

MEMORANDUM

TO: County Council

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Expedited Bill 19-10, Taxes – Transportation Impact Tax - Amendments

Expedited Bill 19-10, Taxes – Transportation Impact Tax - Amendments, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on April 20, 2010. A public hearing is tentatively scheduled for May 11 at 1:30 p.m.

Bill 19-10 would update the credits which apply to the transportation impact tax and codify in the law the transportation mitigation payment referred to in the County Growth Policy.

This packet contains:	<u>Circle #</u>
Expedited Bill 19-10	1
Legislative Request Report	12
Memo from County Executive	13

Expedited Bill No. 19-10
Concerning: Taxes – Transportation
Impact Tax - Amendments
Revised: 4-16-10 Draft No. 4
Introduced: April 20, 2010
Expires: October 20, 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) modify the credits which apply to the transportation impact tax;
- (2) codify, and specify the terms of, the transportation mitigation payment referred to in the County Growth Policy; and
- (3) generally amend County law regarding impact taxes.

By amending

Montgomery County Code
Chapter 52, Taxation
Sections 52-47, 52-54, 52-55, and 52-59

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. Sections 52-47, 52-54, 52-55, and 52-59 are amended as follows:

52-47. Definitions.

In this Article the following terms have the following meanings

Additional capacity means a new road, widening an existing road, adding an additional lane or turn lane to an existing road, or another transportation improvement that:

- (1) increases the maximum theoretical volume of traffic that a road or intersection can absorb; and
- (2) is designated as arterial or higher classification in the County’s Master Plan of Highways, or is similarly designated or classified by a municipality.

Additional capacity is sometimes referred to as “highway capacity,” “transportation capacity,” or “intersection capacity”.

* * *

Major Activity Center is a commercial site, school, shopping area, transit area, Metro station, or other major employment area that generates pedestrian trips.

* * *

Operating Expense includes reasonable costs of staffing, advertising, marketing, building rental, furniture, supplies and materials, bus fuel, and personnel to operate a trip reduction program.

* * *

Sidewalk Connector means a sidewalk that provides a direct link or connection to a major activity center.

Social service provider[:] means a locally-based, federally tax-exempt nonprofit direct provider of social services whose primary service area is Montgomery County.

52-54. Refunds.

- 29 (a) Any person who has paid a development impact tax may apply for a
30 refund of the impact tax if:
- 31 (1) the County has not appropriated the funds for impact
32 transportation improvements of the types listed in Section 52-
33 58, or otherwise formally designated a specific improvement of
34 a type listed in Section 52-58 to receive funds, by the end of the
35 sixth fiscal year after the tax is collected;
- 36 (2) the building permit has been revoked or has lapsed because
37 construction did not start; or
- 38 (3) the project has been physically altered, resulting in a decrease
39 in the amount of impact tax due.
- 40 (b) Only the current owner of property may petition for a refund of the
41 impact tax. A petition for refund of the impact tax must be filed
42 within the time established for filing a claim for refund of a local tax
43 under state law.
- 44 (c) The petition for refund of the impact tax must be submitted to the
45 Director of Permitting Services on a form provided by the County.
46 The petition must contain at least:
- 47 (1) a statement that petitioner is the current owner of the property;
48 (2) a copy of the dated receipt for payment of the development
49 impact tax issued by the Department of Permitting Services;
50 (3) a certified copy of the latest recorded deed for the subject
51 property; and
- 52 (4) the reasons why a refund of the impact tax is sought.
- 53 (d) The Director of Permitting Services must investigate each claim and
54 hold a hearing [at the request of] if the petitioner requests a hearing.
55 Within 3 months after receiving a petition for refund of the impact

56 tax, the Director of Permitting Services must provide the petitioner, in
 57 writing, with a decision on the impact tax refund request. The
 58 decision must include the reasons for the [decisions] decision,
 59 including, as appropriate, a determination of whether impact tax funds
 60 collected from the petitioner, calculated on a first-in-first-out basis,
 61 have been appropriated or otherwise formally designated for impact
 62 transportation improvements of the types listed in Section 52-58
 63 within [six] 6 fiscal years. If a refund of the impact tax is due the
 64 petitioner, the Director of Permitting Services must notify the
 65 Department of Finance and, if the property is located in Gaithersburg
 66 or Rockville, the finance director of that city.

