

**MEMORANDUM**

TO: County Council

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Action:** Expedited Bill 5-09, Permit Fees – New Construction - Deferral

**Planning, Housing and Economic Development Committee recommendation: enact with amendments.**

Expedited Bill 5-09, Permit Fees – New Construction - Deferral, sponsored by the Council President at the request of the County Executive, was introduced on February 10, 2009.

**Summary** As introduced, Bill 5-09 would allow applicants to defer payment of certain Department of Permitting Services (DPS) permit, inspection, license, and engineering fees for 12 months. It also would extend the time limit before a building permit is treated as abandoned from 6 to 12 months after the permit was issued and the deadline to record the initial building inspection with DPS from 12 to 18 months and the second inspection from 14 to 20 months after the permit was issued. The fee deferral authority would apply starting 60 days after this Bill becomes law until the Bill sunsets on April 1, 2010 -- that is, anyone obligated to pay a covered fee during that period could defer payment for 12 months, even if the deferral would extend after April 1, 2010. The fee ultimately paid would be calculated, we presume, at the rate and terms which applied when it was originally due.

**Original fiscal impact** Assuming, as OMB does, that 75% of the covered fees would be deferred, the County's cost in lost interest would be about \$200,000, with an estimated added administrative cost of about \$37,000, which DPS is expected to absorb (see fiscal impact statement, ©9-10).

**Hearing** A public hearing was held on March 3 (see testimony, ©11-29), along with Bills 3-09 and 4-09. The testimony provided by Executive staff and business interests unanimously supported this Bill, but no civic or taxpayer representative appeared at the hearing and the County Civic Federation submitted testimony (see ©23-24) which raised several salient questions. The Civic Federation noted the irony that, while the Executive's 11-point Economic Assistance Plan (see ©13) calls for "an economic and fiscal analysis as part of any legislative or regulatory change", this Bill was not accompanied by any economic analysis.<sup>1</sup>

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<sup>1</sup>The Hillandale Citizens Association submitted testimony (see ©25-29) which technically may fall within the Bill's scope of advertising but raises a non-fee issue (construction fencing). The Civic Federation also mentioned this

**First worksession** The Planning, Housing and Economic Development Committee worksession on this Bill, scheduled for March 9, was shortened after Executive staff asked for more time to try to work out several issues surrounding the proposed fee deferral agreement and lien with representatives of the development community.

**Executive amendments** On April 8 Executive staff advised Council staff that, after discussions with representatives of the development community, the Executive wants to withdraw those parts of Bill 5-09 that would defer certain permit fees but retain those provisions that would extend certain building permit time limits.

**Second worksession** At its second worksession on this Bill, held on April 14, the Committee recommended enactment of this Bill with the Executive amendments, but sunsetting them in 2 years rather than one.

### **Fee Deferral Issues**

**Since the Executive dropped this part of the Bill in his most recent amendments, this discussion of Issues 1-5 is of historical interest only.**

#### **1) Cost/benefit analysis: What difference would deferring these fees make?**

Council staff can think of two valid public interests that could be served by deferring development fees in a severe economic recession:

- Send a signal of sympathy and support to hard-pressed development firms and their owners and employees.
- Stimulate, to some degree, a revival of development in the County.

The first reason (the need to “do something” to show that government understands how dire the situation is) presents a pure policy choice: would the symbolic value of this public gesture outweigh the attendant loss of revenue? This is a value judgment that is made first by County policy-makers, and eventually by the taxpayers who foot the bill.

The second reason (to stimulate more development) allows a more reasoned cost/benefit analysis, albeit in a general way since precise data on development decision-making in recessions has not been provided and the ultimate answer may be equal parts fact and conjecture. Much of the testimony on this Bill documents the severity of the current construction recession, which no one disputes. However, while supporters of this Bill assume, without demonstrating, that deferring County permit fees, alone or in combination with other stimulative measures, will cause some number of developers or builders to take actions that are not now economically

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issue (see ©24). Council staff recommends that the construction fencing issue be considered in another context unless, as the Silver Spring Chamber of Commerce proposed, the time periods to complete building permit inspections are substantially lengthened; in that case, these construction fencing issues would be more relevant to this Bill.

feasible, they have not offered any evidence that such a result would follow.<sup>2</sup> As recent news reports underscore, the building industry recession appears to be caused primarily by cutbacks in occupant demand and unavailability of financing. Neither of these factors would be directly affected by a deferral of County permit fees, particularly when those fees are a relatively small part of any developer's carrying costs. Thus, in our view, in purely cost/benefit terms, a persuasive case has not been made to defer any County fees. **Council staff recommendation:** do not enact this part of the Bill.

At the hearing Councilmember Leventhal raised a related question which may be more important for the impact tax deferral which Bill 4-09 proposes but is also germane to this Bill: why should the County spend money to stimulate new housing demand when large numbers of existing houses remain unsold?<sup>3</sup> This inventory upsurge is a natural part of the housing construction cycle, and in staff's view the County has no particular interest in stimulating or meeting demand for *new* housing as distinct from housing generally (and in fact may have an environmental interest in maximizing use of existing housing units before new units are built). One option would be to amend this Bill to allow only fees for large commercial projects to be deferred.

**2) Length of deferral period – when is payment due?** In testimony presented at the hearing, business representatives proposed that the deferral period – the time during which the specified permit fees would be postponed – be lengthened from the proposed 12 months until whenever the building is ready for occupancy. Readiness for occupancy would be measured by the issuance of a “final permit” – either a certificate of use and occupancy or, for those buildings (mainly single-family homes) which do not require a certificate, a final inspection report. The argument for extending the payment due date, made most succinctly by the Silver Spring Chamber of Commerce on ©21, is that “By allowing deferral to a point in the development process that is tied to sale and transfer, builders can conserve capital and delay out-of-pocket costs. This also defers the payment to a point in time when the applicant is likely to have money coming in with which to make the payment. Further, the cost of the payment will not become an additional part of the financing costs during construction.”

The effect of this amendment would be to postpone County receipt of these fees for an indefinite time. This time could be less than 12 months if a building is completed earlier, or it could be never if construction is abandoned. Under the current law (see e.g. §8-26(a)), any required permits cannot be issued until all fees due are paid. This assures that the County will not perform the reviews necessary to evaluate and approve a development without being compensated, which is an especially critical factor when the permit operation is funded through a self-supporting enterprise fund, as much of DPS' operations is. As this Bill is drafted, the applicant would not pay interest during the deferral period but would pay interest on any fee that remains unpaid after the deferral period ends (see ©4-5, lines 76-80).

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<sup>2</sup>See, e.g., testimony from the Greater Bethesda-Chevy Chase Chamber of Commerce on ©15: “Presumably the legislation is designed to create construction industry jobs, which have all but disappeared in the current economic crisis.” These kinds of assumptions are far from evidence-based decision-making.

<sup>3</sup>See the data in the Maryland-National Capital Building Industry Association testimony on ©19.

If a deferral is accepted in principle but 12 months seems too short, an alternative would be a longer specific time frame such as 18 or 24 months. Otherwise, this issue could be revisited in a year to see if the construction outlook has materially improved; if not, payment of fees that would come due then could be further postponed. **Council staff recommendation:** if deferral is allowed, limit the deferral period to 12 months, with further review next year.

**3) Length of deferral applicability – Bill’s sunset date** Business representatives at the hearing also proposed that the Bill’s sunset date be extended from April 1, 2010, to April 1, 2013. In other words, anyone obligated to pay a covered fee during the next 4 years could defer payment for 12 months (or whatever deferral period is selected; see previous issue), even if the deferral would extend after April 1, 2013. Needless to say, extending the Bill’s sunset date would further postpone County receipt of these fees and further deplete DPS’ enterprise fund. Since DPS would continue to operate and issue permits (to the extent applications are received), tax funds presumably would be allocated to pay these expenses.

As with the immediately previous issue, no one has any real idea whether the County construction outlook will be significantly better, significantly worse, or unchanged by early 2010. In Council staff’s view, the most prudent approach (assuming a deferral is accepted) is to limit it to the next year and reevaluate the situation then. **Council staff recommendation:** keep the early 2010 sunset date.

**4) Defer small fees?** Business representatives suggested that the Bill’s exclusion from deferral of fees under \$400 (see ©3, lines 47-48) be deleted – in other words, that an applicant could defer payment of any fee, no matter how small. Needless to say, this would allow ordinary applicants (non-builders) to defer many relatively low fees but seriously complicate DPS’ administrative burden. **Council staff recommendation:** if deferral is allowed, retain (if not increase) the \$400 floor.

**5) Payment guarantees** Business representatives objected to the Bill’s requirements that each applicant sign a deferral agreement and consent to a lien on the property before any fee can be deferred. They argued that lenders would balk at both these requirements, and suggested that simply retaining the authority to withhold any final occupancy permit would effectively guarantee payment of any fees. Executive staff responded that the agreement would be a simple, standard document which would not require any negotiation, and they and the County Attorney will reexamine the need for both the lien and the agreement. Executive staff scheduled further discussions with business representatives and land-use lawyers after this packet went to print but before this worksession.

Council staff would not recommend dropping either requirement unless the County Attorney is totally comfortable that any transferee of the property would have no way to avoid paying any fees due. We are not sure why a lender should have any problem with a lien, since they are used to dealing with property tax liens. **Council staff recommendation:** retain the lien and deferral agreement requirements unless the County Attorney agrees that they are not needed.

