

**MEMORANDUM**

TO: County Council

FROM: ~~MR~~ Michael Faden, Senior Legislative Attorney

SUBJECT: **Public Hearing:** 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, was introduced on April 20, 2010. A Management and Fiscal Policy Committee worksession is tentatively scheduled for June 14.

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.

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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**

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By: Council President at the Request of the County Executive

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**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

<b>Boldface</b>	<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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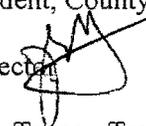
OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett  
County Executive

Joseph F. Beach  
Director

MEMORANDUM

May 6, 2010

TO: Nancy Floreen, President, County Council  
FROM: Joseph F. Beach, Director   
SUBJECT: Expedited Bill 19-10, Taxes - Transportation Impact Tax - Amendments

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

**LEGISLATION SUMMARY**

This legislation amends Chapter 52 of the Montgomery County Code with respect to the Development Impact Tax for Transportation. The purpose of these amendments is 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 amendments are, in part, based on actual experience relating to Impact Tax Credit requests over the last several years.

**FISCAL SUMMARY**

There is no fiscal impact directly related to this legislation. The legislation does not affect how the tax is calculated or collected. It provides clarification and guidance as to the process by which a credit may be certified and supports the way the law has been interpreted and implemented. It provides further clarification on how a determination is made as to whether a transportation improvement is eligible for a credit but there should not be any fiscal impact resulting from the amended language.

The following contributed to and concurred with this analysis: Adam Damin, Office of Management and Budget, and David Moss, Department of Transportation.

JFB:ad

- c: Kathleen Boucher, Assistant Chief Administrative Officer
- Dee Gonzalez, Offices of the County Executive
- Arthur Holmes, Director, Department of Transportation
- Jennifer Barrett, Director, Department of Finance
- John Greiner, Office of Management and Budget
- John Cuff, Office of Management and Budget

Office of the Director

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