67 (e) The Department of Finance must not pay a refund of the impact tax
 68 unless the petitioner has paid all other state, county, or municipal
 69 taxes, fees, or charges that the Department is responsible for
 70 collecting.

71 (f) The petitioner may appeal the determination of the Director of
 72 Permitting Services in accordance with Article 24, Title 9, of the
 73 Maryland Code or any successor law.

74 **52-55. Credits.**

75 (a) (1) A property owner is entitled to a credit if the owner, before July
 76 1, 2002, entered into a participation agreement, or a similar
 77 agreement with the state or a municipality, the purpose of
 78 which was to provide additional transportation capacity. A
 79 property owner is also entitled to a credit if the owner receives
 80 approval before July 1, 2002, of a subdivision plan,
 81 development plan, or similar development approval by the
 82 County or a municipality that requires the owner to build or

83 contribute to a transportation improvement that provides
 84 additional transportation capacity. The Department of
 85 Transportation must calculate the credit. The credit must equal
 86 the amount of any charge paid under the participation
 87 agreement. The Department may give credit only for building
 88 permit applications for development on the site covered by the
 89 participation agreement. [The Department must not give a
 90 refund for a credit earned under this subsection.]

91 (2) Any credit that was certified under this subsection before
 92 February 1, 2010, expires on February 1, 2016.

93 (3) Any credit that is certified under this subsection after February
 94 1, 2010, expires 6 years after the Department of Transportation
 95 certifies the credit.

96 (b) A property owner must receive a credit for constructing or
 97 contributing to an improvement of the type listed in Section 52-58 if
 98 the improvement reduces traffic demand or provides additional
 99 transportation capacity. However, the Department must not certify a
 100 credit for any improvement to or other action limited to a State road,
 101 except a transit or trip reduction program that operates on or relieves
 102 traffic on a State road or an improvement to a State road that is
 103 included in a memorandum of understanding between the County and
 104 either Rockville or Gaithersburg.

105 (1) If the property owner elects to make the improvement, the
 106 owner must enter into an agreement with a municipality or the
 107 County, or receive a development approval based on making
 108 the improvement, before any building permit is issued. The
 109 agreement or development approval must contain:

- 110 (A) the estimated cost of the improvement, if known then[,];
- 111 (B) the dates or triggering actions to start and, if known then,
- 112 finish the improvement[,];
- 113 (C) a requirement that the property owner complete the
- 114 improvement according to applicable municipal or
- 115 County standards[,]; and
- 116 (D) such other terms and conditions as the municipality or
- 117 County finds necessary.
- 118 (2) The Department of Transportation must:
- 119 (A) review the improvement plan[,];
- 120 (B) verify costs and time schedules[,];
- 121 (C) determine whether the improvement is an impact
- 122 transportation improvement[,];
- 123 (D) determine the amount of the credit for the improvement
- 124 that will apply to the development impact tax[,]; and
- 125 (E) certify the amount of the credit to the Department of
- 126 Permitting Services before that Department or a
- 127 municipality issues any building permit.
- 128 (3) An applicant for subdivision, site plan, or other development
- 129 approval from the County, Gaithersburg, or Rockville, or the
- 130 owner of property subject to an approved subdivision plan,
- 131 development plan, or similar development approval, may seek a
- 132 declaration of allowable credits from the Department of
- 133 Transportation. The Department must decide, within 30 days
- 134 after receiving all necessary materials from the applicant,
- 135 whether any transportation improvement which the applicant
- 136 has constructed, contributed to, or intends to construct or

137 contribute to, will receive a credit under this subsection. If,
 138 during the initial 30-day period after receiving all necessary
 139 materials, the Department notifies the applicant that it needs
 140 more time to review the proposed improvement, the
 141 Department may defer its decision an additional 15 days. If the
 142 Department indicates under this paragraph that a specific
 143 improvement is eligible to receive a credit, the Department
 144 must allow a credit for that improvement when taking action
 145 under paragraph 2.