## **Remaining Issue -- Building Permit Extensions**

**This is the only issue the Committee considered at its second worksession.**

**6) Building permit extensions** As amended by the Executive, the remaining part of Bill 5-09 would extend the time limit before a building permit is treated as abandoned from 6 to 12 months after the permit was issued, and the deadline to record the initial building inspection with DPS from 12 to 18 months and the second inspection from 14 to 20 months after the permit was issued. See ©2-3, lines 3-30. These provisions were intended to sunset in 2010 (see ©5-6, lines 103-127).

The purpose of these extensions is to allow more time to finish buildings which run into construction or financial delays. However, as the Civic Federation and the Hillandale Citizens Association pointed out on ©23-29, allowing a construction site more time to remain unfinished could pose safety hazards and increase neighborhood blight. Those impacts could be exacerbated if, as the Silver Spring Chamber of Commerce proposed (see ©22), these inspection deadlines are further extended by another 6 months beyond what this Bill proposed.

Under the current law (see County Code §8-25(b)(2)-(3)) DPS can extend an issued building permit's expiration date for 6 months (and, if the project is located in an enterprise zone, for an unlimited number of 6-month periods if good cause is shown). The reason the Silver Spring Chamber gave to further extend the inspection deadline was "to avoid multiple extension requests". In Council staff's view, no clear case has been made to loosen DPS' control over building permit extensions; in fact, we have not seen any data showing that extension requests have increased.

**Committee recommendation:** temporarily extend each building permit deadline for 6 months, sunsetting in 2011.

**Related state bills** Two identical bills passed by the state legislature and awaiting the Governor's signature, S958 and HB 921, appear intended to continue all state and local building permits in effect until June 30, 2010, and extend the effectiveness of any existing permit for some period of time, the length of which (because of the bills' opaque drafting) is difficult if not impossible to calculate. See ©34, lines 8-10; ©36-39 (DLS staff analysis). Our preliminary view is that these bills, if they become law, would parallel Bill 5-09, but would go further in one important respect. Bill 5-09 does not amend County Code §8-25(b)(1)(B), which renders a building permit invalid if "the authorized work is suspended or abandoned for a period of 6 months". The state bills, assuming they apply to County building permits, appear to override that deadline. In other words, they might allow a building permit to remain valid indefinitely -- at least through June 30, 2010, and possibly longer -- with the result that DPS could not enforce its requirements to close down a building site once the permit has expired. The County Attorney will have to take a closer look at these state bills, which are not clear in their effect, to confirm our analysis. But our bottom line is that the state bills and Bill 5-09 are similar in intent and do not cancel each other out.

<u>This packet contains</u>	<u>Circle</u>
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State Bill (S958)	30

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Expedited Bill No. 5-09  
Concerning: [[Permit Fees - New Construction - Deferral]] Building Permits - Extensions  
Revised: 4-14-09 Draft No. 4  
Introduced: February 10, 2009  
Expires: August 10, 2010  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset: See § [[2]] 3  
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) authorize the deferral of certain permit, inspection, license, and engineering fee payments for a certain period;]]  
[[ (2) (1) temporarily extend the time limit for abandonment of a building permit;]]  
[[ (3) (2) temporarily extend the time [[for recording an initial]] to record a building inspection; and]]  
[[ (4) (3) generally amend the laws regarding permits [[and related fees]].]]

By amending

Montgomery County Code  
Chapter 8, Buildings  
Sections 8-24 and 8-25

[[By adding

Chapter 2, Administration  
Section 2-42C]]

<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:*



28 approved inspection is not recorded in the Department's  
 29 inspection history file within [14] 20 months after the  
 30 permit is issued; or

31 \* \* \*

32 **[[2-42C. Permit fees -new construction - deferrals.**

33 (a) Definitions. In this section the following words have the meanings  
 34 indicated:

35 (1) Fee or Fees mean any permit fee, license fee, inspection fee, or  
 36 engineering fee required to be paid before a permit or license is  
 37 issued or an inspection is made under Chapter 8, 17, 19, 27A, or  
 38 49.

39 (2) New Construction means:

40 (A) any new building; and

41 (B) any addition or renovation of an existing building that  
 42 replaces 50% or more of the existing first floor exterior  
 43 walls, measured around the perimeter of the building.

44 (3) Owner means a person who has legal record title to the real  
 45 property on which the new construction is proposed.

46 (b) Authorization to Defer. An owner or other applicant may defer  
 47 payment of a fee associated with new construction, if the fee exceeds  
 48 \$400 and all other requirements of this Section are met, for 12 months  
 49 after the fee is otherwise due.

50 (c) Conditions of Deferral.

51 (1) An owner must apply for deferral of a fee to the Director on a  
 52 form supplied by the Department.

53 (2) As part of the application, the owner must execute a written  
 54 agreement with the Director. The agreement must provide that

55 the owner consents to all terms and conditions of the deferral,  
 56 including the collection of deferred fees through the tax sale  
 57 process and recordation of the agreement or notice of the  
 58 agreement in the County land records.

59 (3) The Director must record the agreement or notice of the  
 60 agreement in the County land records. The notice must include a  
 61 conspicuous statement that indicates it is being recorded by or on  
 62 behalf of the County.

63 (d) Events accelerating payment. All deferred fees and accumulated  
 64 interest and penalty, if any, become immediately payable when:

65 (1) the ownership of the property subject to a lien for repayment of  
 66 the deferred fees is transferred; or

67 (2) the property becomes subject to tax sale.

68 (e) Payment, Early Payment; Termination of Lien.

69 (1) An Owner must pay a deferred fee on or before the end of the  
 70 deferral period.

71 (2) After the owner pays the deferred fees and any accrued interest  
 72 and penalty, the Director must record a notice of termination of  
 73 the fee deferral lien in the County land records. The notice must  
 74 include a conspicuous statement that indicates it is being recorded  
 75 by or on behalf of the County.

76 (f) Delinquent Fees.

77 (1) Interest and Penalty. Any fee paid after the deferral period  
 78 expires accrue interest and penalty on the amount of the deferred  
 79 fees until paid at the rate which applies to delinquent real  
 80 property taxes.

81 (g) Lien on Real Property and Collection. All fees deferred and any

82 accrued interest and penalty constitute a first lien on the real property to  
 83 which the fees apply until paid. The deferred fees may be collected by  
 84 suit or tax sale as with all other real property taxes. If any person liable  
 85 does not pay all deferred fees as provided, the property may be certified  
 86 to the Department of Finance and the lien may be sold at the next tax  
 87 sale the County conducts. All deferred fees constitute a personal  
 88 liability of the owner of the property.

89 (h) Penalties for False or Fraudulent Information. A person who knowingly  
 90 submits a false or fraudulent application or statement or withholds  
 91 information in order to obtain a deferral under this Section:

92 (1) has committed a Class A violation.

93 (2) is liable for and must repay to the County any deferred fees plus  
 94 interest and penalty at the rate which applies to delinquent real  
 95 property taxes from the date of the deferral to the date of  
 96 payment; and

97 (3.) is liable for all court costs and expenses of the County, including  
 98 attorney's fees, in a civil action brought by the County.

99 (i) Regulations. The County Executive may adopt regulations under  
 100 method (2) to administer this fee deferral program.]]

101 **[[Sec. 2. Sunset.** County Code Section 2-42C, inserted by Section 1 of this  
 102 Act, expires on April 1, 2010.]]

103 **Sec. 2. Sections 8-24 and 8-25, as amended by Section 1 of this Act, are**  
 104 **further amended as follows:**

105 **8-24. Application for permit.**

106 \* \* \*

107 (i) **Time limit.** An application for a permit for any proposed work must be  
 108 treated as abandoned ~~[[12]]~~ 6 months after the application was filed,

109 unless the application has been diligently prosecuted or a permit was  
110 issued. However, for reasonable cause, the Director may extend the  
111 time for the Department to consider an application for one or more  
112 additional periods which do not exceed 90 days each.

113 **8-25. Permits.**

114 \* \* \*

115 (b) *Time limit.*

116 (1) A building permit is invalid if:

- 117 (A) an approved inspection, as required by this Chapter, is not
- 118 recorded in the Department's inspection history file within
- 119 ~~[[18]]~~ 12 months after the permit is issued and a second
- 120 approved inspection is not recorded in the Department's
- 121 inspection history file within ~~[[20]]~~ 14 months after the
- 122 permit is issued; or

123 \* \* \*

124 **Sec. 3. Expedited Effective Date.** The Council declares that this  
125 legislation is necessary for the immediate protection of the public interest. This  
126 Act takes effect 60 days after it becomes law. Section 2 of this Act takes effect on  
127 July 1, ~~[[2010]]~~ 2011.

128 *Approved:*

129

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Philip M. Andrews, President, County Council

Date

130 *Approved:*

131

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Isiah Leggett, County Executive

Date

## LEGISLATIVE REQUEST REPORT

Expedited Bill 5-09

*Permit Fees – New Construction - Deferral*

- DESCRIPTION:** Adds new Sections to the law to allow the deferral of the payment of permit fees and other fees for new construction for 12 months.
- PROBLEM:** The current economic climate impacts the ability of builders to pay the fees prior to construction.
- GOALS AND OBJECTIVES:** By deferring payment of fees the legislation will encourage new construction.
- COORDINATION:** Department of Permitting Services.
- FISCAL IMPACT:** To be requested.
- ECONOMIC IMPACT:** To be requested.
- EVALUATION:** Subject to the general oversight of the County Council and County Executive.
- EXPERIENCE ELSEWHERE:** Not applicable
- SOURCE OF INFORMATION:** Tom Street, Assistant Chief Administrative Officer (240-777-2559)
- APPLICATION WITHIN MUNICIPALITIES:** Yes.
- PENALTIES:** Class A violation.

