable and will enhance the usefulness of the economic assistance package to the benefit of the development community and, ultimately, all of the residents of Montgomery County. If you have any questions on our testimony, please do not hesitate to contact me.

Sincerely,

Jane Redicker

cc: Diane Schwartz-Jones, Esq.

March 2, 2009

Montgomery County Civic Federation Talking Points for March 3 Hearing on Economic Stimulus Legislation--Expedited Bills 4-09 and 5-09

Rather than adopt a position in support of or opposition to these two pieces of legislation, at their meeting on February 18, 2009, the MCCF Executive Committee voted unanimously to submit these talking points to the County Council for consideration.

Defer Deadline for Payment of Impact Taxes by One Year from Current Due Date - Expedited Bill 4-09

- POSITIVE: a one-year deferral of impact tax payments might allow some development projects to go forward which might otherwise be abandoned
- NEGATIVE: although impact tax payments deferred over the next year would be made in FY11, the deferral will further reduce FY10 revenue projections at a time when the county is facing a $500M budget shortfall and an anticipated further decrease in projected tax collections (sales, income tax, etc.)

Deferral of Building Permit Fees, Extend Inspection Deadlines, Extend Abandonment of Permit Deadline - Expedited Bill 5-09

- POSITIVE: a one-year deferral of building permit and associated permit fees might allow some building projects to go forward which might otherwise be abandoned
- NEGATIVE: although building permit and associated permit fees deferred over the next year would be made in FY11, the deferral will further decrease FY10 revenue projections at a time when the county is facing a $500m budget shortfall and an anticipated further decrease in projected tax collections (sales, income tax. etc.)

- POSITIVE: deferred payment of permit fees and a 6-month inspection extension may allow builders, who might otherwise go bankrupt and cancel residential infill projects or abandon them in mid-construction due to cash flow constraints, to finish them and go to sale--and thereby avoid having half-finished home construction projects or empty demolition sites negatively impact safety and attractiveness of neighborhoods
- NEGATIVE: a 6-month inspection extension could mean residents are living with construction projects in their neighborhoods for up to 6 months longer than present (noise, construction trucks parking up residential streets, port-a-johns sitting next to public sidewalks, muddy sites strewn with construction debris awaiting landscaping)

24

- NEGATIVE: a 6-month inspection extension could result in projects being put on hold (no construction activity) or on slow-down (using fewer workers to complete job over longer period), which seems counterintuitive to any effort to create/maintain jobs
- NOTE: we recommend a new law to require the surrounding of residential infill (teardown/rebuild) demolition sites with 8' high chain-link fence if new construction does not begin immediately would prevent safety hazard of having unintended ponds (foundations of demolished homes filled with stormwater) in established neighborhoods; also need requirement that such water be treated to prevent mosquito breeding

General note regarding this legislation
- no economic or fiscal impact analysis was included with the bills when introduced, even though one of the proposals in the County Executive's 11-Point Economic Stimulus Package (released 12/18/08) reads--

> "8. Provide an economic and fiscal impact analysis as part of any legislation or regulatory change. The analysis to include an assessment of the impact on both the County and the parties being regulated."

Fiscal impact analyses were finally released to the public in the packets for Bills 4-09 and 5-09, which were posted on the Council website February 27. This information was made available far too late for any organization, such as the Federation, to disseminate, analyze, and adopt a position prior to the March 3 public hearing.

These fiscal analyses project a loss to the county from these two pieces of legislation of a total of $637,000--a loss of $600,000 in interest on fee and tax revenue due to deferred collection, and an added $37,000 administrative cost. Although the figure seems small in relation to the size of the total County budget, it is a substantial and unnecessary cost to incur in the midst of perhaps the worst economic downturn since the great Depression.

In addition, no economic impact analysis has yet been submitted for Bills 4-09 or 5-09 (in the County Executive's own words, the "impact on the parties being regulated"). In the absence of such analysis, the public is being asked to testify at this hearing without being privy to the County Executive's opinion as to the full extent of impact, either positive or negative, which these legislative proposals may have. This legislative process is inadequate and unacceptable, especially since it involves bills introduced on behalf of a County Executive who purports to value transparency, accountability and informed citizen participation in government decision making.

