

MEMORANDUM

TO: County Council

FROM: ~~M/F~~ Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Expedited Bill 15-10, Taxation – Fuel-Energy Tax – Rate and Resolution to change fuel/energy tax rates

Expedited Bill 15-10, Taxation – Fuel-Energy Tax – Rate, and the alternative resolution to change the fuel/energy tax rates, sponsored by the Council President at the request of the County Executive, are scheduled to be introduced on March 23, 2010.

This Bill and resolution would increase the rates of the fuel-energy tax by 39.6% to raise an estimated additional \$50 million in FY11. For current energy tax revenue data, see the budget table on ©9.

The public hearing on this Bill and resolution is scheduled for May 4 at 1:30 p.m.

This packet contains:	<u>Circle #</u>
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Expedited Bill No. 15-10
Concerning: Taxation – Fuel-Energy
Tax - Rate
Revised: 3-22-10 Draft No. 1
Introduced: March 23, 2010
Expires: September 23, 2011
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
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) increase the rates of the fuel-energy tax; and
- (2) generally amend County laws related to the fuel-energy tax.

By amending

Montgomery County Code
Chapter 52, Taxation
Section 52-14, Fuel-energy tax

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 52-14 is amended as follows:

52-14. Fuel-energy tax.

(a) A tax is levied and imposed on every person transmitting, distributing, manufacturing, producing, or supplying electricity, gas, steam, coal, fuel oil, or liquefied petroleum gas in the County. Beginning on July 1, 2010, the tax rates in dollars are:

(1) For fuel-energy transmitted, distributed, manufactured, produced, or supplied for residential and agricultural purposes:

<u>FUEL-ENERGY</u>	<u>TAX RATE</u>
<u>Electricity (per kilowatt hr)</u>	<u>\$0.0072924198</u>
<u>Natural Gas (per therm)</u>	<u>\$0.0628010617</u>
<u>Steam (per therm)</u>	<u>\$0.0822605134</u>
<u>Coal (per ton)</u>	<u>\$18.6267531744</u>
<u>Fuel oil (per gallon):</u>	
<u>No. 1</u>	<u>\$0.0899987212</u>
<u>No. 2</u>	<u>\$0.0933631594</u>
<u>No. 3</u>	<u>\$0.0933631594</u>
<u>No. 4</u>	<u>\$0.0955500442</u>
<u>No. 5</u>	<u>\$0.0974004852</u>
<u>No. 6</u>	<u>\$0.0995873700</u>
<u>Liquefied petroleum gas (per pound)</u>	<u>\$0.0135686262</u>

(2) For fuel-energy transmitted, distributed, manufactured, produced, or supplied for non-residential purposes:

<u>FUEL-ENERGY</u>	<u>TAX RATE</u>
<u>Electricity (per kilowatt hr)</u>	<u>\$0.0193251926</u>

<u>Natural Gas (per therm)</u>	<u>\$0.1664230814</u>
<u>Steam (per therm)</u>	<u>\$0.2179903605</u>
<u>Coal (per ton)</u>	<u>\$49.3578373320</u>
<u>Fuel oil (per gallon):</u>	
<u>No. 1</u>	<u>\$0.2384966112</u>
<u>No. 2</u>	<u>\$0.2474123724</u>
<u>No. 3</u>	<u>\$0.2474123724</u>
<u>No. 4</u>	<u>\$0.2532076172</u>
<u>No. 5</u>	<u>\$0.2581112858</u>
<u>No. 6</u>	<u>\$0.2639065305</u>
<u>Liquefied petroleum gas (per pound)</u>	<u>\$0.0359568595</u>

11 The County Council [must] may set the rates for various forms of fuel
12 and energy by resolution adopted according to the requirements of
13 Section 52-17(c). The Council may, from time to time, revise, amend,
14 increase, or decrease the rates, including establishing different rates
15 for fuel or energy delivered for different categories of final
16 consumption, such as residential or agricultural use. The rates must
17 be based on a weight or other unit of measure regularly used by [such]
18 persons in the conduct of their business. The rate for each form of
19 fuel or energy should impose an equal or substantially equal tax on the
20 equivalent energy content of each form of fuel or energy for a
21 particular category of use. The tax does not apply to the transmission
22 or distribution of electricity, gas, steam, coal, fuel oil, or liquefied
23 petroleum gas in interstate commerce through the County if the tax
24 would exceed the taxing power of the County under the United States
25 Constitution. The tax does not apply to fuel or energy converted to

26 another form of energy that will be subject to a tax under this Section.
27 The tax must not be imposed at more than one point in the
28 transmission, distribution, manufacture, production, or supply system.
29 The rates of tax apply to the quantities measured at the point of
30 delivery for final consumption in the County.