BILL



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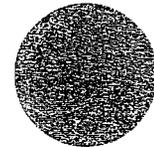
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Isiah Leggett  
County Executive

OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

MEMORANDUM

February 4, 2009



TO: Phil Andrews, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Proposed Legislation – Deferral of Permit Fees

I am attaching for the Council's consideration a bill which would allow a business to defer payment of permit, inspection, license, and engineering fees for 12 months. I am also attaching a Legislative Request Report for the proposed bill.

This bill is one of four legislative proposals which I am submitting to the Council to implement the 11-point economic plan which I announced in December 2008. Each legislative proposal is designed to ease some of the difficulties experienced by local businesses as a result of the national economic downturn. The current economic climate impacts the ability of builders to pay permit, inspection, license, and engineering fees before construction. Allowing a builder to defer payment of these fees will help to encourage new construction which is aimed at retaining existing jobs and creating new job opportunities. This deferral is only temporary and enables the payment to be made at a point in the development process that is closer to when a builder can expect to receive income from a project. This will reduce carrying costs for a project.

My 11-point economic plan included a proposal to provide an economic impact analysis for all legislative and regulatory changes which would analyze the impact of each proposed change on local businesses. We are in the process of completing an economic impact analysis for this bill and will forward it to Council in the near future along with the normal fiscal impact statement. I look forward to working with the Council as it considers this bill and my other three legislative proposals which provide opportunities for some measure of relief to our business community and residents.

IL:dg

Attachments (2)

3-5-09



MF  
cc  
SBF  
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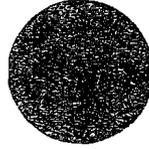
OFFICE OF MANAGEMENT AND BUDGET

040537

Isiah Leggett  
County Executive

Joseph F. Beach  
Director

MEMORANDUM



February 5, 2009

TO: Phil Andrews, County Council President  
FROM: Joseph F. Beach, Director, Office of Management and Budget  
SUBJECT: Expedited Bill XX - New Construction Permit Fee Deferral

REC'D  
MONTGOMERY COUNTY  
OFFICE OF MANAGEMENT AND BUDGET  
FEB 17 11:39 AM

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

**LEGISLATION SUMMARY**

The purpose of the legislation is to create new Sections in Chapters 8, 17, 19, 27A, and 49 of the Montgomery County Code to authorize the deferral for a period of 12 months of the payment of permit fees, inspection fees, license fees, and engineering fees and to set out the terms and conditions of the deferral and for the repayment of the deferred fees.

**FISCAL SUMMARY**

Estimating that 75% of revenues from the fees will be deferred (\$12,692,600) and assuming a 1.5% interest rate, the loss in interest income would be \$190,389 for the year. Deferral of the fees DPS collects for MCFRS (\$584,140) would also reduce interest income for the County by \$8,760.

DPS is currently upgrading the Hansen permit system application and database. To support the new legislation, the migration scripts that convert the Hansen 7 Database to the Hansen 8 Database will have to be modified by the vendor for every Permit Type. Converted data must be verified. DPS estimates that the vendor will require an additional \$20,000. The existing contract will require modification and approval by the Office of the County Attorney and Department of General Services. This additional cost will be absorbed within DPS' current appropriation.

Office of the Director

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Phil Andrews  
February 5, 2009  
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DPS will be required to invoice program participants for collection of the deferred fees. To perform this, the fiscal impact to DPS would be administrative costs for the supplies and postage for the billing. This would average \$2 per permit. Estimating a 75% participation rate, the administrative cost would be \$17,226. This projected increase in administrative costs will be absorbed within DPS' current appropriation.

The following contributed to and concurred with this analysis: Tom Laycock, Department of Permitting Services, Gail Lucas, Department of Permitting Services.

JFB:brg

c: Tom Street, Assistant Chief Administrative Officer  
Kathleen Boucher, Assistant Chief Administrative Officer  
Dee Gonzalez, Office of the County Executive  
Carla A. Reid, Director, Department of Permitting Services  
Amy Wilson, Office of Management and Budget  
Brady Goldsmith, Office of Management and Budget



ROCKVILLE, MARYLAND

**Public Hearing - March 3, 2009**

**Bill 3-09, Local Small Business Reserve Program - Amendments  
Bill 4-09, Development Impact Tax -- Deferral  
Bill 5-09, Permit Fees -- New Construction -- Deferral**

**Testimony of Assistant Chief Administrative Officer Kathleen Boucher**

Good afternoon. I am Kathleen Boucher, Assistant Chief Administrative Officer with the Office of the County Executive. I want to thank Council President Andrews for sponsoring Bills 3-09, 4-09, and 5-09 on behalf of the County Executive, and the full Council for its timely consideration of these items.

Bill 3-09 proposes changes to the County's Local Small Business Reserve Program. Bills 4-09 and 5-09 amend the law governing impact taxes and fees related to new construction which are collected by the Department of Permitting Services (DPS).

Over the past two years, the County has experienced the severe impacts of the recession that has gripped our entire nation. Except for a slight increase in February and September of 2008, the leading economic indicator for the Washington, D.C. metropolitan region (which is used to predict future economic activity) has declined steadily since April 2007 (down 4% during the period). That decrease suggests that the region's economy will experience slower growth during the first half of 2009 and not re-accelerate until early summer at the earliest, depending on the breadth and depth of the national recession. The coincident economic indicator for the region (which measures the current performance of the economy and reflects consumer confidence) has also declined steadily since the spring of 2007 (down 12% during the period). Other signs of extreme stress in the County's economy include: no growth in resident employment during the past two years; a decline in home sales of more than 20% in each of the last 3 years (20.5% in 2006, 23.4% in 2007, and 20.6% in 2008); and an average 7.9% decline in home sale prices in 2008 (based on preliminary data).

These data and others point to a need for local government action to help our residents and businesses during this difficult economic time. On December 18, 2008, the Executive announced an 11-Point Economic Assistance Plan, which included the three bills that are the subject of today's hearing. A summary of the Plan is attached to this testimony. The Executive views his 11-point plan as a modest first step to help ease some of the difficulties experienced by local businesses as a result of the national economic downturn. The Executive will continue to work to find additional ways to assist County businesses and looks forward to working with the business community, the Council, and others to identify additional measures that can effectively and efficiently assist local businesses.

Generally, the Plan is an attempt to increase business opportunities for County-based businesses by:

- Allowing deferral of fees and taxes related to new construction;
- Extending expiration periods for building permit applications and inactive building permits related to new construction;
- Broadening the definition of “small local business” for the purpose of the County’s Small Local Business Reserve Program; and
- Increasing the percentage of County contracting opportunities that are directed to small local businesses.

The current economic climate impacts the ability of builders to pay impact taxes and fees for permits, inspections, licenses, and engineering before construction. By allowing a builder to defer payment of these taxes and fees, Bill 4-09 and Bill 5-09 will encourage new construction that will help to retain existing jobs and create new job opportunities. This deferral is only temporary and enables a builder to pay the taxes or fees at a point in the development process that is closer to when a builder can expect to receive income from a project. In essence, deferral of impact taxes and fees will reduce carrying costs for a project.

The current economic climate impacts local small businesses disproportionately to other businesses. By increasing the percentage of contracts that the County awards to local small businesses, Bill 3-09 will encourage greater participation in the program and help retain existing jobs and create opportunities for new jobs.

The following is a summary of the key components of Bill 3-09, Bill 4-09, and Bill 5-09.

**Bill 3-09:** This bill increases from 10% to 20% the combined dollar value of certain contracts that County departments must award to local small businesses.

**Bill 4-09:** This bill authorizes the deferral of impact tax payments (for both schools and transportation) for up to twelve months after their current due date. Currently, these taxes are due when the building permit for the associated property is issued by DPS. Bill 4-09 outlines conditions of deferral and circumstances that would lead to accelerated payment. These provisions are necessary in order to ensure that the County eventually receives payment of the deferred taxes and that deferred taxes are paid prior to the transfer of ownership of the associated property.

**Bill 5-09:** This bill authorizes the deferral of permit, inspection, license, and engineering fees associated with new construction for a period of 12 months from the time they are normally due. The bill also extends the time limit for abandonment of a building permit application from 6 to 12 months, and extends the time for recording an initial building inspection from 12 to 18 months after issuance of a building permit. As with Bill 4-09, and for the same reasons, this bill outlines conditions of deferral and circumstances that would lead to accelerated payment.

Thank you for the opportunity to testify in support of these bills. We look forward to working with the Council as it considers this package.

