

**MEMORANDUM**

TO: County Council

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

SUBJECT: **Action:** Expedited Bill 59-10, Transportation Impact Tax – Amendments –  
White Flint Impact Tax District

**Government Operations and Fiscal Policy Committee recommendation: enact with amendments.**

Expedited Bill 59-10, Transportation Impact Tax – Amendments – White Flint Impact Tax District, sponsored by the Council President at the request of the County Executive, was introduced on December 14, 2010. A public hearing was held on January 18, at which the only speakers, representing the County Executive and LCOR Inc., endorsed the Bill (see LCOR testimony, ©7-8). A Government Operations and Fiscal Policy Committee worksession was held on January 31, at which the Committee recommended that Bill 59-10 be enacted with technical amendments.

Bill 59-10 would:

- create a White Flint impact tax district;
- define the boundaries of the district, coterminous with the White Flint special taxing district created by Bill 50-10;
- set the rate of impact taxes for the district at \$0, as the Council tentatively decided when it reviewed the White Flint financing plan; and
- apply the \$0 tax rate for any development for which an application for a building permit is filed on or after December 1, 2010.

**Fiscal and economic impact** OMB's fiscal impact statement (see ©6) estimated the 40-year revenue loss at \$72 million. OMB also estimated the "fiscal impact" of full buildout of the development authorized in the White Flint Sector Plan at \$6.8 billion in County revenues.

**Issues/Committee amendments**

1) **Revenue loss** While it considered the financing package for the infrastructure needed to build out the development authorized in the White Flint Sector Plan, the Council in November conceptually approved creating a new White Flint impact tax district and setting the tax rate in

that district at \$0. The effect would be to waive the transportation impact tax for any new development that pays the supplemental property tax in the White Flint special taxing district, created by Bill 50-10. Neither Bill 50-10 nor the accompanying infrastructure resolution implemented that decision because it must be done with a follow-up Bill to amend the impact tax law. This Bill is the vehicle to implement that decision, assuming that the Council still intends to do so. As noted above, the 40-year revenue loss from waiving the otherwise applicable transportation impact tax in this area was estimated at \$72 million.

**Committee recommendation:** create a White Flint impact tax district and set the tax rate at \$0.

**2) Effective date** When reviewing Bill 50-10, the Council also tentatively decided that the transportation impact tax rate for the remaining buildings in LCOR Inc.'s North Bethesda Center development should be \$0. This development had been approved under the former County Growth Policy's Alternative Review Procedure for Metro Station Policy Areas, under which its impact tax rate is 75% of the County-wide rate. In its subdivision approval, LCOR had committed to pay double the then-prevailing transportation impact tax rates without accepting any applicable impact tax credits.

As introduced, this Bill would waive the transportation impact tax for any development for which an application for a building permit is filed on or after December 1, 2010. As LCOR's testimony (see ©7-8) notes, as part of its North Bethesda Center development it filed a building permit application for a new Nuclear Regulatory Commission office building well before that date. LCOR asked for an amendment applying the Bill to any development for which a building permit is issued on or after December 14. The County Executive supported that amendment. If the Council concurs that buildings in the White Flint special taxing district with permits issued before this Bill is enacted should be exempt from the transportation impact tax, the Committee inserted an amendment to do so on ©3, lines 33-37.

**Committee recommendation:** revise the law's effective date to cover any development in the White Flint impact tax district with a building permit issued on or after December 1, 2010. The Committee also clarified that the County must refund any tax already paid for such a development (see ©3, lines 37-40).

This packet contains:

	<u>Circle #</u>
Expedited Bill 59-10 with Committee amendments	1
Legislative Request Report	4
Memo from County Executive	5
Fiscal Impact Statement	6
LCOR testimony	7

Expedited Bill No. 59-10  
Concerning: Transportation Impact Tax  
- Amendments - White Flint Impact  
Tax District  
Revised: 2-11-11 Draft No. 2  
Introduced: December 14, 2010  
Expires: June 14, 2012  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: December 1, 2010  
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) create a White Flint impact tax district;
- (2) define the boundaries of the White Flint impact tax district;
- (3) set the rates of the transportation impact tax for the district; and
- (4) generally amending the law governing the transportation impact tax.

By amending

Montgomery County Code  
Chapter 52, Taxation  
Sections 52-49 and 52-57

<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 52-49 and 52-57 are amended as follows:**

**52-49. Imposition and applicability of development impact taxes.**

\* \* \*

(c) The following impact tax districts are established[, consisting of the listed Policy Areas as defined in the Growth Policy]:

- (1) *Metro Station*: Friendship Heights, Bethesda CBD, Grosvenor, White Flint, Twinbrook, Rockville Town Center, Shady Grove Metro, Silver Spring CBD, Wheaton CBD, and Glenmont Metro station policy areas, as defined in the most recent Subdivision Staging Policy, except as modified by paragraph ~~[(4)]~~ (3) for the White Flint policy area;
- (2) *Clarksburg*: Clarksburg policy area, as defined in the most recent Subdivision Staging Policy;
- (3) *White Flint*: The ~~[[area]]~~ part of the White Flint Metro Station Policy Area included in the White Flint Special Taxing District in Section 68C-2; and
- (4) *General*: Any part of the County, including any municipality, not located in [a listed policy area] an area listed in paragraphs (1)-(3).

