Montgomery County Council

Committee: GO
Committee Review: Completed
Staff: Ludeen McCartney-Green, Legislative Attorney
Glenn, Orlin, Senior Analyst
Purpose: Final action – vote expected
Keywords: #CapOnImpactTax, #Development

AGENDA ITEMS#2A&3R
June 20, 2023
Action

SUBJECT

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

Resolution to Approve Development Impact Tax Rates for Transportation and Public School Improvements

Lead Sponsors: Councilmembers Friedson, Glass, and Stewart
Co-sponsors: Councilmembers Fani-González and Balcombe

EXPECTED ATTENDEES

Nancy Feldman, Finance Department

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- The Government Operations and Fiscal Policy Committee (GO) recommended by a vote (3-0) enactment of Bill 25-23, with amendments.
- Final Action – Roll call vote expected.

DESCRIPTION/ISSUE

Expedited Bill 25-23 would:

(1) modify the calculations for tax rate adjustments for transportation improvements by requiring cumulative increase or decrease in the construction cost index rather than an annual average every two years;

(2) set a cap on the development impact tax rate for school and transportation improvements;

(3) allow certain carryover increases of the biennial tax rate adjustments; and

(4) generally amend the law governing transportation and school development impact taxes.

SUMMARY OF KEY DISCUSSION POINTS

- The GO Committee held a worksession on June 15 and made the following amendments to Bill 25-23:
    - modify the calculation for the transportation and school impact tax excess carryover to a dollar amount instead of a percentage (lines 18-23 and 39-44);
    - modify the approach for calculating the excess carryover for the school impact tax to occur *after* the biennial tax rate adjustment (lines 39-44); and
    - clarify that the school impact tax calculation uses the average Montgomery County public school construction costs (lines 27-33).

- In addition, the Committee unanimously recommended approval of the resolution with an amendment to add a table showing the public school utilization premium payment rate schedule increasing by 20% over existing rates, effective July 1, 2023.

This report contains:

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AGENDA ITEMS #2A&3R
June 20, 2023
Action

M E M O R A N D U M

June 16, 2023

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney
Glenn Orlin, Senior Analyst

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

Resolution to Approve Development Impact Tax Rates for Transportation and Public School Improvements

PURPOSE: Action – a roll call vote expected

GO Committee recommendation: The Government Operations and Fiscal Policy (GO) Committee voted (3-0) to recommend the enactment of Bill 25-23 with amendments.

Expedited Bill 25-23, Taxation - Development Impact Taxes for Transportation and Public-School Improvements – Amendments, sponsored by Lead Sponsors Councilmembers Friedson, Glass, and Stewart, and Co-Sponsor Fani-González was introduced on May 18, 2023. A public hearing was held on June 13 at 1:30 p.m.[1] A Government Operations & Fiscal Policy Committee worksession was held on June 15.

Expedited Bill 25-23 would modify the calculations for tax rate adjustments for transportation improvements by requiring a cumulative increase or decrease in the construction cost index rather than an annual average every two years. Expedited Bill 25-23 would also establish a cap on the development impact tax rate for school and transportation improvements, allow certain increases to the biennial tax rate adjustments, and generally amend the law governing transportation and school development impact taxes.

Accompanying Expedited Bill 25-23 is a resolution to approve the proposed tax rates that would be established with a 20% inflation cap. See ©5. The resolution is required by County law[2] if the Council decides to make any updates to the impact tax rates for transportation and public

[1]#CapOnImpactTax, #Development
[2] County Code §52-49(e) and §52-55(d),

school improvements after the Director of Finance has already published new rates on May 1, 2023. See ©8. The resolution would become effective July 1, 2023 and override the published rates by Finance.

Background

Code §§52-49 and 52-55 require the Director of Finance to adjust and publish the tax rates automatically every two years (in odd-numbered years) for the development impact tax for transportation and public school improvements.

The law also requires the transportation impact tax rates to be calculated based on the annual average or increase in the published construction cost index inflation over the most recent two calendar years. The school impact tax rate adjustment takes into account Montgomery County Public Schools' (MCPS') current unit cost of school construction coupled with the student generation rate by housing type.

On May 1, 2023, the Director of Finance published in the County Register the new rates for the period effective 7/1/2023 through 6/30/2025.[3]

Under the current law, the impact tax rates for transportation will increase by 9.47%. According to the Finance Department, the increase in the index in calendar 2021 over calendar 2020 was 6.05%, and the increase in the index in calendar 2022 over calendar 2021 was 12.89%, thus the average increase was calculated to be 9.47%.

The rates for school impact tax rates will increase substantially. In part depending on the type of unit and whether it is in an "infill" or "turnover" area, the rate will go up by anywhere between 41.3% to 129.2%. The school impact tax rates are developed by the Montgomery County Planning Board staff, with input from MCPS staff, and are based on 2021-2022 school year construction costs and enrollment data. The projected increases by unit and area type are:

Infill Areas:	
Single-family detached	+45.6%
Single-family attached	+44.2%
Multi-family low-rise	+69.0%
Multi-family high-rise	+57.8%
Turnover Areas:	
Single-family detached	+41.3%
Single-family attached	+42.7%
Multi-family low-rise	+57.0%
Multi-family high-rise	+129.2%

The rate increases for the transportation rates and, especially, the school rates are significantly larger than past biennial adjustment updates.