**Montgomery County Executive Isiah Leggett's Eleven Point Economic Assistance Plan**  
**December 18, 2008**

1. Increase Local, Small Business Reserve Program (LSBRP) gross annual sales thresholds for local small businesses in the wholesale, retail and services sectors to \$5 million from the current levels of \$2 million for wholesale businesses or \$2.5 million for retail goods and non-construction services, and to \$14 million from \$7 million for construction services and manufacturing. Also proposed is to increase the employee complement limits from 15 to 30 for wholesale and retail businesses, from 20 to 40 for manufacturing businesses, and from 25 to 50 for businesses in the service and construction sectors.
2. Increase the required percentage of Local, Small Business Reserve Program (LSBRP) participation in annual contracting from the present level of 10% to 20%.
3. Generally, delay up to 18 months, the effective dates of new legislation and regulations that have a substantial economic impact on business.
4. Allow, upon request, deferral of payment of permitting fees and impact taxes for a period of twelve months from their current due date.
5. Increase permit application expiration period to twelve months for those permits associated with new residential and commercial construction.
6. Increase expiration period for inactive building permits to eighteen months.
7. Extend the validity period for existing Adequate Public Facility reviews from five (5) years to seven (7) years.
8. Provide an economic and fiscal impact analysis as part of any legislation or regulatory change. The analysis to include an assessment of the impact on both the County and the parties being regulated.
9. Unbundle large County contracts. County requirements that have traditionally been bundled together for administrative and cost savings benefit should be scrutinized as candidates for unbundling.
10. Assist local Chambers of Commerce in providing Business Networking Forums for small businesses to connect with potential partners.
11. Partner with local Chambers of Commerce to hold business fairs at several county locations.



# **The Greater Bethesda-Chevy Chase Chamber of Commerce**

7910 Woodmont Avenue, Suite 1204, Bethesda MD, 20814 • Ph (301) 652-4900 • Fax (301) 657-1973 • Email [staff@bccchamber.org](mailto:staff@bccchamber.org) • Web [www.bccchamber.org](http://www.bccchamber.org)

Your Business Is  
Our Only Business

**Testimonies of  
Patrick L. O’Neil and  
Frank Amantia  
On Behalf of  
The Greater Bethesda-Chevy Chase  
Chamber of Commerce  
Before the  
Montgomery County Council  
Regarding Bill Nos. 3-09, 4-09 and 5-09  
March 3, 2009**

**THE GREATER BETHESDA-CHEVY CHASE CHAMBER OF COMMERCE  
TESTIMONY REGARDING BILL NOS. 3-09, 4-09 AND 5-09  
BEFORE THE MONTGOMERY COUNTY COUNCIL  
MARCH 3, 2009**

Good afternoon. My name is Patrick O'Neil and I am the Vice President of Economic Development and Government Relations for the Greater Bethesda-Chevy Chase Chamber of Commerce. On behalf of the Chamber, I am here to thank the County Executive for his efforts in Bill Nos. 3-09, 4-09 and 5-09 to address the economic impact of the current national recession on small businesses and development entities in the County. We are generally supportive of the proposals in the legislation and, through our testimony today, offer suggestions in some cases to make a good thing even better.

We begin with Bill 3-09 and the corresponding Executive Regulations (2-09) that propose meaningful changes to the Local Small Business Reserve Program. The legislation proposes, and we support, threshold increases to allow more local businesses to participate in the program; the doubling of the required participation percentage for each department and the deletion of the current sunset date for the program. Notably the proposed legislation transfers the responsibility for administering the program to the Department of General Services. We agree with this change and believe that DGS is the right County entity to oversee and promote the program.

Bill Nos. 4-09 and 5-09 propose to defer the payment of impact taxes and building permit fees and costs for up to twelve months. For our purposes, these bills are interrelated and we address them together. Like the changes to the Local Small Business Reserve Program, the bills' proposed deferral opportunities are well-intentioned. Presumably the legislation is designed to create construction industry jobs, which have all but disappeared in the current economic crisis. As such, the legislation encourages the development of approved projects that have been stalled by the absence of available financing. However, the additional bureaucratic hurdles imbedded in these bills could serve to defeat their purposes.

In particular, the requirements for executed deferral agreements and for the filing of security interests on affected properties would discourage a developer from taking advantage of the deferral opportunities. I have asked Frank Amantia of the Mid-Atlantic Federal Credit Union to

address these lien impacts from a construction lending perspective. Mr. Amantia has over 20 years of lending experience in the County.

Mr. Amantia opines that Bills 4-09 and 5-09 provide effective stimulus for developers to re-enter the marketplace, but they ignore the regulatory and procedural requirements of lenders who provide needed funding to bring the developers' plans to fruition. The primary area of concern is the Bills' requirement that deferred taxes and fees be perfected in the form of a lien, filed in the land records. This lien, which is given priority status, prevents the lender from achieving first position. The second point of concern is the Bills' requirement that any deferral be memorialized in a "written agreement" filed in the land records. The terms of this agreement diminish the effectiveness of the lender's loan documents. If the Bills were revised to preserve the rights and remedies of the lenders, without whose funds the developers' plans would generally not be possible, the Bills would spur both developers and lenders alike.

In light of the unintended effects of the lien requirements and the written agreements, and in an effort to provide a more meaningful incentive for would-be developers, we propose a simpler deferral option. This option has been cooperatively developed by our Chamber, the Montgomery County Chamber, the Greater Silver Spring Chamber and others. A copy of our collective efforts is attached. We propose the deferral of all impact taxes and permit fees and costs until the project is ready for occupancy. The Department of Permitting Services would not issue final occupancy approvals until the outstanding fees and costs are paid.

Our proposal is easier to understand and more enticing to a prospective developer than the current legislation. Our proposed deferral is easy to obtain because it is automatic – no deferral agreement or approval is required. More importantly, our proposal provides a clear benchmark for when payments are due and provides meaningful County leverage to ensure that the fees and costs are ultimately paid. If the goal is job creation through development opportunities, Bills 4-09 and 5-09 are more likely to achieve the goal with our proposed changes.

On behalf of the Greater Bethesda-Chevy Chase Chamber of Commerce, thank you for the opportunity to present these comments.

(March 3, 2009)

## IMPACT TAXES

### 52-51A. Deferral of payments

(a) *Definitions.* In this Section the following words have the meanings indicated:

(1) *Final permit* means a certificate of use and occupancy or, if a certificate of use and occupancy is not required for the development, a final inspection report.

(2) *Impact tax or tax* means the Taxes imposed under this Article and Article XII.

(3) *Owner* means a person who has a legal record title interest in real property, including a creditor with a recorded lien on the property, on which development is proposed that is subject to the impact tax.

(b) *Authorization to defer.* An owner may defer payment on all impact tax due until the issuance of a final permit needed to occupy any portion of the development. A payment that has been deferred pursuant to this section must be paid before the final permit will be issued.

(c) *Sunset.* The opportunity to obtain a deferral of payment under this Section expires on April 1, 2013.

## PERMITS

No changes are proposed for the proposed amendments for Section 8-24 (Application for permit) and 8-25 (Permits).

### 2-42C. Permit fees - new construction - deferrals.

(a) *Definitions.* In this Section the following words have the meanings indicated:

(1) *Fee or fees* mean any permit fee, license fee, inspection fee, or engineering fee required to be paid before a permit or license is issued or an inspection is made under Chapter 8, 17, 19, 27A, or 49.

(2) *Final permit* means a certificate of use and occupancy or, if a certificate of use and occupancy is not required for the new construction, a final inspection report.

(3) *New Construction* means:

(A) any new building; and

(B) any addition or renovation of an existing building that replaces 50% or more of the existing first floor exterior walls, measured around the perimeter of the building.

(4) *Owner* means a person who has legal record title to the real property on which the new construction is proposed that is subject to the fee.

(b) *Authorization to defer.* An owner or other applicant may defer payment on a fee associated with new construction until the issuance of a final permit needed to occupy any portion of the new construction.

(c) *Sunset.* The opportunity to obtain a new construction deferral under this Section expires on April 1, 2013.

# 6112959\_v2



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**Maryland National Capital Building Industry Association (MNCBIA)  
 Testimony Before the Montgomery County Council  
 On  
 Expedited Bill 4-09: Development Impact Tax – Deferral  
 Expedited Bill 5-09: Permit Fees – New Construction - Deferral**

**March 3, 2009**

Good afternoon. My name is Tom Farasy.

I am the 2009 President of Maryland-National Capital Building Industry Association. The BIA represents builders and developers in Prince George's, Montgomery, St. Mary's, Charles and Calvert counties. We have 600 + members today.

The MNCBIA supports the County Executive's Emergency Bill Nos. 4-09 and 5-09, with amendments.

Bills 4-09 and 5-09 as drafted creates a bureaucracy that is costly to the County, cumbersome to the applicant, and burdensome to both; it provides under the **most optimum** of circumstances, eight months breathing room to an industry underwater and struggling to stay afloat.

Given the national regional and local forecasting, eight months is clearly not enough.

I do not need to brief the Council on the severity of the recession that we are all experiencing. It is in the news everyday and none of us have ever experienced this type of recession. The County's drop in revenues mirrors the precipitous drop in the housing market. Unfortunately, the forecast by industry experts does not offer any relief until well beyond 2009.

As you may remember, sales and building starts in 2008 were dramatically reduced as compared to 2007. Hanley Wood, the research company that tracks new home sales in residential projects over 10 units, reports for Montgomery County:

- \* Net sales were 894 in 2008 vs. 1159 in 2007 vs. 2621 in 2006;
- \* The average new home sales in 2008 vs. 2006 were as follows:

Type	2008	2007	2006
Single Family	\$792,120	\$888,850	\$905,795
Townhouse	\$437,806	\$513,764	\$507,692
Condominium	\$339,113	\$506,130	\$473,736

- \* The vacant lot inventory has grown to a 12.2 month supply as of December 31, 2008 vs. an average of 2.2 months supply in calendar 2006; the normal lot inventory is 2 months, so we are six (6) times the norm.