\* \* \*

**52-57. Tax rates.**

(a) The tax rates for each impact tax district, except as provided in subsection (b), are:

\* \* \*

(b) For any development located in the White Flint Impact Tax District, the tax rates are:

<i>Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)</i>	
<i>Building Type</i>	<i>White Flint</i>

High-rise residential (per dwelling unit)	\$0
Multifamily-senior residential (per dwelling unit)	\$0
Office (per sq.ft. GFA)	\$0
Industrial (per sq.ft. GFA)	\$0
Bioscience facility (per sq.ft. GFA)	\$0
Retail (per sq.ft. GFA)	\$0
Place of worship (per sq.ft. GFA)	\$0
Private elementary and secondary school (per sq.ft. GFA)	\$0
Hospital (per sq.ft. GFA)	\$0
Other nonresidential (per sq.ft. GFA)	\$0

- 27        [(b)](c)        \*        \*        \*
- 28        [(c)](d)        \*        \*        \*
- 29        [(d)](e)        \*        \*        \*
- 30        [(e)](f)        \*        \*        \*
- 31        [(f)](g)        \*        \*        \*

32        **Sec. 2.        Expedited Effective Date; Applicability; Refunds.**

33        The Council declares that this Act is necessary for the immediate protection  
 34 of the public interest. This Act takes effect on the date when it becomes law, and  
 35 applies to any development located in the White Flint impact tax district for which  
 36 [[an application for]] a building permit is [[filed]] issued on or after December 1,  
 37 2010. If any development impact tax was collected under Article VII of County  
 38 Code Chapter 52 before this Act took effect for any development to which this Act  
 39 applies, the Director of Finance must promptly refund that tax as if a refund were due  
 40 and claimed under County Code Section 52-54.

## LEGISLATIVE REQUEST REPORT

Expedited Bill 59-10

*Transportation Impact Tax – Amendments - White Flint Impact Tax District*

**DESCRIPTION:** The requested legislation establishes a new White Flint Impact Tax District, defines the boundaries of the District, and sets the tax rate in the District.

**PROBLEM:** Implementation of the White Flint Sector Plan.

**GOALS AND OBJECTIVES:** Implementation of the White Flint Sector Plan through (1) this legislation, (2) Bill 50-10, White Flint Special Taxing District, (3) Resolution 16-1570, White Flint Sector Plan Implementation Strategy and Infrastructure Improvement List, and (4) \$385,000 Special Appropriation to the FY11 Capital Budget and Amendment to the FY11-16 Capital Improvements Program (CIP) for White Flint District West: Transportation Project.

**COORDINATION:** Department of Finance; Office of Management and Budget

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** N/A

**EXPERIENCE ELSEWHERE:** N/A

**SOURCE OF INFORMATION:** Jennifer Barrett, Director, Department of Finance  
Joseph Beach, Director, Office of Management and Budget  
Kathleen Boucher, Assistant Chief Administrative Officer  
Diane S. Jones, Assistant Chief Administrative Officer

**APPLICATION WITHIN MUNICIPALITIES:** N/A

**PENALTIES:** N/A



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

December 9, 2010

2010 DEC 10 AM 9:49

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

TO: Valerie Ervin, President, County Council

FROM: Isiah Leggett, County Executive

SUBJECT: White Flint Impact Tax District

I am transmitting for Council introduction a bill to create a White Flint Impact Tax District. This is a follow-up to the Council's action, on November 30, 2010, on Bill 50-10, White Flint Special Tax District and Resolution 16-1570, White Flint Sector Plan Implementation Strategy and Infrastructure Improvement List.

Bill 50-10 created a special tax district for the White Flint area that is intended to replace certain development transportation charges, including transportation impact taxes. Resolution 16-1570 outlined an implementation strategy for the White Flint Special Tax District which includes creation of a White Flint Impact Tax District, with tax rates of \$0, to replace the existing transportation impact tax in White Flint.

The attached legislation creates the White Flint Impact Tax District envisioned in Resolution 16-1570. The boundaries of this district are the same as the boundaries for the White Flint Special Tax District. Within this area, the transportation impact tax rate is to be set at \$0.

Executive staff are available to assist the Council in any way as it considers the attached legislation. Thank you for your consideration and assistance in moving the White Flint Sector Plan forward towards realization.