146 [(4) The County must not provide a refund for a credit which is
 147 greater than the applicable tax.]

148 [(5)] (4) (A) Any credit [issued] that was certified under this
 149 subsection on or after March 1, 2004, expires 6 years
 150 after the Department certifies the credit.

151 (B) Any credit that was certified under this subsection before
 152 March 1, 2004, expires on February 1, 2016.

153 (5) The property owner must notify the Department of
 154 Transportation of the actual cost of each improvement for
 155 which a credit was certified within 90 days after the
 156 improvement is completed. Each eligible cost must be
 157 expressly authorized in an applicable regulation. Any cost of
 158 dedicating land or another right-of-way is not eligible unless the
 159 owner shows that the improvement resulted in a loss of density
 160 for the development.

161 (6) If the actual cost of an improvement for which a credit was
 162 certified differs from its estimated cost:

163 (A) if the actual cost is greater than the estimate, the amount
 164 of the credit must be increased to cover the actual cost of
 165 the improvement;

166 (B) if the actual cost is less than the estimate:

167 (i) the amount of any credit that has not been used
 168 must be reduced by the difference between the
 169 estimate and the actual cost; and

170 (ii) if any impact tax on the development is owed, the
 171 property owner must pay the additional tax.

172 (c) A property owner may apply to the Director of Permitting Services for
 173 a credit for the amount of the development impact tax previously paid
 174 if:

175 (1) the project has been altered, resulting in a decrease in the
 176 amount of the tax due; or

177 (2) the building permit lapses because of noncommencement of
 178 construction.

179 [(d) Reserved.]

180 [(e)] (d) Any property owner who, before May 1, 2001, built all or part of a
 181 project in the Clarksburg planning policy area which is listed in the
 182 impact tax transportation program (including building any road which
 183 would be widened under the program) is entitled to a credit equal to
 184 the reasonable cost of the improvement. The Department of
 185 Transportation must calculate the credit. [The Department must not
 186 give a refund for a credit earned under this subsection.]

187 [(f)] (e) A property owner may transfer a credit against the development
 188 impact tax to another property owner if the transferor received the
 189 credit on or before August 7, 1992, in exchange for the sale of land to

190 the County. The transferee is entitled to the amount of credit
 191 transferred to it, up to the amount of unpaid impact tax the transferee
 192 owes. [The Department must not give a refund for a credit used under
 193 this subsection.] The Department must not allow more than
 194 \$2,750,000 in credits under this [subdivision] subsection.

195 [(g)] (f) Any [credits] credit for building or contributing to an impact
 196 transportation improvement [do] does not apply to any development
 197 that is approved under the Alternative Review Procedure for Metro
 198 Station Policy Areas in the County Growth Policy.

199 (g) A refund must not be granted for any credit certified under this
 200 Section.

201 (h) (1) If an improvement has not been completed and the impact tax
 202 credit is based on an estimated cost, the property owner must
 203 post a surety bond or similar instrument based on the estimated
 204 cost of the improvement.

205 (2) If the property owner does not construct or complete the
 206 improvement for which a credit has been issued, the County
 207 may use the bond as necessary to construct or complete the
 208 improvement.

209 (3) The Department may revoke a credit when the property owner
 210 does not build the improvement for which a credit was certified.

211 (i) Any credit certified for an improvement located in a municipality
 212 must be applied to impact tax payable on development in the same
 213 municipality.

214 (j) Any road or other transportation improvement that is local or internal
 215 to a development is not eligible for a credit under this Section.

216 (k) Any contribution to a transportation improvement must be to a
 217 specific project that is fully funded in the County capital improvement
 218 program or the similar program of a municipality to be eligible for a
 219 credit under this Section.

220 **52-59. [Reserved] Transportation Mitigation Payment.**

221 (a) In addition to the tax due under this Article, an applicant for a
 222 building permit for any building on which an impact tax is imposed
 223 under this Article must pay to the Department of Finance a
 224 Transportation Mitigation Payment if that building was included in a
 225 preliminary plan of subdivision that was approved under the
 226 Transportation Mitigation Payment provisions in the County Growth
 227 Policy.