**BUILDING HOMES, CREATING NEIGHBORHOODS**

Representing the Building and Development Industry in Calvert, Charles, Montgomery, Prince George's and St. Mary's Counties and Washington, D.C.  
 Affiliated with the Maryland State Builders Association and the National Association of Home Builders

**Maryland National Capital Building Industry Association (MNCBIA)**  
**Testimony Before the Montgomery County Council**  
**On**  
**Expedited Bill 4-09: Development Impact Tax – Deferral**  
**Expedited Bill 5-09: Permit Fees – New Construction – Deferral**  
**March 3, 2009**  
**Page 2 of**

Two recent reports by Zelman & Associates affirm that this recession will not recede anytime soon; to highlight a few details:

Hope Now: Delinquency and Foreclosure Report, January 2009

- This month's foreclosure rate marks the highest level since July 2007
- In December 2008, 203,000 homes entered the foreclosure process, up from 169,000 in November 2008

Foreclosures Presenting Unprecedented Conditions, January 26, 2009

- 2009 new sales to decrease 40%
- Due to unprecedented competition from foreclosures, Zelman projects ***new home sales to be less than 7% of real estate home sales*** vs. an historical median of 16%
- Zelman is lowering new housing starts from 750,000 to 575,000 for 2009
- ***No increase in housing starts until 2011***

(The Hanley Wood and the Zelman Reports are attached to my testimony for your convenience)

Many of our suppliers, builders and developers have had 4, 5 or more rounds of layoffs. Last week alone, a concrete supplier reported he went from 100 employees a year ago to 30 today; one of our builders reported to me, his payroll has gone from 72 employees a year ago to 17 today. Such stories go on and on.

While we anticipate a recovery, and anticipate that the President's Stimulus Bill will have an effect, what we know is that this recovery will not be traditional, and there is no ***guaranteed*** trigger date. This is the reality that frames the industry's comments today.

Bills 4-09 and 5-09 are well intentioned; however:

1. The legislation requires a lien on the property. A lien will require lender consent. Unfortunately, many lenders are not available for such conversations; when available, they are not making decisions. This process requires asking lenders to agree to an action that increases their risk; we believe that lenders would not respond to this request, nor agree to the placing of a lien, thereby negating the deferral provided by the legislation.
2. The legislation sunsets on April 01, 2010 providing less than 1 year window for applicants who have dared, or who dare, to initiate any development or construction.
3. The legislation requires an agreement between the applicant and the Department of Permitting Services. This is an expensive, onerous and lengthy proposition; in addition there is no certainty ... by the time the agreement is drafted, negotiated amongst the parties, agreed to by the parties, consent obtained from the lender any period of benefit if one ever gets to the finish line might be 3 months of relief at best. We are in a recession cycle that is going to last for years, not 3 months.

**Maryland National Capital Building Industry Association (MNCBIA)**  
**Testimony Before the Montgomery County Council**  
**On**  
**Expedited Bill 4-09: Development Impact Tax – Deferral**  
**Expedited Bill 5-09: Permit Fees – New Construction – Deferral**  
**March 3, 2009**  
**Page 3 of 3**

Our amendments are simple:

- Utilizing DPS's current system of inspections, require that all deferred fees and taxes be paid before an Occupancy Permit can be issued; when an Occupancy Permit is not required, require that fees and taxes be paid prior to final inspection.
- Given the unpredictability in the current economy to guarantee any significant recovery in the next 36 months, provide a sunset date of April 01, 2013.

The industry needs relief, quickly, simply, Not a lien, not an agreement, not for less than one year. Our proposal assures that the County will be paid its impact taxes, as well as its permit, inspection, license, and engineering fees.

Our members look forward to participating in the Council's worksessions on these Bills. Thank you for the opportunity to present the industry's perspective today.



March 3, 2009

The Honorable Phil Andrews, President  
and Members of the Montgomery County Council  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

**Re: Public Hearing - Expedited Bills 4-09 and 5-09 (the "Legislation")**

Dear President Andrews and Members of the Council:

The Greater Silver Spring Chamber of Commerce is pleased to submit this letter as its testimony in the Council's public hearing on the above referenced Legislation scheduled for today, March 3, 2009.

On behalf of the Board of the Chamber, I wish to express our support for the efforts of the County Executive and the County Council to provide regulatory relief and economic assistance to County businesses in this extraordinarily difficult economic climate. This assistance is especially needed by the residential and commercial development industry that would specifically benefit from this Legislation.

Members of the Chamber's Economic Development Committee and representatives of our development and land use sectors have reviewed these bills and agree that this Legislation is a good first step. However, they also point out that it does not go far enough, given the depth of the hardship to the development community that has been caused by the current economic downturn, the uncertainty for recovery, and the importance to the County for vibrant and sustained development activity.

In this regard, the Chamber respectfully requests that the Council consider the following revisions to the Legislation to make it more effective in providing meaningful/usable assistance to the development community during this period of significant economic uncertainties and difficulties:

- Amend Bill 4-09 (Impact Tax Deferral) and Bill 5-09 (Permit Fees, Deferrals and Permit Validity Period Extensions) to extend the deferral of the Impact Tax Payments and permit fees until the issuance of the final permit/inspection or certificate of occupancy needed for occupancy, rather than only 12 months, with a corresponding extension to the sunset date. *The additional time for deferral is requested in recognition of the extended nature of the downturn and the uncertain timing of a recovery. By allowing deferral to a point in the development process that is tied to sale and transfer, builders can conserve capital and delay out-of-pocket costs. This also defers the payment to a point in time when the applicant is likely to have money coming in with which to make the payment. Further, the cost of the payment will not become an additional part of the financing costs during construction.*

- Eliminate the requirement in both Bill 4-09 and 5-09 that applicants for a deferral of Impact Taxes and/or permit fees enter into an agreement with the County and place a lien for such deferred payments on the subject property. *This requirement is cumbersome for agency staff to monitor and may interfere with project financing. Moreover, the County can ensure payment of deferred fees by withholding use and occupancy permits and/or final inspections. These are already points in the process where the County acts as the gatekeeper.*
- Amend 5-09 to allow for 24 months for a first inspection and 26 months for a second inspection, but also allow extensions for these inspections. *Given the uncertainty of the time frame for recovery and the lack of stable market conditions necessary for development to commence, it is essential to provide realistic time frames for development that are long enough to avoid multiple extension requests.*

We believe these requested revisions are reasonable and will enhance the usefulness of the economic assistance package to the benefit of the development community and, ultimately, all of the residents of Montgomery County. If you have any questions on our testimony, please do not hesitate to contact me.

Sincerely,



Jane Redicker

cc: Diane Schwartz-Jones, Esq.



March 2, 2009

**Montgomery County Civic Federation Talking Points for March 3 Hearing on Economic Stimulus Legislation--Expedited Bills 4-09 and 5-09**

Rather than adopt a position in support of or opposition to these two pieces of legislation, at their meeting on February 18, 2009, the MCCF Executive Committee voted unanimously to submit these talking points to the County Council for consideration.

Defer Deadline for Payment of Impact Taxes by One Year from Current Due Date - Expedited Bill 4-09

- POSITIVE: a one-year deferral of impact tax payments might allow some development projects to go forward which might otherwise be abandoned
- NEGATIVE: although impact tax payments deferred over the next year would be made in FY11, the deferral will further reduce FY10 revenue projections at a time when the county is facing a \$500M budget shortfall and an anticipated further decrease in projected tax collections (sales, income tax, etc.)

Deferral of Building Permit Fees, Extend Inspection Deadlines, Extend Abandonment of Permit Deadline - Expedited Bill 5-09

- POSITIVE: a one-year deferral of building permit and associated permit fees might allow some building projects to go forward which might otherwise be abandoned
- NEGATIVE: although building permit and associated permit fees deferred over the next year would be made in FY11, the deferral will further decrease FY10 revenue projections at a time when the county is facing a \$500m budget shortfall and an anticipated further decrease in projected tax collections (sales, income tax. etc.)
  
- POSITIVE: deferred payment of permit fees and a 6-month inspection extension may allow builders, who might otherwise go bankrupt and cancel residential infill projects or abandon them in mid-construction due to cash flow constraints, to finish them and go to sale--and thereby avoid having half-finished home construction projects or empty demolition sites negatively impact safety and attractiveness of neighborhoods
- NEGATIVE: a 6-month inspection extension could mean residents are living with construction projects in their neighborhoods for up to 6 months longer than present (noise, construction trucks parking up residential streets, port-a-johns sitting next to public sidewalks, muddy sites strewn with construction debris awaiting landscaping)

- NEGATIVE: a 6-month inspection extension could result in projects being put on hold (no construction activity) or on slow-down (using fewer workers to complete job over longer period), which seems counterintuitive to any effort to create/maintain jobs
- NOTE: we recommend a new law to require the surrounding of residential infill (teardown/rebuild) demolition sites with 8' high chain-link fence if new construction does not begin immediately would prevent safety hazard of having unintended ponds (foundations of demolished homes filled with stormwater) in established neighborhoods; also need requirement that such water be treated to prevent mosquito breeding

General note regarding this legislation

- no economic or fiscal impact analysis was included with the bills when introduced, even though one of the proposals in the County Executive's 11-Point Economic Stimulus Package (released 12/18/08) reads--

"8. Provide an economic and fiscal impact analysis as part of any legislation or regulatory change. The analysis to include an assessment of the impact on both the County and the parties being regulated."

