Agenda Item 74
May 5, 2015
Public Hearing

MEMORANDUM

May 1, 2015

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney

SUBJECT: **Public Hearing:** Bill 8-15, Taxation – Development Impact Tax - Exemptions

Bill 8-15, Taxation – Development Impact Tax - Exemptions, sponsored by Council Vice-President Floreen and Councilmembers Riemer, Rice, Katz and Navarro, was introduced on February 3. The Council conducted a public hearing on March 3, 2015. A second hearing was made necessary due a problem with the published notice for the March 3 hearing. A Government Operations and Fiscal Policy Committee worksession will be scheduled at a later date.

Bill 8-15 would exempt the market-rate rental dwelling units in any development which consists of at least 25% affordable housing units from the transportation and school development impact taxes. This Bill is very similar to Bill 39-11 as that Bill was recommended to be amended by the Government Operations and Fiscal Policy Committee. On May 7, 2013, the Council considered Bill 39-11 and laid the bill on the table. Bill 39-11 expired without further action on December 1, 2014.

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Bill No. 8-15
Concerning: Taxation - Development Impact Tax - Exemptions
Revised: 1-20-15 Draft No. 1
Introduced: February 3, 2015
Expires: August 3, 2015
Enacted: ______
Executive: ______
Effective: ______
Sunset Date: None
Ch. ____, Laws of Mont. Co. ______

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council Vice-President Floreen, and Councilmembers Riemer, Rice, and Katz

AN ACT to:

(1) exempt certain housing units from certain development impact taxes; and
(2) generally amend the law governing development impact taxes.

By amending

Montgomery County Code
Chapter 52, Taxation
Sections 52-49 and 52-89

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

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

Section 1. Sections 52-49 and 52-89 are amended as follows:

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

* * *

(g) A development impact tax must not be imposed on:

(1) any Moderately Priced Dwelling Unit built under Chapter 25A or any similar program enacted by either Gaithersburg or Rockville;

(2) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning less than 60% of the area median income, adjusted for family size;

(3) any Personal Living Quarters unit built under Sec. 59-A-6.15, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(4) any dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(5) any non-exempt rental dwelling unit in a development in which at least 25% of the dwelling units are exempt under paragraph (1), (2), (3), or (4), or any combination of them, if:

(A) the development is not located on publicly-owned land or land that was publicly-owned when the development was proposed; and

(B) the development has not received other benefits under Chapter 59 because the development includes more than the minimum required affordable housing; and

[(5)] <u>(6)</u> any development located in an enterprise zone designated by the State or in an area previously designated as an enterprise zone.

* * *

52-89. Imposition and applicability of tax.

* * *

(c) The tax under this Article must not be imposed on:

(1) any Moderately Priced Dwelling Unit built under Chapter 25A or any similar program enacted by either Gaithersburg or Rockville;

(2) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning less than 60% of the area median income, adjusted for family size;

(3) any Personal Living Quarters unit built under Sec. 59-A-6.15, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(4) any dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

<u>(5) any non-exempt rental dwelling unit in a development in which at least 25% of the dwelling units are exempt under paragraph (1), (2), (3), or (4), or any combination of them, if:</u>

<u>(A) the development is not located on publicly-owned land or land that was publicly-owned when the development was</u>

proposed; and

(B) the development has not received other benefits under Chapter 59 because the development includes more than the minimum required affordable housing; and

[(5)] (6) any development located in an enterprise zone designated by the State or in an area previously designated as an enterprise zone.

* * *

Section 2. Applicability. County Code Section 52-49(g)(5) and Section 52-89(c)(5), both inserted by Section 1 of this Act, do not apply to any development which received preliminary subdivision plan approval or site plan approval (or a similar approval in a municipality) before this Act took effect.

Approved:

____

George Leventhal, President, County Council　　　　Date

Approved:

____

Isiah Leggett, County Executive　　　　Date

This is a correct copy of Council action.

____

Linda M. Lauer, Clerk of the Council　　　　Date

LEGISLATIVE REQUEST REPORT

Bill 8-15
Taxation – Development Impact Tax - Exemptions

DESCRIPTION:	Exempts the market-rate rental dwelling units in any development which consists of at least 25% affordable housing units from the transportation and school development impact taxes.
PROBLEM:	Need to encourage provision of affordable housing.
GOALS AND OBJECTIVES:	To create further incentives to increase the share of low- and moderate-income housing in new developments
COORDINATION:	Department of Permitting Services, Department of Housing and Community Affairs, Planning Board
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney, 240-777-7895
APPLICATION WITHIN MUNICIPALITIES:	Impact taxes apply County-wide.
PENALTIES:	Not applicable.

