

# Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

## EXPEDITED TAXATION - DEVELOPMENT IMPACT TAXES FOR BILL 25-23: TRANSPORTATION AND PUBLIC SCHOOL IMPROVEMENTS - AMENDMENTS

### SUMMARY

The Office of Legislative Oversight (OLO) anticipates Expedited Bill 25-23 will have a negative impact on racial equity and social justice (RESJ) in the County through reducing development impact tax revenue, particularly for school capital projects. In the short-term, the Bill would generally benefit developers who are disproportionately White with decreased tax payments, while likely diminishing the quality of school facilities for BIPOC students who account for the majority of Montgomery County Public Schools (MCPS) enrollment. The negative RESJ impact likely outweighs any positive impacts that could exist from increased revenue for transportation capital projects generated through this Bill in the short-term.

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### PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements (RESJIS) is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.<sup>1</sup> Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.<sup>2</sup>

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### 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.”<sup>3</sup>

The County collects 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.<sup>4</sup>

If enacted, Bill 25-23 would make the following changes to the Transportation and School Development Impact Taxes:<sup>5</sup>

- 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 percent inflation cap on the biennial tax rate adjustments; and
- Require that biennial tax rate adjustments exceeding 20 percent be carried over and added to the next biennial adjustment.

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According to Council staff, the result of making these changes would cause a net revenue loss of about \$24.5 million in fiscal years 2024 through 2028.<sup>6</sup>

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.

In August 2022, OLO published a RESJIS for Bill 24-22, Streets and Roads.<sup>7</sup> Please refer to this RESJIS for additional background on transportation infrastructure and racial equity.

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### CAPITAL PROJECTS AND RACIAL EQUITY

Capital projects are large, long-term investments in community facilities and infrastructure that are funded through the government, such as the construction of public schools, street maintenance, and parks improvements.<sup>8</sup> As described by the Government Finance Officers Association, capital projects “have real social impacts: raising local property values, reducing injury, and developing public spaces that provide a wealth of community benefits,” among many others.<sup>9</sup> While capital projects are impactful, too often their benefits are not equitably distributed among communities by race and ethnicity. This section describes racial inequities in capital projects impacted by Bill 25-23: public school facilities and transportation infrastructure.

**Inequities in public school facilities.** Racial inequities in schools are largely rooted in the nation’s legacy of racial segregation, whereby separate and unequal institutions were established to provide superior resources to White people and inferior resources to Black, Indigenous, and Other People of Color (BIPOC). Such was the case with public school facilities in Montgomery County. As described by Montgomery History, after state law mandated the separate education of White and Black students in 1872, “[t]he Montgomery County school board resisted the construction and maintenance of [B]lack schools. New schools were promised but never built. Repairs to old and inadequate facilities were often refused; damaged or burned structures were ignored for years, and teachers were forced to find some other place to hold class.”<sup>10</sup>

As noted by researchers at the Urban Institute, school facilities play an integral role in student well-being and success through mitigating indoor air pollutants and mold, protecting from lead exposure, creating a welcoming environment, and influencing environmental factors that can affect student learning and academic achievement.<sup>11</sup> However, there is evidence that racially and economically segregated schools continue to drive disparities in the quality of public school facilities today. For instance, in 2012-13, higher-poverty schools in the U.S. with large shares of students eligible for free and reduced-price lunch and schools with high shares of BIPOC students were more likely to include portable or temporary buildings and were more likely to be rated in “fair” or “poor” condition.<sup>12</sup>

In the County, racial and economic disparities in the quality of public school facilities have generally been understudied. In terms of funding for school facilities, data in Table 1 demonstrates that most funding for MCPS capital projects (41.8 percent or \$1.7 billion) was not identified by district in the approved FY23 Capital Improvements Program (CIP) budget. However, where the district was identified, former Council District 1 – where White residents were largely overrepresented (Table A, Appendix) – had the largest allocation of funding for MCPS capital projects.