Fiscal impact analyses were finally released to the public in the packets for Bills 4-09 and 5-09, which were posted on the Council website February 27. This information was made available far too late for any organization, such as the Federation, to disseminate, analyze, and adopt a position prior to the March 3 public hearing.

These fiscal analyses project a loss to the county from these two pieces of legislation of a total of \$637,000--a loss of \$600,000 in interest on fee and tax revenue due to deferred collection, and an added \$37,000 administrative cost. Although the figure seems small in relation to the size of the total County budget, it is a substantial and unnecessary cost to incur in the midst of perhaps the worst economic downturn since the great Depression.

In addition, no economic impact analysis has yet been submitted for Bills 4-09 or 5-09 (in the County Executive's own words, the "impact on the parties being regulated"). In the absence of such analysis, the public is being asked to testify at this hearing without being privy to the County Executive's opinion as to the full extent of impact, either positive or negative, which these legislative proposals may have. This legislative process is inadequate and unacceptable, especially since it involves bills introduced on behalf of a County Executive who purports to value transparency, accountability and informed citizen participation in government decision making.

---

submitted on behalf of the Civic Federation Executive Committee by  
Jim Humphrey  
Chair, MCCF Planning and Land Use Committee  
(301)652-6259 day/evening/weekends  
email - theelms518@earthlink.net

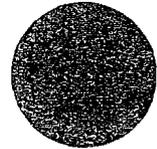
NAO  
CC  
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**Marin, Sandra**

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**From:** Andrews' Office, Councilmember  
**Sent:** Tuesday, March 03, 2009 9:14 AM  
**To:** Montgomery County Council  
**Subject:** FW: Hillandale Citizens Association Testimony on Bill 5-09

040782



-----Original Message-----

**From:** Eileen Finnegan [mailto:finnegan20903@yahoo.com]  
**Sent:** Monday, March 02, 2009 9:21 PM  
**To:** Andrews' Office, Councilmember; Harriston, Delphine  
**Cc:** Floreen's Office, Councilmember; Elrich's Office, Councilmember; Knapp's Office, Councilmember; Ervin's Office, Councilmember  
**Subject:** Hillandale Citizens Association Testimony on Bill 5-09

Hello council President Andrews and Ms. Harriston,

Since the speakers list was full for the hearing on this bill, I am submitting the testimony of the Hillandale Citizens Association with this e-mail.

Thank you.

Eileen Finnegan  
10404 Sweetbriar Parkway  
Silver Spring, MD 20903  
301-439-2263

2009-03-03 09:25  
MONTGOMERY COUNTY  
SANDRA MARIN

Hillandale Citizens Association

Testimony to County Council on Emergency Bill 5-09,  
March 3, 2009

“Please add a requirement for chain-link fencing on new residential in-fill construction. Open foundations and open construction sites are unsafe. Our experiences with two sites near our elementary school make this a basic safety/security concern.”

## **Neighborhood Safety Issue: Chain-link fencing is needed for residential infill building sites**

- Large, open foundation pits are unsafe.
- Construction sites are inviting & dangerous.
- Commercial permits require fencing.



1226 Cresthaven Drive , next to elementary school

### **Demolition Permits: Is a Year Too Much?**

**10318 Parkman: Purchased for demolition in July, 2006; Demolition permit #424891 issued on August 13, 2007; Now long EXPIRED.**

**Building is still standing.**

**Not-habitable structure in limbo as builder continues to seek buyers for two lot property.**

**Not the only time...**

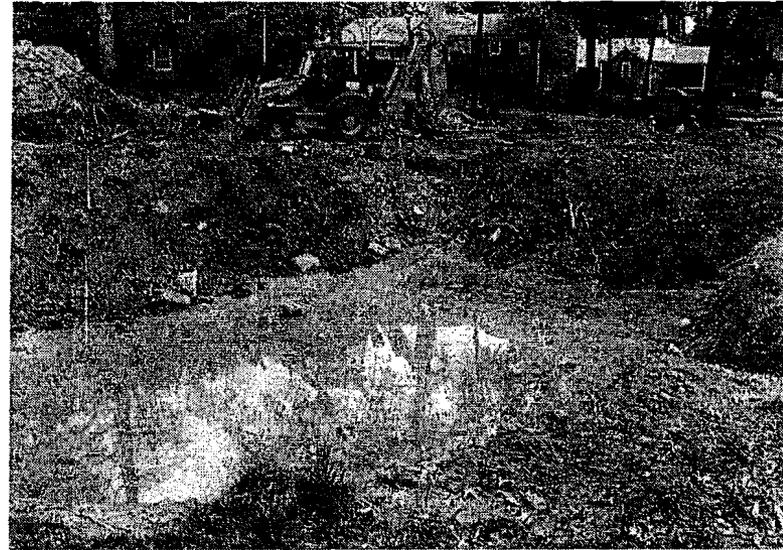
**1258 Cresthaven demolition happened 13 months after issuance, left debris, unsafe conditions and an unsecured hole for many, many months.**

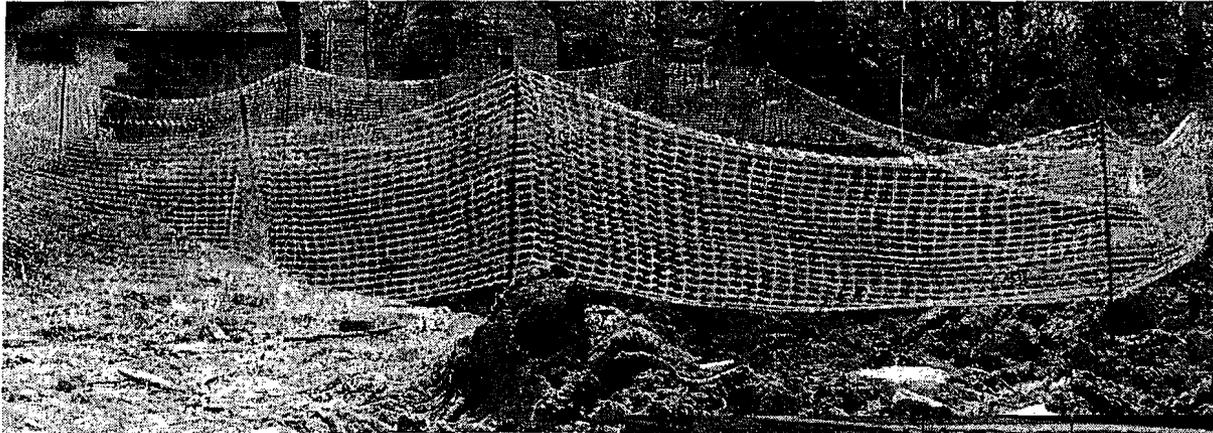


## **Chain-link fencing needed for new home/in-fill construction projects**

**Example: 1258 Cresthaven Drive at the corner of  
Cresthaven, Harper and Royal Roads. One short block to  
Cresthaven Elementary School**

**First foundation hole was an open pit. With contractor  
difficulties, this was an seemingly “abandoned” site for  
many months. After complaints, DPS requested  
snow/orange plastic fencing as a safeguard as “a favor to  
the community.” Community informed that chain-link  
fencing is only required on commercial projects.**

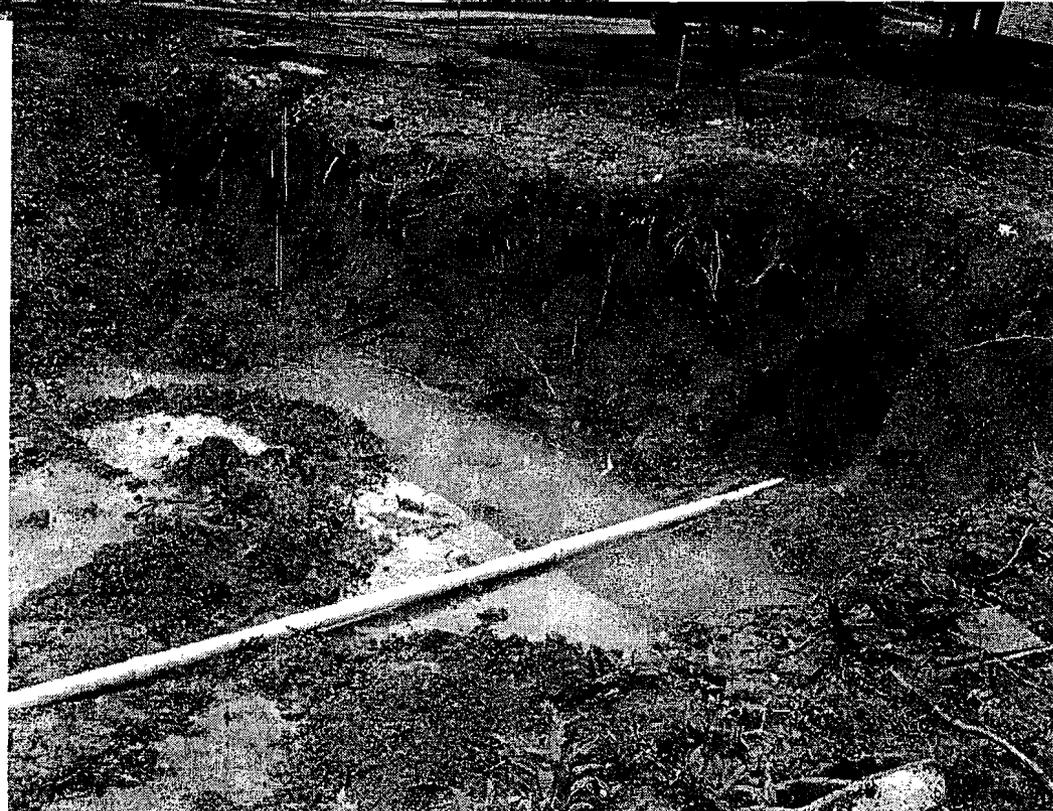




**1258 Cresthaven Drive "Do Over"**

**Above: Second Foundation hole with  
DPS requested plastic fencing**

**Right: Foundation hole with sewer pipe  
installation. Note condition of plastic  
fencing along Cresthaven Drive.**



# SENATE BILL 958

C2, L6, P3

EMERGENCY BILL  
ENROLLED BILL

(9lr3258)