ROCKVILLE, MARYLAND

MEMORANDUM

March 31, 2015

TO: George Leventhal, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: FEIS for Bill 8-15, Taxation – Development Impact Tax - Exemptions

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph F. Beach, Director, Department of Finance
Diane Jones, Department of Permitting Services
David Platt, Department of Finance
Alex Espinosa, Office of Management and Budget
Dennis Hetman, Office of Management and Budget
Felicia Zhang, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Council Bill 8-15 Taxation – Development Impact Tax - Exemptions

1. **Legislative Summary.**

   Bill 8-15 would exempt the rental market-rate dwelling units in any housing development which consists of at least 25% affordable housing units from the transportation and school development impact taxes they would otherwise have to pay.

2. **An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

   In response to a similar Bill (39-11) DPS examined several areas that have major rental housing projects in the pipeline and that are assumed to be moving forward. This analysis assumes anticipated development in three planning areas (Great Seneca Science Corridor (GSSC); White Flint; and Shady Grove-County Service Park West (CSWP)) and projects the lost impact tax revenue if *all potential* projects took advantage of the proposed bill.

Potential Lost Impact Tax Revenues under Maximum-Loss Scenario

Master/Sector Plan Area	Total Rental Units Supplied	Additional MPDUs	Loss in Transportation Impact Taxes	Loss in School Impact Taxes	Loss in Total Impact Taxes	Cost per Additional MPDU
GSSC	1,550	193	$9,513,900	$8,112,700	$17,626,600	$91,330
White Flint	3,266	408	N/A	$17,094,244	$17,094,244	$41,898
CSPW	1,114	33	$6,837,732	$5,830,676	$12,668,408	$383,891
Total	**5,930**	**634**	**$16,351,632**	**$32,044,676**	**$48,576,308**	**$76,619**

Under the above scenario, the additional 634 affordable units provided under the waiver would result in $48,576,308 in lost impact tax revenue at an average cost to the taxpayer of $76,619 per each additional MPDU constructed.

3. **Revenue and expenditure estimates covering at least the next 6 fiscal years.**

   No additional expenditures are expected as a result of this Bill. Illustrative revenue impacts are described above.

4. **An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

   Not applicable.

5. **Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

   Not applicable

6. **An estimate of the staff time needed to implement the bill.**

   No additional staff time is needed from DHCA, DPS, and Finance to implement the Bill.

7. **An explanation of how the addition of new staff responsibilities would affect other duties.**

   Not applicable.

8. **An estimate of costs when an additional appropriation is needed.**

   Not applicable.

9. **A description of any variable that could affect revenue and cost estimates.**

   Revenues (or lost impact tax revenues) may be affected by changes in the impact tax rate. The quantity of additional MPDUs developers elect to build may also affect revenues (or lost impact tax revenues).

10. **Ranges of revenue or expenditures that are uncertain or difficult to project.**

    The change in impact tax receipts is difficult to project. Impact tax revenues would vary, depending on the number of developers that elect to build under this waiver.

    Additionally, the market dictates whether projects will be condominium or rentals and it is difficult to predict what future shifts will be. If expected development in different plan areas changes from rental to fee simple sales, fewer projects would make use of the provisions of this Bill. Projects in areas that are now, or were formerly, an enterprise zone are not subject to development impact taxes. Therefore, there would not be lost revenues in these areas. Conversely, the beneficial intent of the Bill would not be realized in these areas either.

11. **If a bill is likely to have no fiscal impact, why that is the case.**

The fiscal impact of this Bill is difficult to determine since it depends completely on the number of developers who avail themselves of this credit.

12. Other fiscal impacts or comments.

Not applicable.

13. The following contributed to and concurred with this analysis: (Enter name and department).

Diane Schwartz Jones, Department of Permitting Services

Hadi Mansouri, Department of Permitting Services

Timothy Goetzinger, Department of Housing and Community Affairs

Dennis Hetman, Office of Management and Budget

Jennifer A. Hughes

Jennifer A. Hughes, Director
Office of Management and Budget

3/31/15
Date

Economic Impact Statement
Bill 8-15, Taxation – Development Impact Tax – Exemptions

Background:

This legislation would exempt the market-rate rental dwelling units in any development which consists of at least 25 percent affordable housing units from the transportation and school development impact taxes.

1. **The sources of information, assumptions, and methodologies used.**

   Sources of information include:
   - Department of Permitting Services (current school and transportation development impact tax rates),
   - Department of Housing and Community Affairs (sample of properties with 250 units including market rates, number of moderately priced dwelling units (MPDUs), and rental rates for MPDUs),
   - McGraw-Hill Construction, Dodge Local Construction Potentials Bulletin (construction costs in Montgomery County for multi-family housing),
   - National Apartment Association ("2013 Survey of Operating Income & Expenses in Rental Apartment Communities"), and
   - Department of Planning.