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**Table 1: Total Cost of FY23 MCPS CIP Projects by Council District**

District	Total Cost (in thousands)	Total Cost (%)
Countywide	\$1,697,735	41.8
District 1	\$593,069	14.6
District 2	\$523,296	12.9
District 3	\$390,571	9.6
District 4	\$405,734	10.0
District 5	\$451,107	11.1

Source: OLO Analysis of Open Budget Data, Montgomery County Office of Management and Budget.

**Inequities in transportation infrastructure.** A history of inequitable policies and practices have shaped today's transportation landscape. The Federal-Aid Highway Act of 1956, which created the interstate highway system, was one of the most consequential transportation policies for accelerating racial inequities in various domains.<sup>13</sup>

Highway construction and urban renewal efforts through the 1970s destroyed and displaced many Black neighborhoods, increasing isolation, crowding, and clustering of BIPOC communities.<sup>14</sup> The U.S. Department of Transportation estimated in the 20 years after the passage of the Federal-Aid Highway Act, more than 475,000 households were displaced, mostly in low-income and BIPOC communities.<sup>15</sup> In 2022, two students from Eastern Middle School in Silver Spring won the C-SPAN StudentCam documentary competition for their film on Gibson Grove, a once thriving Black community in the County that was divided by the construction of I-495 in the 1950s.<sup>16</sup>

Today, the interaction of transportation inequities with residential segregation and the racial wealth gap facilitates more housing and transportation choices for White people meanwhile limiting choices for BIPOC.<sup>17</sup> In 2021, an estimated 11.4 of Black households in the County did not have access to a vehicle, compared to 8.4 percent of Asian households, 7.5 of Latinx households, and 5 percent of White households.<sup>18</sup> In a transportation system dominated by cars, limited access to vehicles and dependence on unreliable public transit often makes it more difficult for BIPOC to access jobs, education, healthy food options, and more.<sup>19</sup> As described by the Center on Race Inequality & the Law at the New York University School of Law, "the country's transportation system continues to be planned, funded, and operated in ways that restrict [] low-income people and communities of color," prioritizing investments in highways and suburban commuter rail systems while chronically underfunding public transportation systems communities of color rely on.<sup>20</sup>

In the County, data in Table 2 demonstrates that most funding for transportation capital projects (54.9 percent or \$2.4 billion) was not identified by district in the approved FY23 CIP budget. However, where the district was identified, former Council District 1 – where White residents were largely overrepresented (Table A, Appendix) – had the largest allocation of funding for transportation capital projects. Former Council District 4 – where Latinx residents were overrepresented (Table A, Appendix) – received about one third the funding of former Council District 1 for transportation projects. While District 3 also had a relatively low allocation, this is likely because more transportation projects within this district are funded through the incorporated localities of Rockville and Gaithersburg.

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**Table 2: Total Cost of FY23 Transportation CIP Projects by Council District**

District	Total Cost (in thousands)	Total Cost (%)
Countywide	\$2,425,643	54.9
District 1	\$612,875	13.9
District 2	\$455,413	10.3
District 3	\$232,104	5.3
District 4	\$219,764	5.0
District 5	\$470,326	10.7

Source: OLO Analysis of Open Budget Data, Montgomery County Office of Management and Budget.

### ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 25-23 on RESJ in the County, OLO recommends the consideration of two related questions:

- Who are the primary beneficiaries of this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

To answer these questions, OLO considered the various stakeholders that would be impacted by changes to development impact taxes and RESJ concerns for each group:

- **Developers of commercial and residential properties** would benefit from a cap on development impact taxes. Council staff estimates changes to the tax rate calculation proposed by Bill 25-23 would decrease School Development Impact Taxes by \$28.8 million over five years and increase Transportation Development Impact Taxes by \$4.3 million over five years. In aggregate, changes to the tax rate calculation would result in a net decrease in development impact taxes paid by developers of \$24.5 million over five years.<sup>21</sup>

As approximated by business ownership in the construction sector, Census data summarized in Table 3 suggests White people are largely overrepresented among developers in the DC metro region, while BIPOC are underrepresented.