—*Education, Health, and Environmental Affairs / Environmental Matters*—

Introduced by **Senator Rosapepe**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
President.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Construction Permits - Expiration Dates**

3 FOR the purpose of requiring the running of the period of approval for certain permits  
4 issued by the State to be tolled for a certain period; requiring the running of the  
5 period of approval for certain permits issued by a county or municipality to be  
6 tolled for a certain period; requiring a certain person who was issued a certain  
7 permit by the State, a county, or a municipality that will expire during a certain  
8 time period to pay any applicable renewal fees; requiring the Department of  
9 Planning to report to certain persons on certain matters; authorizing the State,  
10 a county, or a municipality to cancel a certain permit under certain  
11 circumstances; making certain conforming changes; defining certain terms;  
12 declaring the intent of the General Assembly; providing for the application of  
13 this Act; making this Act an emergency measure; providing for the termination  
14 of this Act; and generally relating to the expiration of construction and  
15 development permits.

**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics* indicate opposite chamber / conference committee amendments.



1 BY repealing and reenacting, with amendments,  
 2 Article – State Government  
 3 Section 11–103(a)  
 4 Annotated Code of Maryland  
 5 (2004 Replacement Volume and 2008 Supplement)

6 BY adding to  
 7 Article – State Government  
 8 Section 11–201 and 11–202 to be under the new subtitle “Subtitle 2. Permit  
 9 Extensions”  
 10 Annotated Code of Maryland  
 11 (2004 Replacement Volume and 2008 Supplement)

12 BY adding to  
 13 Article 24 – Political Subdivisions – Miscellaneous Provisions  
 14 Section 23–101 and 23–102 to be under the new title “Title 23. Construction and  
 15 Development Permits”  
 16 Annotated Code of Maryland  
 17 (2005 Replacement Volume and 2008 Supplement)

18 Preamble

19 WHEREAS, There exists a state of national recession, which has drastically  
 20 affected various segments of the Maryland economy, but none as severely as the  
 21 State’s banking, real estate, and construction sectors; and

22 WHEREAS, The real estate finance sector of the economy is in severe decline  
 23 due to the subprime mortgage problem and the resultant widening mortgage finance  
 24 crisis; and

25 WHEREAS, The extreme tightening of lending standards for home buyers and  
 26 other real estate borrowers has reduced access to the capital markets; and

27 WHEREAS, As a result of the crisis in the real estate finance sector of the  
 28 economy, real estate developers, homebuilders, and commercial, office, and industrial  
 29 developers have experienced an industry-wide decline, including reduced demand,  
 30 canceled orders, declining sales, rental price reductions, increased inventory, fewer  
 31 buyers who qualify to purchase homes, layoffs, and scaled back growth plans; and

32 WHEREAS, The process of obtaining planning board and zoning board  
 33 approvals for subdivisions, site plans, and variances can be difficult, time consuming,  
 34 and expensive both for private applicants and government bodies; and

35 WHEREAS, The process of obtaining other government approvals required  
 36 pursuant to legislative enactments and their implementing rules and regulations can  
 37 also be difficult and expensive; and

1 WHEREAS, Permits and approvals can be impossible to renew or reobtain if  
2 expired or lapsed; and

3 WHEREAS, County and municipal governments obtain determinations of  
4 master plan consistency, conformance, or endorsement with State or regional plans,  
5 from State and regional government entities that may expire or lapse without  
6 implementation due to the state of the economy; and

7 WHEREAS, The current national recession has severely weakened the building  
8 industry, and many landowners and developers are seeing their life's work destroyed  
9 by the lack of credit and dearth of buyers and tenants due to the crisis in real estate  
10 financing and the building industry, uncertainty over the state of the economy, and  
11 increasing levels of unemployment in the construction industry; and

12 WHEREAS, The construction industry and related trades are sustaining severe  
13 economic losses, and the lapsing of government development approvals would, if not  
14 addressed, exacerbate those losses; and

15 WHEREAS, Financial institutions that lend money to property owners,  
16 builders, and developers are experiencing erosion of collateral and depreciation of  
17 their assets as permits and approvals expire, and the extension of these permits and  
18 approvals is necessary to maintain the value of the collateral and the solvency of  
19 financial institutions throughout the State; and

20 WHEREAS, Due to the current inability of builders and their purchasers to  
21 obtain financing, under existing economic conditions, more and more once-approved  
22 permits are expiring or lapsing and, as these approvals lapse, lenders must reappraise  
23 and thereafter substantially lower real estate valuations established in conjunction  
24 with approved projects, thereby requiring the reclassification of numerous loans  
25 which, in turn, affects the stability of the banking system and reduces the funds  
26 available for future lending, thus creating more severe restrictions on credit and  
27 leading to a vicious cycle of default; and

28 WHEREAS, As a result of the continued downturn of the economy, and the  
29 continued expiration of approvals which were granted by State and local governments,  
30 it is possible that thousands of government actions will be undone by the passage of  
31 time; and

32 WHEREAS, Obtaining an extension of an approval pursuant to existing  
33 statutory or regulatory provisions can be costly in terms of time and financial  
34 resources, with the costs falling on the public as well as the private sector; and

35 WHEREAS, Obtaining an extension of an approval pursuant to existing  
36 statutory or regulatory provisions may be insufficient to cope with the extent of the  
37 present financial situation; ~~and~~

1 ~~WHEREAS, It is the purpose of this Act to prevent the wholesale abandonment~~  
 2 ~~of approved projects and activities due to the present unfavorable economic conditions,~~  
 3 ~~by tolling the term of these approvals for a period of time, thereby preventing a waste~~  
 4 ~~of public and private resources; now, therefore,~~

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article - State Government**

8 11-103.

9 (a) **EXCEPT AS PROVIDED UNDER SUBTITLE 2 OF THIS TITLE, THIS**  
 10 **TITLE:**

11 (1) ~~[This] EXCEPT AS PROVIDED UNDER SUBTITLE 2 OF THIS~~  
 12 ~~TITLE, THIS title~~ applies only to a development project and only through the  
 13 completion of a final action under § 11-520 of this title; **AND**

14 (2) ~~This title~~ does not apply to an application for a renewal,  
 15 amendment, or extension of a development permit.

16 **SUBTITLE 2. PERMIT EXTENSIONS.**

17 **11-201.**

18 (A) **IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
 19 **INDICATED.**

20 (B) **“PERMIT” INCLUDES A DEVELOPMENT PERMIT, AS DEFINED UNDER**  
 21 **§ 11-101(D) OF THIS TITLE.**

22 **11-202.**

23 (A) **THIS SUBTITLE APPLIES TO A PERMIT ISSUED BY A COUNTY OR**  
 24 **MUNICIPALITY FOR A PROPOSED CONSTRUCTION OR DEVELOPMENT.**

25 (B) **THIS SUBTITLE DOES NOT APPLY TO:**

26 (1) **ANY PERMIT OR APPROVAL ISSUED BY THE UNITED STATES**  
 27 **GOVERNMENT OR ANY FEDERAL AGENCY;**

28 (2) **ANY PERMIT OR APPROVAL ISSUED JOINTLY BY THE UNITED**  
 29 **STATES GOVERNMENT AND A COUNTY OR A MUNICIPALITY;**

1           **(3) ANY PERMIT OR APPROVAL ISSUED JOINTLY BY ANY FEDERAL**  
2 **AGENCY AND A COUNTY OR A MUNICIPALITY;**

3           **(4) ANY PERMIT OR APPROVAL THAT HAS AN EXPIRATION DATE**  
4 **ESTABLISHED UNDER A LAW OR REGULATION OF THE FEDERAL GOVERNMENT;**  
5 **OR**

6           **(5) ANY PERMIT, LICENSE, OR APPROVAL ISSUED UNDER TITLE 4,**  
7 **SUBTITLE 1 OR SUBTITLE 2 OF THE ENVIRONMENT ARTICLE.**

8           **(C) THE RUNNING OF THE PERIOD OF APPROVAL FOR ANY PERMIT**  
9 **ISSUED BY A COUNTY OR MUNICIPALITY SHALL BE TOLLED BEGINNING ON**  
10 **JANUARY 1, 2008, AND ENDING ON ~~DECEMBER 31, 2012~~ JUNE 30, 2010.**

11           **(D) NOTWITHSTANDING SUBSECTION (C) OF THIS SECTION, A PERSON**  
12 **WHO WAS ISSUED A PERMIT BY A COUNTY OR MUNICIPALITY THAT WILL EXPIRE**  
13 **DURING THE PERIOD BEGINNING ON JANUARY 1, 2008, AND ENDING ON JUNE**  
14 **30, 2010, IS REQUIRED TO PAY ANY APPLICABLE RENEWAL FEES.**

