

**MEMORANDUM**

TO: County Council

FROM:  Michael Faden, Senior Legislative Attorney  
Glenn Orlin, Deputy Staff Director

SUBJECT: **Public Hearing:** Expedited Bill 14-10, Recordation Tax – Allocation of Revenue

Expedited Bill 14-10, Recordation Tax – Allocation of Revenue, sponsored by the Council President at the request of the County Executive, was introduced on March 23, 2010. A Management and Fiscal Policy Committee worksession is tentatively scheduled for May 6 at 2 p.m.

**Recordation tax background** As Councilmembers will recall, the County recordation tax, levied under state law and shown in County Code §52-16B, since 2008 has 3 levels or tiers:

<b>Tier</b>	<b>Rate</b>	<b>Use of funds</b>
1	\$4.40/\$1000	General Fund (unrestricted)
2	\$2.50/\$1000	MCPS capital, College educational technology
3	\$3.10/\$1000 (>\$500,000)	50% County government capital improvements 50% new funding for rental assistance programs

**Summary** Bill 14-10 would suspend for the next 2 fiscal years the current requirement that portions of the recordation tax (Tier 3) be allocated to the cost of County Government capital projects and rental assistance programs for low and moderate income households.

On April 27, the Executive proposed a further amendment (see ©7-8) that would also suspend, for the next 3 fiscal years, the requirement that another portion of the recordation tax (Tier 2) be allocated to capital improvements to County schools and educational technology for Montgomery College.

**Fiscal impact** Council staff has not received a fiscal impact statement for this Bill or the Executive's amendment.

**Options** Other options before the Council for allocation of recordation tax revenue include:

- suspend the statutory revenue allocations in Tiers 2-3 only for the next fiscal year, FY11;
- repeal the statutory revenue allocations in Tiers 2-3 so that all recordation tax revenue goes to the General Fund and is available for any appropriation.

This packet contains:

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Expedited Bill 14-10	1
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Expedited Bill No. 14-10  
Concerning: Recordation Tax –  
Allocation of Revenue  
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

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By: Council President at the Request of the County Executive

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**AN EXPEDITED ACT** to:

- (1) revise the allocation of certain revenue received from the recordation tax; and
- (2) generally amend County law related to the recordation tax.

By amending

Laws of Montgomery County 2009  
Chapter 17

<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. Chapter 17 of the Laws of Montgomery County 2009 is amended as follows:**

\* \* \*

**Sec. 3. Allocation of Revenue.** During any fiscal year that begins on or after July 1, [2010] 2012, the net revenue attributable to the increase in the rate of the recordation tax enacted in this Act must be reserved for and allocated equally to:

- (a) the cost of County government capital improvements; and
- (b) rental assistance programs for low- and moderate-income households, which must not be used to supplant any otherwise available funds.

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

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

*Approved:*

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Nancy Floreen, President, County Council Date

*Approved:*

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Isiah Leggett, County Executive Date

*This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council Date

## LEGISLATIVE REQUEST REPORT

### Expedited Bill 14-10 Recordation Tax – Allocation of Revenue

**DESCRIPTION:** This Bill would suspend the current requirement that portions of the recordation tax be allocated to: (a) the cost of County Government capital projects; and (b) rental assistance programs for low and moderate income households.

**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  
Marc Hansen, Acting County Attorney

**APPLICATION WITHIN MUNICIPALITIES:** Revenue laws apply County-wide.

**PENALTIES:** N/A.



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

PLANNING SERVICES  
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.”<sup>1</sup> 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

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<sup>1</sup> 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



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

**MEMORANDUM**

April 27, 2010

TO: Nancy Floreen, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Proposed Amendment to Bill 14-10, Recordation Tax—Allocation of Revenue

The County has experienced a steep decline in projected revenues from the income tax. This decline combined with the need to restore the County's reserve levels to the 6% policy level has opened a FY-11 budget gap of approximately \$200 million. A major part of my recommended strategy for closing this budget gap is to reduce current revenue funding of capital projects.

In order to implement this strategy I am reluctantly recommending that Bill 14-10, Recordation Tax—Allocation of Revenue, be amended to suspend for two years the current requirement that a portion of the recordation tax be allocated to the cost of capital improvements to schools and educational technology for Montgomery College. A draft amendment to Bill 14-10 is attached to this memorandum.

IL:tjs

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2 Proposed Amendment to Bill 14-10  
3  
4

5 **Sec. 2. Chapter 9 of the Laws of Montgomery County 2002, Sec 4, as**  
6 **amended by Chapter 21 of the Laws of Montgomery County 2003, and**  
7 **further amended by Chapter 33 of the Laws of Montgomery County 2003, is**  
8 **further amended as follows:**

9 **Sec. 4. Allocation of Revenue**

10 During any fiscal year that begins on or after July 1, 2004, the net revenue  
11 attributable to the increase in the rate of the recordation tax enacted in this Act must  
12 be reserved for and allocated to the cost of capital improvements to schools and  
13 educational technology for Montgomery College in the form of debt service for debt-  
14 eligible projects and current revenue for debt-eligible or non-debt-eligible projects.  
15 This allocation ends as of the effective date of this Act and begins again during any  
16 fiscal year that begins on or after July 1, 2013.  
17