31 * * *

32 **Sec. 2. Expedited Effective Date.**

33 The Council declares that this legislation is necessary for the immediate
34 protection of the public interest. This Act takes effect on the date when it becomes
35 law.

36 *Approved:*

37

38

39 _____
Nancy Floreen, President, County Council Date

40 *Approved:*

41

42

43 _____
Isiah Leggett, County Executive Date

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

45

46

47 _____
Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 15-10 Taxation – Fuel-Energy Tax – Rate

- DESCRIPTION:** This Bill would increase the rates of the fuel-energy tax.
- PROBLEM:** In order to meet current fiscal challenges facing the County, the County must increase the amount of revenue available to maintain core Government programs and services.
- GOALS AND OBJECTIVES:** To enhance the amount of revenue available to support core government programs and services.
- COORDINATION:** Office of Management and Budget; Department of Finance
- FISCAL IMPACT:** To be requested.
- ECONOMIC IMPACT:** To be requested.
- EVALUATION:** Subject to the general oversight of the County Executive and the County Council.
- EXPERIENCE ELSEWHERE:**
- SOURCES OF INFORMATION:** Joseph Beach, Director of Management and Budget
Kathleen Boucher, Assistant Chief Administrative Officer
- APPLICATION WITHIN MUNICIPALITIES:** Tax laws apply County-wide.
- PENALTIES:** N/A

F:\LAW\BILLS\1015 Fuel Energy Tax\LRR.DOC



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

March 18, 2010

TO: Nancy Floreen, Council President

FROM: Isiah Leggett, County Executive 

SUBJECT: FY 2011 Budget Reconciliation and Financing Act

2010 MAR 19 AM 9:26
RECEIVED
MONTGOMERY COUNTY
COUNCIL

I am attaching for Council's consideration a Budget Reconciliation and Financing Act (BRFA) which makes changes to the County Code that are necessary to reconcile my recommended FY 2011 operating budget with projected FY 2011 revenues. This bill will help the County address its current fiscal challenges by increasing the amount of revenue available to maintain and enhance core government programs and services. I am also attaching a Legislative Request Report for the bill. A Fiscal Impact Statement will be transmitted to Council soon.

The BRFA consists of five primary components. First, it increases the energy tax rates. Second, it temporarily redirects the portion of recordation tax revenues that are currently reserved for County Government capital projects and rental assistance programs to the general fund for general purposes. Third, it allows revenues generated by the Water Quality Protection Charge to be used to pay debt service on bonds that fund stormwater management infrastructure projects. Fourth, it transfers responsibility for administering equal employment opportunity programs from the Office of Human Resources to the Office of Human Rights. Fifth, it authorizes the Fire and Rescue Service to impose an Emergency Medical Services (EMS) Transport Fee.

As the Council knows, the County's energy tax is actually a tax on fuel oil, natural gas, and electric utility providers which is passed on to all utility customers. Because the energy tax is a broad-based tax, its impact on families is reduced by the fact that it is paid by businesses and households, and all levels of government, including federal agencies located in the County (that currently do not pay any other major County tax). Additionally, the energy tax is a consumption tax based on energy usage. It is not based on the overall size of the utility bill or the cost per unit of energy used as billed to the consumer. Therefore, the amount of the tax can be lessened by reduced energy usage. Based on existing usage patterns for the average homeowner, my recommended FY 2011 budget assumes an average increase in the energy tax of approximately \$2.90 per month. I have also recommended additional funding in the Health and

Human Services budget for the County's Energy Assistance Program to minimize the impact to low-income households.

My recommended FY11 budget contains several efforts to restructure County Government to improve responsiveness and efficiency. One of these changes is the transfer of the Equal Employment Opportunity program from the Office of Human Resources to the Office of Human Rights. This shift takes advantage of existing staff resources to reduce costs and leverage the efforts of County staff to produce better outcomes for the community. This bill modifies the County code provisions relating to the responsibilities of the Office of Human Resources and Office of Human Rights to reflect this change.