15           **Article 24 – Political Subdivisions – Miscellaneous Provisions**

16           **TITLE 23. CONSTRUCTION AND DEVELOPMENT PERMITS.**

17           **23-101.**

18           **(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
19 **INDICATED.**

20           **(B) “PERMIT” INCLUDES A DEVELOPMENT PERMIT, AS DEFINED UNDER**  
21 **§ 11-101(D) OF THE STATE GOVERNMENT ARTICLE.**

22           **23-102.**

23           **(A) THIS TITLE APPLIES TO A PERMIT ISSUED BY THE STATE FOR A**  
24 **PROPOSED CONSTRUCTION OR DEVELOPMENT.**

25           **(B) THIS TITLE DOES NOT APPLY TO:**

26           **(1) ANY PERMIT OR APPROVAL ISSUED BY THE UNITED STATES**  
27 **GOVERNMENT OR ANY FEDERAL AGENCY;**

28           **(2) ANY PERMIT OR APPROVAL ISSUED JOINTLY BY THE UNITED**  
29 **STATES GOVERNMENT AND A COUNTY OR A MUNICIPALITY;**

1           **(3) ANY PERMIT OR APPROVAL ISSUED JOINTLY BY ANY FEDERAL**  
 2 **AGENCY AND A COUNTY OR A MUNICIPALITY;**

3           **(4) ANY PERMIT OR APPROVAL THAT HAS AN EXPIRATION DATE**  
 4 **ESTABLISHED UNDER A LAW OR REGULATION OF THE FEDERAL GOVERNMENT;**  
 5 **OR**

6           **(5) ANY PERMIT, LICENSE, OR APPROVAL ISSUED UNDER THE**  
 7 **FOLLOWING PROVISIONS OF THE ENVIRONMENT ARTICLE:**

8                   **(I) TITLE 4, SUBTITLE 1 OR SUBTITLE 2;**

9                   **(II) TITLE 5, SUBTITLE 5; OR**

10                   **(III) TITLE 9.**

11           **(C) THE RUNNING OF THE PERIOD OF APPROVAL FOR ANY PERMIT**  
 12 **ISSUED BY THE STATE SHALL BE TOLLED BEGINNING ON JANUARY 1, 2008, AND**  
 13 **ENDING ON ~~DECEMBER 31, 2012~~ JUNE 30, 2010.**

14           **(D) NOTWITHSTANDING SUBSECTION (C) OF THIS SECTION, A PERSON**  
 15 **WHO WAS ISSUED A PERMIT BY THE STATE THAT WILL EXPIRE DURING THE**  
 16 **PERIOD BEGINNING ON JANUARY 1, 2008, AND ENDING ON JUNE 30, 2010, IS**  
 17 **REQUIRED TO PAY ANY APPLICABLE RENEWAL FEES.**

18           ~~SECTION 2. AND BE IT FURTHER ENACTED, That nothing in this Act shall~~  
 19 ~~be interpreted to affect any permit or approval issued by the government of the United~~  
 20 ~~States or any federal agency, or any permit or approval that has an expiration date~~  
 21 ~~established pursuant to law or regulation of the federal government.~~

22           SECTION ~~2~~ 2. AND BE IT FURTHER ENACTED, That nothing in this Act  
 23 shall affect the authority of the State or any county or municipality to revoke or  
 24 modify a permit. The State or any county or municipality may cancel a permit affected  
 25 by the provisions of this Act if the State or the county or municipality determines that  
 26 the permit presents a threat to the public health, safety, or welfare of its citizens.

27           SECTION ~~4~~ 3. AND BE IT FURTHER ENACTED, That, except as otherwise  
 28 provided in this Act, this Act shall be construed to apply retroactively and shall be  
 29 applied to and interpreted to affect any permit for construction or development issued  
 30 by the State or any county or municipality on or after January 1, 2008, and on or  
 31 before June 30, 2010.

32           SECTION 4. AND BE IT FURTHER ENACTED, That, on or before December  
 33 31, 2009, the Maryland Department of Planning shall report to the General Assembly,  
 34 in accordance with § 2-1246 of the State Government Article, on the impact of this

1 Act, whether the toll period should be extended, and what other alternatives might be  
2 available to the State and local jurisdictions in light of the current economic downturn.

3 SECTION 5. AND BE IT FURTHER ENACTED, That, ~~except as otherwise~~  
4 ~~provided in this Act,~~ this Act is an emergency measure, is necessary for the immediate  
5 preservation of the public health or safety, has been passed by a yea and nay vote  
6 supported by three-fifths of all the members elected to each of the two Houses of the  
7 General Assembly, and shall take effect from the date it is enacted. It shall remain  
8 effective through ~~December 31, 2012~~ June 30, 2010, and, at the end of ~~December 31,~~  
9 ~~2012~~ June 30, 2010, with no further action required by the General Assembly, this Act  
10 shall be abrogated and of no further force and effect.

Approved:

\_\_\_\_\_  
Governor.

\_\_\_\_\_  
President of the Senate.

\_\_\_\_\_  
Speaker of the House of Delegates.

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 921

(Delegate Barnes, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

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Construction Permits - Expiration Dates

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This emergency bill extends to June 30, 2010, the duration of approved State, county, and municipal permits for proposed construction and development that were approved on or after January 1, 2008. The bill does not apply to several specified issued permits or permit approvals. The bill applies retroactively to construction and development permits issued by the State, a county, or a municipality. By December 31, 2009, the Maryland Department of Planning must report to the General Assembly on the impact of the bill, whether the toll period should be extended, and what other alternatives might be available to the State and local jurisdictions.

The bill terminates June 30, 2010.

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Fiscal Summary

**State Effect:** General fund expenditures will increase by an estimated \$36,200 in FY 2010 to meet the reporting requirement of the bill. Future years are not affected. There is no direct effect on revenues.

**Local Effect:** Fees and taxes associated with construction may decrease for some local jurisdictions, from the effective date through FY 2010. **This bill may impose a mandate on a unit of local government**

**Small Business Effect:** Minimal.

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## Analysis

**Bill Summary:** The bill does not affect the authority of the State, a county, or municipality to revoke or modify a permit and does not affect the obligation of permit holders to pay any applicable renewal fees. Affected permits may be cancelled if the State, a county, or municipality determines that the permit presents a threat to the public health, safety, or welfare of its citizens.

The bill does not apply to the running time of permits or approvals:

- issued by the United States government or any federal agency;
- issued jointly by the United States government and a county or a municipality;
- issued jointly by any federal agency and a county or a municipality;
- that has an expiration date established under a law or regulation of the federal government; or
- issued under specified State environmental laws.

**Current Law/Background:** In Maryland, local governments have the primary role in enforcing building and construction codes. There are over 90 local jurisdictions that issue building permits in the State, including all 23 counties and Baltimore City. Construction and development permits are generally required for the purpose of assuring public safety, health, and welfare as they are affected by construction. The permitting process varies by local jurisdiction. Local jurisdictions may charge permit fees to help cover inspection and other related expenses. The duration, or running time, for a building permit (*e.g.*, for construction of a single home) is often shorter than for permits for commercial development or creation of a subdivision.

At the local level, a site planning process involving multiple local governmental agencies concerned with regulating water, sewer, utilities, roadways, erosion and sediment control, fire safety, and other issues may be a pre-requisite for applying for a commercial development or subdivision permit. Subdivision development may involve not only building permits for individual properties, but permits for grading of roadways and may require approval of road design and the creation of individual lots.

Permits generally remain in effect once construction begins. If there is a delay in construction, a permit may be renewed, re-routed, or reactivated. At this point in time, the permit-granting authority typically reviews whether, and to what degree, changes to pertinent zoning, water and sewer, or other regulations affect the construction that would be permitted.

**State Fiscal Effect:** General fund expenditures increase by \$36,241 in fiscal 2010. This estimate reflects the cost of employing one contractual planner in the Maryland Department of Planning during the first half of fiscal 2010 to meet the reporting requirement of the bill. It includes a salary, fringe benefits, and operating expenses. The Maryland Department of Planning advises that the employee will be responsible for contacting over 90 building permit issuing agencies throughout the State, compiling information received, and assisting in the preparation of the report to be delivered to the General Assembly by December 31, 2009.

**Local Fiscal Effect:** Local revenues associated with reactivation of a permit (such as excise tax and school facilities charge revenues) will be reduced over the effective time period. Howard County advises that its revenues may decrease under the bill by as much as \$8,000.

Some local governments have permit allocation systems designed to ensure that the growth rate of new development projects does not overreach existing or planned infrastructure (*e.g.*, schools). Where such allocations exist, extending the duration of existing permits may in some cases preclude other potential construction and development projects from obtaining permits to proceed. The Maryland Association of Counties advises that some local jurisdictions are working toward extending permit periods, either on a case-by-case or an overall basis.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** SB 958 (Senator Rosapepe) – Education, Health, and Environmental Affairs.

**Information Source(s):** Allegany, Calvert, Howard, Montgomery, and Talbot counties; Maryland Association of Counties; Board of Public Works; Office of the Attorney General (Consumer Protection Division); Maryland Department of the Environment; Maryland Department of Planning; Department of General Services; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - March 4, 2009  
mcp/mwc Revised - House Third Reader - April 8, 2009

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