2. **A description of any variable that could affect the economic impact estimates.**

   The variables that could affect the economic impact estimates are:
   - Current market rental rates,
   - Current rental rates for MPDUs,
   - Current number of MPDUs in the sample of properties provided by DHCA
   - Construction costs,
   - Gross operating profit margin for rental units provided by the National Apartment Association, and
   - The number of unbuilt multi-family dwelling units.

3. **The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.**

   Bill 8-15 could have an impact on the profitability of a new rental development. The impact is based on the assumptions presented in the previous paragraph. Those assumptions include changes to:
   - current market rental rates,
   - current MPDU rental rates,
   - the difference between current market rental rates and current MPDU rental rates,
   - construction costs,
   - school and transportation development impact tax rates, and

- gross profit margin.

Incorporating data provided by DHCA on three sample properties and the National Apartment Association on gross profit margin, Finance estimated the economic effect on business income for new rental property resulting from raising the percent from 12.5 percent to 25 percent.

Under the current policy of providing 12.5 percent rental units at MPDU rates, the benefit to the developer/owner of not incurring both school and transportation development impact taxes in return for charging lower rental rates for MPDU units varies by property. For example, given the three sample properties provided by DHCA, the benefit would expire between six and ten years. That is, for the developer/owner the number of years that the developer/owner would benefit from the exemption of paying the school and transportation development impact taxes versus the loss of revenues from MPDU rental units is a benefit between six and ten years. After that period, the amount of annual rental income earned by the developer/owner over the remaining life to the property is less than the annual rental income if all units paid the market rental rate.

For one of the sample properties, there are 43 MPDUs out of a total of 347 units or 12.6 percent of the total units pay MPDU rental rates. Based on the difference between the current market rental rate and the MPDU rental rate, the development loses approximately $963,000 per year due to the difference in the rental rates. With the exempted amount of $6.3 million in school and transportation development impact taxes, the exempted amount will cover nearly seven years in lost rental revenues. The coverage in the loss of revenues depends on the difference between the development's market rental rate and the MPDU rental rate and the number of units qualifying as MPDUs.

Under the proposed policy of providing 25.0 percent rental units at MDPU rates, that coverage of lost rental revenue and the exemption from the school and impact development impact taxes is between three and five years based on the sample properties and on the current rental rate differential and the number of MPDU units. Using the same example as in the previous paragraph, the number of MPDUs would increase from the current 43 units to 86 units and would result in an annual loss of approximately $1.9 million in rental revenues. With the same exempted amount of $6.3 million, the exemption would cover only three years of the lost revenue.

Therefore, over the short period of two to three years, Bill 8-15 would have a positive economic benefit to rental property developers and owners. However, that benefit would end after that period because the amount of lost rental income would be greater than the amount saved from the exemption of development impact taxes.

The impact of Bill 8-15 is based on the sample of properties provided by DHCA and the inability and lack thereof of increasing market rental rates compared to MDPU rental rates such that the difference remains constant over the life of the property. If the developers/owners of the rental property had the ability, or market power, to raise market rental rates such that the difference between market rates and MPDU rates increased, then the developers/owners would not incur a loss of rental income (assuming operating expenses remaining constant) and the developers/owners would maintain their current operating profit margin of fifty-five percent.

Finally, data provided on the Department of Planning's website state that the number of unbuilt multi-family units in the pipeline is 27,899. Under the current policy of 12.5 percent set aside, the number of MPDUs is approximately 3,490 units. Increasing that percentage to 25 percent would increase the number of units by 3,490 for a total of 6,980. Therefore, Bill 8-15 would increase the number of MPDUs by providing low-income families an increase in the number of affordable rental housing and thereby providing an economic benefit to low-income families.

4. **If a Bill is likely to have no economic impact, why is that the case?**

Bill 8-15 would have an economic benefit to the developer/owner over a short period of time. But that benefit period is reduced compared to the current policy of 12.5 percent and assumes that the developer/owners do not have the ability to raise market rental rates above the current difference between those rates and rental rates for MPDUs. To offset the estimated deleterious financial effect on the developers'/ owners' revenues, there is an economic benefit to low-income families due to an increase in the number of affordable rental units. However, without precise data on the revenue loss to developers/owners and the economic benefit to low-income families, it is difficult to determine with any accuracy the total economic impact, either positive or negative, on the County.

5. **The following contributed to or concurred with this analysis**: David Platt, Mary Casciotti, and Rob Hagedoorn, Finance.

Joseph F. Beach, Director
Department of Finance

3/20/15
Date