**Table 3: Percent of Population and Construction Business Owners by Minority Business Status, Washington-Arlington-Alexandria, DC-VA-MD-WV Metro Area**

Minority Business Status	Population	Construction Business Owners (NAICS 23)
Nonminority (White and non-Latinx)	42.3	73.4
Minority (any other race and ethnicity combination other than White and non-Latinx)	57.7	26.0

Source: 2020 Decennial Census (Table DP1) and 2020 American Business Survey (Table AB2000CSA01), Census Bureau.

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- **Students, staff, and other stakeholders using MCPS facilities** may experience lower quality school facilities from decreased funding for school capital projects in the short-term. Table 1 in the previous section demonstrates that most funding for MCPS projects in the CIP are not identifiable by district. Thus, it is unclear whether decreased funding for these projects could particularly affect stakeholders in districts where BIPOC or White constituents are overrepresented. However, more broadly, the decrease in funding would likely impact the quality of school facilities for BIPOC students, as they account for a majority of MCPS enrollment.<sup>22</sup>
- **County constituents and other stakeholders using transportation infrastructure** may experience improved transportation infrastructure from increased funding for transportation capital projects in the short-term. Table 2 in the previous section demonstrates that most funding for transportation projects in the CIP are not identifiable by district. Thus, it is unclear whether increased funding for these projects could particularly benefit stakeholders in districts where BIPOC or White constituents are overrepresented.

Taken together, OLO anticipates Bill 25-23 will have a negative impact on RESJ in the County through benefitting developers who are disproportionately White and who may not live in the County with a cap on development impact taxes and changes to tax rate calculations that will generally decrease their tax payments in the short-term. The consequent decrease in funding for school capital projects in the short-term would likely diminish the quality of school facilities for BIPOC students, as they account for a majority of MCPS enrollment. The RESJ impact of increased funding for transportation capital projects in the short-term is indeterminant. However, to the extent BIPOC constituents could benefit from increased funding for transportation capital projects, the negative RESJ impact of decreased funding for school capital projects likely outweighs this effect since the expected decrease in funding for schools outweighs the increase in funding for transportation by more than six times.

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## RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.<sup>23</sup> OLO anticipates Expedited Bill 25-23 will have a negative impact on RESJ in the County, with some components having an indeterminant impact. Should the Council seek to improve the RESJ impact of this Bill, two policy options are offered for consideration:

- **Commission Equity Review of the Capital Improvements Program.** To understand and address potential racial and social inequities in capital investments, the Council could consider commissioning a comprehensive equity review of the Capital Improvements Program. For instance, in 2019, the Baltimore City Department of Planning partnered with the Baltimore Neighborhood Indicators Alliance to develop a methodology for conducting an annual equity analysis of the City's CIP.<sup>24</sup> The analysis developed indicators to measure CIP investments across four areas of equity: distributional, transgenerational, structural, and procedural. The analysis also accounted for the varying influence of CIP projects by identifying projects as having local, multi-neighborhood, or Citywide impacts.<sup>25</sup>

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- **Increase Access to CIP Construction Opportunities to BIPOC-owned businesses and workers.** The County’s 2014 Disparity Study found that while Black-owned firms accounted for 11 percent of the construction marketplace, they accounted for less than 2 percent of prime contracts with the County.<sup>26</sup> Conversely, White male firms accounted for 74 percent of the construction marketplace and 79 percent of prime contracts, and Latinx-owned firms accounted for 6 percent of the construction marketplace and 13 percent of prime contracts.<sup>27</sup> The Council could advance RESJ by supporting efforts to proactively identify and contract BIPOC-owned businesses for CIP funded projects and other project needs. PolicyLink’s “Strategies for Addressing Equity in Infrastructure and Public Works” offers best practices for incorporating disadvantaged workers and businesses into employment and procurement opportunities.<sup>28</sup>

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### CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than 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.