228 (b) The amount of the Payment for each building must be calculated by
 229 multiplying the Payment rate by the total peak period trips generated
 230 by the development.

231 (c) The Payment rate is \$11,000 per peak period trip, unless modified by
 232 Council resolution. The Council by resolution, after a public hearing
 233 advertised at least 15 days in advance, may increase or decrease the
 234 Payment rate or set different rates for different types of development.

235 (d) The Payment must be paid at the same time and in the same manner as
 236 the tax under this Article, and is subject to all provisions of this
 237 Article for administering and collecting the tax.

238 (e) The Department of Finance must retain funds collected under this
 239 Section in an account to be appropriated for transportation
 240 improvements that result in added transportation capacity in the area
 241 where the development for which the funds were paid is located.

242 **Sec. 2. Expedited Effective Date.**

LEGISLATIVE REQUEST REPORT

Expedited Bill 19-10

Taxes --Transportation Impact Tax - Amendments

- DESCRIPTION:** Modifies the credits that apply to the Development Impact Tax. Codifies the Transportation Mitigation Payment referred to in the County Growth Policy
- PROBLEM:** Terms and provisions in the impact tax law need updating and clarification to be consistent with the way impact tax credits are currently administered. The Transportation Mitigation Payment referred to in the County Growth Policy has never been codified.
- GOALS AND OBJECTIVES:** To clarify the application of impact tax credits and refunds and definitions of terms used in the impact tax law, to limit the length of the life of credits; and to codify the Transportation Mitigation Payment requirement referred to in the County Growth Policy
- COORDINATION:** Departments of Transportation and Finance; Planning Board
- FISCAL IMPACT:** To be requested.
- ECONOMIC IMPACT:** To be requested.
- EVALUATION:** To be requested.
- EXPERIENCE ELSEWHERE:** To be determined.
- SOURCE OF INFORMATION:** David Moss, DOT, 240-777-2184
Michael Faden, Senior Legislative Attorney, 240-777-7905
- APPLICATION WITHIN MUNICIPALITIES:** The transportation impact tax applies County-wide.
- PENALTIES:** N/A

F:\LAW\BILLS\1019 Transportation Impact Tax - Exec Amends\LRR.DOC



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

MEMORANDUM

Isiah Leggett
County Executive

April 1, 2010

TO: Nancy Floreen, County Council President

FROM: Isiah Leggett, County Executive 

SUBJECT: Expedited Bill Relating to Impact Tax Credits

The purpose of this memorandum is to transmit for the Council's approval a bill which amends County law governing Impact Tax Credits. In the Fall of 2007, the Council reviewed and addressed issues related to the 2007-2009 Growth Policy. As part of that effort, the Council requested that the Executive Branch review and evaluate County law governing the Development Impact Tax for Transportation for the purpose of developing recommendations for possible amendments to that law. On September 15, 2009, I transmitted my recommendations for potential changes to Chapter 52 (Taxation) of the County Code as part of my recommendations on the Growth Policy. This bill implements those recommendations.

The bill is intended to provide clarification and guidance as well as tighten areas of the Code that are considered to be vague or open to multiple interpretations. These recommended changes are, in part, based on actual experience relating to Impact Tax Credit requests over the last several years. It should be noted that the Department of Transportation has, in every instance, evaluated the merits of requests for Impact Tax Credit in a consistent and fair manner with the goal of ensuring that decisions on credits will not result in setting an unacceptable precedent.

This bill is the result of a collaborative effort which has involved the Departments of Finance, Permitting Services and Transportation, Office of the County Attorney, Office of the Executive, and Montgomery County Planning Department of M-NCPPC, as well as Council staff and stakeholders, including, the Maryland National Capital Building Industry Association and the Montgomery County Civic Federation. Please direct any questions relating to this bill to David Moss of the Department of Transportation at 240-777-2184.

Attachments

c:
Jennifer Barrett, Director, Finance Department
Marc Hansen, Acting County Attorney
Arthur Holmes, Director, DOT
Carla Reid, Director, DPS
Diane Schwartz-Jones, ACAO

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