---

submitted on behalf of the Civic Federation Executive Committee by
Jim Humphrey
Chair, MCCF Planning and Land Use Committee
(301)652-6259 day/evening/weekends
email - theelms518@earthlink.net

25

54-09

ME
CC
SDF
LL
GO

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

041623

MEMORANDUM

April 10, 2009

TO: Phil Andrews, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Expedited Bill No. 4-09 Development Impact Tax Modification

2009 APR 10 PM 2:00

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

LEGISLATION SUMMARY

Expedited Bill 4-09 would change the due date for all impact taxes to either (1) the date of final inspection approval, or (2) the date the development is occupied. The purpose of changing the due date for collection of impact taxes to the end of the building process is to help encourage new construction which is aimed at retaining existing jobs and creating new job opportunities.

FISCAL SUMMARY

Fiscal Impact: Expedited Bill 4-09 would shift the collection of both Transportation and Public Schools Impact Taxes from the beginning of the permitting process (issuance of the building permit) to the end of the permitting process (either at final inspection approval or before the building is occupied). The Department of Permitting Services advises that for residential construction the average elapsed time between the issuance of a building permit and the final inspection approval is one year, and for commercial construction the average elapsed time is 600 days, or almost one year and eight months.

The Department of Finance advises that for FY09 nearly $5.7 million in Public Schools Impact taxes has been collected through the end of March 2009, while nearly $1.8 million in Transportation Impact taxes have been collected.

Assuming that Expedited Bill 4-09 becomes law near the end of June 2009, impact tax collections for all of FY10 would be affected. Given that the average period of time between permit issuance and final inspection approval for residential properties is one year, we could expect to receive no impact taxes for residential construction in FY10. This is also the case for commercial construction, as the taxable event - final inspection approval, is even further in the future, averaging 600 days after the issuance of the building permit. For commercial construction, we would expect that no impact taxes would be collected in FY10, and impact taxes would begin to be collected in about January 2011, during FY11. This would mean that taxes based on the construction activity of FY10 would begin to be collected in late FY11.

The table below shows the estimated Impact Tax collections based on the changes made through Expedited Bill 4-09, as compared to the Impact Tax collection projections that were used in the FY09 Approved Capital Budget and FY09-14 Capital Improvements Program (CIP) July 2008. As such, this table does not control for the effect of the current recession on the construction industry, which is shown in the year-to-date collections data mentioned above. The FY09 Approved Capital Budget and FY09-14 CIP July 2008, is based on estimated FY10 impact tax revenues of $13.2 million for Transportation and $19.2 million for Public Schools, while the actual revenues collected so far in FY09 are estimated to be $2.4 million for Transportation Impact Taxes and $8.5 million for Public Schools Impact Taxes.

