Climate Assessment

Office of Legislative Oversight

Expedited Bill 25-23: Taxation – Development Impact Taxes for Transportation and Public School Improvements – Amendments

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Expedited Bill 25-23 will have a minimal, negative impact on the County's contribution to addressing climate change as OLO expects the proposed changes could decrease revenue from development impact taxes which in turn would make it more difficult to fund transportation infrastructure projects designed to limit climate change. Further, the decrease in total development taxes paid by developers may lead to an increase in development, possible exacerbating the negative impact.

BACKGROUND AND PURPOSE OF EXPEDITED BILL 25-23

"Development Impact Taxes" are a means by which local governments "collect revenue from builders for public facilities necessitated by new residential or commercial development," thereby "shift[ing] the costs of financing new public facilities from existing taxpayers to individuals responsible for the development."[1]

The County has development impact taxes for transportation and schools. The Transportation Development Impact Tax is assessed on both residential and commercial projects and is used to fund improvements to enhance local transportation capacity. The School Development Impact Tax is assessed on residential projects only and is used to fund improvements to enhance the capacity of the public school system. [2]

If enacted, Expedited Bill 25-23 would make the following changes to the Transportation and School Development Impact Taxes:

- Use a cumulative approach over the prior two years rather than an annual average in calculating tax rate adjustments for development impact taxes;
- Establish a 20% inflation cap on the biennial tax rate adjustments; and
- Require that biennial tax rate adjustments exceeding 20% be carried over and added to the next biennial adjustment.[3]

According to the Introductory Staff Report for the Bill, the net result of making these changes would be "a net revenue loss of about $24.5 million in FYs 24-28."[4]

Expedited Bill 25-23, Taxation – Development Impact Taxes for Transportation and Public School Improvements – Amendments, was introduced by the County Council on May 18, 2023.

Anticipated Impacts

Development impact taxes are set by the Montgomery County Council and partly fund improvements necessary to increase the capacity of transportation or public school systems.[5] These taxes are assessed on new residential and commercial buildings and additions to commercial buildings and in general, development taxes and fees are meant to help municipalities recover growth-related infrastructure and public service costs.[6]

In 2001, Bill 47-01, Development Impact Tax – Amendments, established transportation impact taxes countywide and established several non-personal car centric categories for eligible transportation projects including: Ride On buses and shelters, new or expanded transit centers, hiker-biker trails, sidewalk connectors, and bike storage facilities.[7] The projects that fall within these categories can encourage more constituents to choose different modes of transportation outside of cars, which are less carbon intensive and can lead to a decrease in greenhouse gas emissions associated with transportation.[8] However, the revenue raised from development impact taxes could still go to transportation infrastructure that encourage more private passenger vehicle travel, such as the addition of a lane on an existing road or a new road.[9]

Further, according to Council Staff, Bill 25-23 would result in a net loss of about $24.5 million in FYs 24-28 and would decrease the amount of money available for the funding of transportation costs.[10] However, there are other streams of revenue that the County could access for local transportation infrastructure projects, so a decrease in this stream is not guaranteed to prevent a project from being completed.

OLO anticipates Expedited Bill 25-23 will have a minimal, negative impact on the County's contribution to addressing climate change as OLO expects the proposed changes could decrease revenue from development impact taxes which in turn would make it more difficult to fund transportation infrastructure projects designed to limit climate change. Further, the decrease in total development taxes paid by developers may lead to an increase in development, possible exacerbating the negative impact.

Recommended Amendments

The Climate Assessment Act requires OLO to offer recommendations, such as amendments or other measures to mitigate any anticipated negative climate impacts.[11] OLO does not offer specific amendments to Expedited Bill 25-23, but instead suggests that the Council prioritize the funding of transportation infrastructure that encourages less carbon-intensive modes of transportation such as walking, biking, and public transit. This could offset negative externalities of development, such as increased greenhouse gas emissions associated with development.

CAVEATS

OLO notes two caveats to this climate assessment. First, predicting the impacts of legislation upon climate change is a challenging analytical endeavor due to data limitations, uncertainty, and the broad, global nature of climate change. Second, the analysis performed here is intended to inform the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of legislation on the County's contribution to addressing climate change. These climate assessments will provide the Council with a more thorough understanding of the potential climate impacts and implications of proposed legislation, at the County level. The scope of the Climate Assessments is limited to the County's contribution to addressing climate change, specifically upon the County's contribution to greenhouse gas emissions and how actions suggested by legislation could help improve the County's adaptative capacity to climate change, and therefore, increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed County bills may impact GHG emissions and community resilience.

CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

[1] "County Development Impact Fees and Building Excise Taxes in Maryland", Department of Legislative Services, 2013.
[2] "Development Impact Taxes", Montgomery County Department of Permitting Services, Accessed 6/8/23.
[3] "Introduction Staff Report for Expedited Bill 25-23", Montgomery County Council, May 18, 2023.
[4] Ibid.
[5] "Development Impact Taxes", Montgomery County Department of Permitting Services, Accessed 6/8/23.
[6] "Development Impact Fees" U.S. Department of Transportation Federal Highway Administration, Accessed 6/9/23.
[7] "Introduction Staff Report for Bill 27-16", Montgomery County Council, November 15, 2016.
[8] "Public Transit, Walking, and Biking", Environmental and Energy Study Institute, Accessed 6/12/23.
[9] Montgomery County Code, Chapter 52. Taxation, Article IV. Development Impact Tax for Transportation Improvements (section 52-50), Accessed 6/9/23
[10] "Introduction Staff Report for Expedited Bill 25-23", Montgomery County Council, May 18, 2023.
[11] Bill 3-22, Legislative Branch – Climate Assessments – Required, Montgomery County Council, Effective date October 24, 2022