- cc: Jennifer Barrett, Director, Department of Finance
- Art Holmes, Director, Department of Transportation
- Carla Reid, Director, Department of Permitting Services
- Diane Schwartz Jones, Assistant Chief Administrative Officer



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett  
County Executive

Joseph F. Beach  
Director

MEMORANDUM

January 11, 2011

TO: Valerie Ervin, President, County Council  
FROM: Joseph F. Beach, Director *J. F. Beach, Jr.*  
SUBJECT: Council Expedited Bill 59-10, Transportation Impact Tax – Amendments – White Flint Impact Tax District

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

**LEGISLATION SUMMARY**

Bill 59-10 would:

- create a White Flint impact tax district;
- define the boundaries of the district, coterminous with the White Flint special taxing district created by Bill No. 50-10;
- set the rate of impact taxes for the district at \$0; and
- apply the \$0 tax rate for any development for which an application for a building permit is filed on or after December 1, 2010.

**FISCAL AND ECONOMIC SUMMARY**

Bill 59-10 was designed to provide relief from a perceived and/or actual duplicate tax burden on developers who will also be paying the White Flint special taxing district tax. The economic impact of the bill is anticipated to be the removal of any such duplicate taxation as a potential hindrance to redevelopment proceeding; thus allowing significant economic development and tax base creation consistent with the White Flint Sector Plan. The estimated fiscal impact/return from the entire White Flint Sector Plan, assuming full build-out over the 40 year life of the Sector Plan, is over \$6.8 billion. The estimated amount of impact tax district taxes that would be foregone under Bill 59-10 is about \$72 million, also over the life of the Sector Plan, and estimated at current impact tax rates.

The following contributed to and concurred with this analysis: Jennifer Barrett and Mike Coveyou, Department of Finance; and Bryan Hunt and John Cuff, Office of Management and Budget.

JFB:bh

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

Office of the Director

**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

January 18, 2011

**Stephen P. Elmendorf**  
301.961.5110  
selmendorf@linowes-law.com

Council President Valerie Ervin  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20814

Re: Exp. Bill 59-10; White Flint Impact Tax District

Dear Council President Ervin and Members of the County Council:

This law firm represents LCOR, Inc., the developer of the White Flint Metro Station Property. On behalf of LCOR, I am writing to support the Council's adoption of Exp. Bill 59-10 with one caveat. As explained below, because the County Council was not able to adopt this legislation when it adopted the legislation establishing the White Flint Infrastructure Tax District, it is critical that this legislation contain the following language addressing its effective date:

“This Act takes effect on December 14, 2010 and applies to any development for which a building permit is issued on or after that date.”

LCOR is preparing to pull a building permit for a new NRC office building immediately adjacent to the White Flint Metro Station within the next fourteen (14) days. Because of its contractual obligations to GSA to deliver this building for NRC occupancy by a certain date, LCOR cannot delay pulling their permit until this legislation is adopted by the Council and signed by the Executive. Because this legislation is not likely to be effective before DPS issues this permit, under the existing transportation impact tax ordinance, LCOR will be required to pay a transportation impact tax when it receives this building permit.

Payment of this tax would be completely contrary to the decision the Council made, via its straw votes, back in November, that new development within the White Flint Sector Plan should not have to pay the transportation impact tax in addition to the new infrastructure tax district assessment. As a large office building (over 360,000 square feet), the NRC development will yield significant district tax revenue each year.

I understand that the County Executive is supportive of my proposed language for the effective date of this legislation. This is basically a timing issue. The Executive's recommendation and the Council's decision to create the White Flint Impact Tax District and to set its tax rate at \$0

Council President Valerie Ervin

January 18, 2011

Page 2

were made too late in the legislative process for the infrastructure tax district to allow final legislative action on the White Flint Impact Tax District to be taken last November.

I hope you will support this needed language on the legislation's effective date, to avoid an unfair and unintended consequence to LCOR.

If this legislation becomes law with this proposed effective date, DPS will need to refund this transportation impact tax payment to LCOR. There is a potential problem in that the current ordinance on transportation impact taxes, at Section 52-54 of the County Code, does provide for refunds under three circumstances. None of which covers LCOR's situation for this building permit. To clarify for DPS that Exp. Bill 59-10 does intend that DPS refund LCOR's impact tax payment, it may be necessary to amend Exp. Bill 59-10 to add additional language to Section 52-54(a) of the Code to address this refund situation. I suggest language to read as follow:

“(4) the project is located within the White Flint Impact Tax District and the building permit is issued on or after December 14, 2010”

Thank you for your anticipated consideration and support of the issue raised in this letter.

Very truly yours,

**LINOWES AND BLOCHER LLP**

  
Stephen P. Elmendorf

SPE:rmg

cc: Ms. Diane Schwartz-Jones  
Mr. Michael Smith