The EMS Transport Fee is needed to fund fire and rescue services in the County. Without this fee, emergency response to residents will be impaired. EMS Transport Fees are widely employed throughout the nation and by local governments throughout the Washington region. These jurisdictions have not experienced any indication that people decline to use emergency transports as a result of the imposition of an ambulance fee. By creating a prepaid fund for uninsured County residents, the legislation that I am transmitting imposes a fee only on County residents with health insurance which covers EMS Transports. This arrangement more equitably distributes the economic burden of providing EMS transport services in the County between residents and nonresidents. The legislation provides for a hardship waiver for nonresidents who fall below 300 percent of federal poverty guidelines.

To provide the Council with a complete picture of the EMS Transport Fee program created by this bill, I am attaching a copy of the proposed Executive Regulation to implement the fee. This proposed regulation will be published in the April 2010 County Register and submitted to Council after the 30-day public comment period ends on April 30.

Finally, I note that the BRFA is consistent with Bill 31-09, Consideration of Bills – One Subject (enacted on September 29, 2009), which requires that a bill “contain only one subject matter”. As noted in the Council staff packet for Bill 31-09, that bill was intended to adopt the “one subject rule” of the Maryland Constitution, which requires all laws enacted by the General Assembly to contain only one subject. The Maryland Attorney General has repeatedly concluded that budget reconciliation and financing bills do not conflict with the one subject rule. For example, in 2005, the Attorney General noted that “[f]or the past fourteen years, 15 budget reconciliation, budget reconciliation and financing acts or variations thereof, have been used to balance budgets, raise revenue, make fund transfers, redistribute funds, cut mandated appropriations and authorize or mandate appropriations.”¹ The Attorney General concluded that all of those bills were consistent with the one subject rule because the provisions of the bills were “clearly germane to the single subject of financing State and local government”. See *Panitz v. Comptroller of the Treasury*, 247 Md. 501 (1967) (Omnibus supplemental appropriation bill comprised a single subject for purposes of § 29 of Art III of the State Constitution even though

¹ See May 19, 2005 memorandum from Attorney General J. Joseph Curran, Jr. to Governor Robert Ehrlich regarding House Bill 147 (2005).

Nancy Floreen, Council President
March 18, 2010
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the bill combined such diverse elements as police aid to local government; teacher salaries and pensions; and general unrestricted grants to local government).

Attachments (3)

cc: Joseph Adler, Director, Office of Human Resources
Jennifer Barrett, Director, Finance Department
Joseph Beach, Director, OMB
Kathleen Boucher, ACAO
Richard Bowers, Fire Chief, MCFRS
Marc Hansen, Acting County Attorney
Robert Hoyt, Director, DEP
Richard Y. Nelson, Jr., Director, DHCA
James Stowe, Director, Office of Human Rights

Resolution No. _____
Introduced: March 23, 2010
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Council President

SUBJECT: Fuel/energy tax – rates

Background

1. Section 52-14 of the County Code levies a tax on persons transmitting, distributing, manufacturing, producing, or supplying electricity, gas, steam, coal, fuel oil, or liquefied petroleum gas in the County.
2. Section 52-14 also provides that the County Council may amend the fuel/energy tax rates by resolution, after a public hearing advertised as required by Section 52-17. A public hearing was held on this resolution on (date).
3. The Council finds that it is fair and equitable to continue different rates for fuels and energy transmitted, distributed, manufactured, produced, or supplied for residential and agricultural purposes and for non-residential purposes.

Action

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

1. On and after July 1, 2010, the fuel/energy tax rates levied under Section 52-14 of the County Code are as shown on Schedule A, attached to this resolution.
2. This Resolution supersedes Resolution 16-553.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date

SCHEDULE A (starting July 1, 2010)

(a) For fuel-energy transmitted, distributed, manufactured, produced, or supplied for residential and agricultural purposes:

FUEL-ENERGY	TAX RATE
Electricity (per kilowatt hr)	\$0.0072924198
Natural Gas (per therm)	\$0.0628010617
Steam (per therm)	\$0.0822605134
Coal (per ton)	\$18.6267531744
Fuel oil (per gallon)	
No. 1	\$0.0899987212
No. 2	\$0.0933631594
No. 3	\$0.0933631594
No. 4	\$0.0955500442
No. 5	\$0.0974004852
No. 6	\$0.0995873700
Liquefied petroleum gas (per pound)	\$0.0135686262

(b) For fuel-energy transmitted, distributed, manufactured, produced, or supplied for non-residential purposes:

FUEL-ENERGY	TAX RATE
Electricity (per kilowatt hr)	\$0.0193251926
Natural Gas (per therm)	\$0.1664230814
Steam (per therm)	\$0.2179903605
Coal (per ton)	\$49.3578373320
Fuel oil (per gallon)	
No. 1	\$0.2384966112
No. 2	\$0.2474123724
No. 3	\$0.2474123724
No. 4	\$0.2532076172
No. 5	\$0.2581112858
No. 6	\$0.2639065305
Liquefied petroleum gas (per pound)	\$0.0359568595

SCHEDULE C-2

Revenues Detailed By Agency

	Actual FY09	Budget FY10	Estimated FY10	Recommended FY11	% Chg Bud/Rec
Special Funds Non-Tax Supported	275,448	575,000	575,000	575,000	—
Enterprise Funds Non-Tax Supported	12,326,760	14,150,000	12,409,600	14,578,300	3.0%
TOTAL M-NCPPC	122,395,151	123,746,840	121,219,010	110,709,610	-10.5%
OTHER					
SUMMARY					
GRAND TOTAL ALL FUNDS/AGENCIES	4,238,144,349	4,475,519,832	4,299,713,704	4,443,966,271	-0.7%

SCHEDULE C-3

Revenues Detailed By Agency, Fund and Type

	Actual FY09	Budget FY10	Estimated FY10	Recommended FY11	% Chg Bud/Rec
TAX SUPPORTED					
MONTGOMERY COUNTY GOVERNMENT					
County General Fund					
Taxes					
Property Taxes					
Countywide Tax	1,103,000,368	1,217,556,500	1,211,041,980	1,249,091,200	2.6%
Storm Drainage Tax	3,767,095	4,481,190	4,454,790	4,502,330	0.5%
Tax Rebate	-142,295,619	-168,942,072	-167,612,040	0	—
Income Tax Offset Credit	0	0	0	-168,814,443	—
New Business Incentive Tax Credit	-2,616,227	-4,000,000	-4,000,000	-4,026,150	0.7%
County Homeowner Tax Credit Program	-952,394	-1,867,619	-3,197,651	-1,896,331	1.5%
Penalties and Interest on Taxes	1,370,122	1,479,356	1,479,356	1,478,098	-0.1%
Property Tax Electric Deregulation	0	555,345	555,345	277,673	-50.0%
Prior Year Tax	45,962	2,039,721	2,039,721	2,039,721	—
Other Taxes					
County Income Tax	1,291,716,935	1,214,770,000	1,094,555,000	1,160,880,000	-4.4%
Real Property Transfer Tax	64,771,739	64,970,000	68,670,000	75,650,000	16.4%
Recordation Tax Premium	0	6,509,000	0	8,221,000	26.3%
Recordation Tax	42,437,217	51,880,000	46,121,000	51,020,000	-1.7%
Solar Tax Credit	0	-500,000	-500,000	-500,000	—
Energy Tax	129,328,307	130,360,000	132,194,000	185,120,000	42.0%
Telephone Tax	30,906,025	32,840,000	29,542,000	30,589,000	-6.9%
Hotel/Motel Tax	16,829,254	20,014,000	15,813,000	17,353,000	-13.3%
Admissions Tax	2,169,201	2,130,000	2,058,000	2,043,000	-4.1%
TOTAL TAXES	2,540,477,985	2,574,275,421	2,433,214,501	2,613,028,098	1.5%
Licenses & Permits					
Business Licenses					
Hazardous Materials Permits	683,432	700,000	928,000	700,000	—
Traders Licenses	735,338	780,000	780,000	780,000	—
Miscellaneous - Landlord-Tenant	155	15,000	0	0	—
Clerk of the Court Business Licenses	239,386	215,000	215,000	215,000	—
Burglar Alarm Licenses	77,740	67,030	70,000	67,000	0.0%
Other Business Licenses	4,467,736	4,414,390	4,553,610	4,549,260	3.1%
Public Health Licenses	2,263,481	2,171,920	2,209,650	2,209,650	1.7%
Non-Business Licenses					
Residential Parking Permits	165,925	125,000	185,000	185,000	48.0%
Marriage License\Ceremony Fees	65,358	67,000	67,000	67,000	—
Marriage Licenses-Battered Spouses	248,566	300,000	250,000	250,000	-16.7%
Other Non-Business Licenses	2,800	0	0	0	—
Pet Animal Licenses	351,890	277,040	369,300	369,300	33.3%