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### CONTRIBUTIONS

OLO staffer Janmarie Peña, Performance Management and Data Analyst, drafted this RESJ impact statement.

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### APPENDIX

**Table A: Constituent Demographics by Council District<sup>29</sup>**

District	% White	% Black	% Latinx	% Asian
Countywide	45.9	17.3	18.6	14.5
District 1	71.5	4.8	8.5	12.0
District 2	40.1	19.0	19.2	18.2
District 3	45.8	12.2	18.8	19.5
District 4	38.6	18.5	26.4	12.7
District 5	33.2	32.4	20.2	10.2

Source: 2016 Demographic Profile of Council Districts, Montgomery County Planning Department.

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<sup>1</sup> Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools. <https://www.racialequitytools.org/glossary>

<sup>2</sup> Ibid

<sup>3</sup> [“County Development Impact Fees and Building Excise Taxes in Maryland,”](#) Maryland Department of Legislative Services, December 2013.

<sup>4</sup> [“Development Impact Taxes,”](#) Montgomery County Department of Permitting Services.

<sup>5</sup> [Introduction Staff Report for Expedited Bill 25-23](#), Montgomery County Council, Introduced May 18, 2023.

<sup>6</sup> Ibid

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<sup>7</sup> [RESJIS for Bill 24-22](#), Office of Legislative Oversight, August 22, 2022.

<sup>8</sup> [“About the Capital Budget,”](#) Montgomery County Open Budget.

<sup>9</sup> Elliot Karl, [“Prioritizing Community Values in Capital Budgeting,”](#) Government Finance Officers Association, June 2021.

<sup>10</sup> [“History of African-American Education in Montgomery County,”](#) Montgomery History.

<sup>11</sup> Kristin Blagg, et. al., [“Assessing the National Landscape of Capital Expenditures for Public School Districts,”](#) Urban Institute, January 2023.

<sup>12</sup> Ibid

<sup>13</sup> Deborah N. Archer, [“‘White Men’s Roads Through Black Men’s Homes’: Advancing Racial Equity Through Highway Reconstruction,”](#) Vanderbilt Law Review, October 2020.

<sup>14</sup> [“The Unequal Commute,”](#) Urban Institute, October 6, 2020.

<sup>15</sup> [“A Legacy of Disenfranchisement and Underinvestment,”](#) from Beyond Traffic 2045 (PDF page 102), U.S. Department of Transportation, January 9, 2017.

<sup>16</sup> [“Grand Prize Winner – What Happened to Gibson Grove?,”](#) C-SPAN StudentCam, March 2022.

<sup>17</sup> “The Unequal Commute”

<sup>18</sup> Table S0201, 2021 American Community Survey 1-Year Estimates, Census Bureau.

<sup>19</sup> Regan Patterson, [“New Routes to Equity: The Future of Transportation in the Black Community,”](#) Congressional Black Caucus Foundation, September 2020.

<sup>20</sup> [“Fighting for Equity in Transportation Policy and Infrastructure,”](#) The Center of Race Inequality & The Law, New York University School of Law.

<sup>21</sup> Introduction Staff Report for Expedited Bill 25-23

<sup>22</sup> [“About MCPS,”](#) Montgomery County Public Schools.

<sup>23</sup> Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council

<sup>24</sup> Baltimore Neighborhood Indicators Alliance, [“Equity Analysis of Baltimore City’s Capital Improvement Plan, FY 2014 – FY 2020,”](#) Baltimore City Department of Planning, August 2019.

<sup>25</sup> Ibid

<sup>26</sup> Griffin & Strong, PC, [“Disparity Study Final Report,”](#) Office of the County Attorney, June 11, 2014.

<sup>27</sup> Ibid

<sup>28</sup> Kalima Rose and Judith Dangerfield, [“Strategies for Addressing Equity in Infrastructure and Public Works,”](#) PolicyLink.

<sup>29</sup> Latinx people are not included in other racial groups within this table.