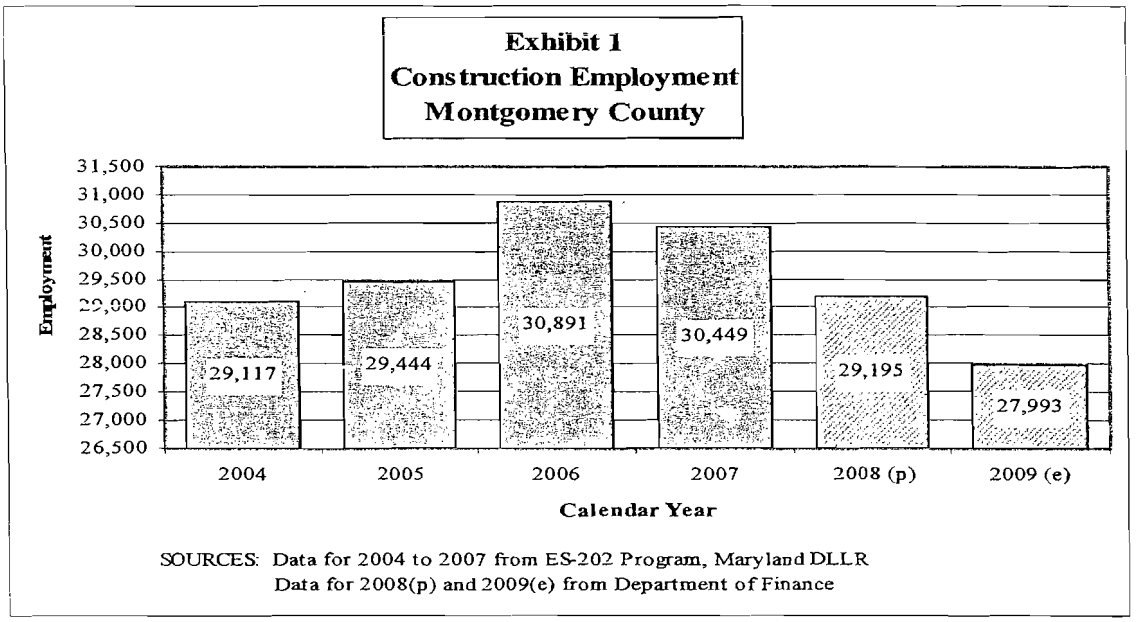
Estimated Impact Tax Collections

	EB 4-09		Compared to Approved FY09 Budget	
	Transportation	Schools	Transportation	Schools
FY10	$0	$0	-$13,223,000	-$19,243,000
FY11	$8,749,218	$12,732,452	-$5,008,782	-$7,603,548
FY12	$13,576,992	$19,966,202	-$764,008	-$2,007,798
FY13	$14,143,752	$21,419,810	-$240,248	-$1,904,190
FY14	$14,369,452	$22,867,250	-$630,548	-$2,491,750
FY15	$14,791,587	$24,670,492	-$208,413	-$829,508
FY16	$15,000,000	$25,452,295	$0	-$47,705

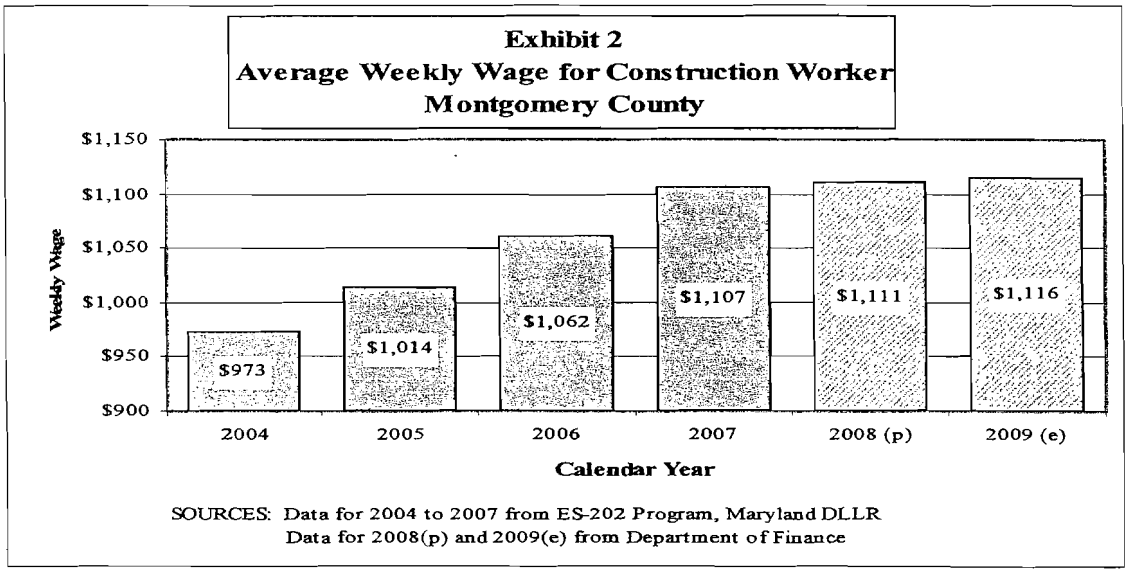
Note: Due to the volatility experienced in the actual collection of impact tax revenues and the severe economic recession, projected Impact Tax revenues would have been significantly reduced in the FY11-16 CIP, even in the absence of the subject legislation. The actual Impact Tax revenue foregone will be much lower than the amount displayed above, which is based on estimates prepared before the severity and duration of the recession in the County's building market were fully understood and incorporated into our estimates.

Economic Impact: Expedited Bill 4-09 is intended to provide assistance to builders and developers, which will lead to the retention of existing jobs and/or creation of new jobs. However, it is not possible at this time to quantify the likely impact of these bills with any specificity. The remainder of this memorandum discusses the impact of the national recession on the County's construction industry, which highlights the need for the County to enact Expedited Bill 4-09 as a modest step towards easing that impact.

Exhibit 1 presents actual, preliminary (p), and an estimated (e) payroll employment data for the County's construction industry. In 2004, the number of construction jobs in the County was 29,117 based on data from the Maryland Department of Labor, Licensing and Regulation (DLLR). Between 2004 and 2006, that number increased to nearly 31,000 – an increase of nearly 1,800 jobs. Since that time, employment has declined to nearly 30,500 in 2007 and a preliminary estimate of 29,200 in 2008 – a loss of nearly 1,300 jobs. The 2008 estimate is based on data for the first half of 2008 from DLLR, the latest date for which employment data are available. With both residential and non-residential activity contracting in 2008, the Department of Finance estimates that the number of workers employed in the County's construction activity will decline further in 2009 to an estimated 28,000 jobs – a loss of 1,200 since 2008. All told, the number of job losses in the construction industry could amount to nearly 3,000 by the end of this year since the peak of 2006.



With the estimated loss of employment in 2009, there is the expected loss in wage income. In 2004, the average weekly wage for a construction worker was $973 (Source: DLLR). In 2007, that average reached $1,107 – an average annual increase of 4.3 percent. Based on data for the first half of 2008, the latest date for which data are available from DLLR, the average weekly wage rate is expected to increase to $1,111 – a 0.4 percent increase over 2007. Exhibit 2 presents actual, preliminary (p), and an estimated (e) average weekly wage rates for the County.



Therefore, the construction industry in Montgomery County is estimated to experience a decline in the number of jobs (↓1,300) and a meager wage increase (↑0.4%) in 2008. If that trend continues into 2009, the industry is likely to lose an additional 1,200 jobs and experience only a modest increase in the average weekly wage of 0.4 percent. As such, total wage income from the construction

industry in 2009 is estimated to decline almost $69.8 million from 2008. That estimated loss would have an effect on the County's income tax base for tax year 2009 and beyond. Additionally, the decline in the number of construction projects and additional value from new construction will have an effect on the addition of new construction to the property tax base.

The following contributed to and concurred with this analysis: Michael Coveyou and David Platt of the Department of Finance and Bryan Hunt of the Office of Management and Budget.

JFB:bh

c: Kathleen Boucher, Assistant Chief Administrative Officer
Tom Street, Assistant Chief Administrative Officer
Dee Gonzalez, Offices of the County Executive
Reginald Jetter, Department of Permitting Services
Carla Reid, Department of Permitting Services
Scott Foncannon, Office of the County Attorney
Marc Hansen, Office of the County Attorney
Michael Coveyou, Department of Finance
David Platt, Department of Finance
Jacqueline Carter, Office of Management and Budget
Brady Goldsmith, Office of Management and Budget
Bryan Hunt, Office of Management and Budget
Amy Wilson, Office of Management and Budget

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

April 30, 2009

TO: Phil Andrews, President, County Council

FROM: Joseph F. Beach, Director, Office of Management and Budget

SUBJECT: Expedited Bill No. 4-09 Development Impact Tax Modification

The purpose of this memorandum is to amend the estimated fiscal impact statement on the subject legislation. The table below reflects the recognition of impact tax revenue in FY12 and FY13, that would be deferred in FY10 and FY11, as a result of this bill. The impact of this bill on impact tax revenues is neutral over a four year period. As stated in the previous fiscal impact statement, the impact of the economic downturn is not reflected in either the Approved FY09-16 impact tax projections or the projected impact tax revenues that would result from enactment of Expedited Bill 4-09.

As stated at the last Council meeting on this legislation, the Executive Branch does not believe it is necessary to reflect these revenue adjustments in the amended FY09-14 Capital Improvements Program (CIP) reconciliation. Conducting a comprehensive reconciliation in revenues is not necessary under a biennial CIP and will be very disruptive to the approved program. The Department of Finance will conduct a comprehensive update of impact tax revenue estimates as part of the FY11-16 CIP. We will work with Council staff and the Council on alternative ways of estimating and programming this volatile revenue source.

Estimated Impact Tax Collections				
	EB 4-09		Compared to Approved FY09 Budget	
	Transportation	Schools	Transportation	Schools
FY10	$0	$0	-$13,223,000	-$19,243,000
FY11	$8,749,218	$12,732,452	-$5,008,782	-$7,603,548
FY12	$27,917,992	$41,940,202	$13,576,992	$19,966,202
FY13	$19,038,790	$30,204,347	$4,654,790	$6,880,347
FY14	$15,000,000	$25,359,000	$0	$0
FY15	$15,000,000	$25,500,000	$0	$0
FY16	$15,000,000	$25,500,000	$0	$0

Office of the Director
101 Monroe Street, 14th Floor • Rockville, Maryland 20850 • 240-777-2800
www.montgomerycountymd.gov