[3] Montgomery County Register.
https://www.montgomerycountymd.gov/exec/register/regs/2023/May23Notices.html

BILL SPECIFICS

Expedited Bill 25-23 seeks to amend the law to address the flaw regarding the calculation of tax rate adjustments for development impact taxes for transportation improvements by using a cumulative approach over the prior two years rather than an annual average. When the biennial update process was added to the law, the intent was for the rates to be adjusted for inflation so that new development would continue to pay for its impact on transportation and school construction. The fact that the transportation tax has been increased only by the average of the prior two years means that the rates were increased only half as much as was intended. The proposed provision is intended to correct this flaw as of July 2023; it does not seek to recoup the foregone revenue from past biennial updates.

See lines 4-9, as follows:
Biennial tax rate adjustment. The Director of Finance, after advertising and holding a public hearing as required by Section 52-17(c), must adjust the tax rates set in or under this Section on July 1 of each odd-numbered year by the **[**annual average**]** cumulative increase or decrease in a published construction cost index specified by regulation **[**for**]** over the **[**two most recent calendar years**]** prior two calendar years.

The cumulative inflation rate over calendar years 2021 and 2022 was 19.74%, according to the regional construction cost index.

Decision Point #1: Whether the Committee approves amending the transportation impact tax calculation to reflect cumulative construction cost inflation over the prior two calendar years. **Approved by the Committee (3-0)**.

Bill 25-23 would also establish a 20% inflation cap on the biennial tax rate adjustments. In other words, if an increase in the construction cost index exceeds 20% in subsequent years, **the Director of Finance must limit the rate adjustments to 20% for transportation and public school impact taxes**. In addition, the Bill allows for the opportunity to recapture and carry over a percentage that exceeds 20% to be banked or reserved for future calculation. The carryover percentage may be used and added to the following biennial base tax rate, if the excess carryover plus the base rate remains capped at 20%.

The net result of correcting the transportation impact tax biennial calculation and capping the transportation and school impact tax rate increases at 20% will result in a net revenue loss of about $24.5 million in FYs24-28. The year-by-year impacts are shown below ($000):

Impact Tax Bill - Inflation Caps	FY23-28	FY24	FY25	FY26	FY27	FY28
Impact Tax Transportation - Inflation Adj	**4,255**	851	851	851	851	851
Impact Tax Schools - Inflation Adj 20% cap	**(28,791)**	(4,429)	(5,378)	(6,328)	(6,328)	(6,328)
change	**(24,536)**	(3,578)	(4,527)	(5,477)	(5,477)	(5,477)

The Amended FY23-28 Capital Improvements Program incorporated this foregone revenue. If the Council were to approve a higher cap—or not approve the bill or resolution resulting in no cap—then part or all this foregone revenue would be added to the General Obligation bond capital reserve.

The Planning Board noted that Public School Utilization Premium Payment is derived from the current school impact Tax rates. The Board recommends that, if there is a cap on the school impact tax rates then the same percentage cap should apply to the Utilization Payments, and that a revised rate table be included in the resolution. Table 3 on ©11-12 shows the existing and the new "uncapped" rates.

Decision Point #2: Whether the Council concurs with adding to the rate resolution Table 3 amended so that the new rates reflect the cap. **Approved by the Committee (3-0)**.

The Board also recommends a zoning text amendment that would also revise the Bethesda Park Impact Payment and the Silver Spring Civic Improvement Fund. Once the Council acts on Bill 25-23 and the accompanying resolution, Council staff will prepare such a ZTA.

PUBLIC HEARING

There were two speakers at the public hearing. Jason Sartori, on behalf of the Montgomery County Planning Board, supported the Bill and requested amendments to modify the language for the carryover provision for transportation impact taxes, along with a minor modification to Section 52-55. Mr. Sartori also testified that the Board does not support the carryover amount for school impact taxes because the true value is achieved automatically at every biennial update (©14).

Laura Stewart, representing the Montgomery County Council of PTAs (MCCPTA), testified in support of the Bill with amendments for a 25% cap, but also requested the Council consider a permanent fix through the new Growth and Infrastructure Policy that will be transmitted by the Planning Board next year. (©27) Griffin Benton, of the Maryland Building Industry Association (MBIA), provided written testimony in support of the Bill with an amendment to lower the cap to 12%-14% with the ability to carryover excess amount over the cap. (©28)

SUMMARY OF IMPACT STATEMENTS

Racial Equity and Social Justice Impact Statement: "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 most of the 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." (©30).

The **Economic Impact Statement** provided by OLO anticipates the Bill would have an overall positive impact on economic conditions in the County. The Bill would reduce operating expenses for certain commercial and residential developers (holding all else equal). However, certain developers likely would pay higher development taxes due to the provision in the Bill that biennial tax rate adjustments exceeding 20% be carried over and added to the next biennial adjustment. (©27).

The **Climate Assessment** is on page ©43. The Office and Management and Budget (OMB)/Finance Department has requested an extension until June 27 to submit the **Fiscal Impact Statement** to the Council**.** (©42).

SUMMARY OF GO COMMITTEE WORKSESSION – JUNE 15

Mary Beck, Capital Budget Manager, Dennis Hetman, Fiscal Manager, and Todd Fawley-King, Financial Analyst, represented the Executive Branch. Legislative Attorney Ludeen McCartney-Green and Senior Analyst Glenn Orlin represented the Council staff. The Committee discussed the specifics of the Bill and agreed with amending the transportation impact tax calculation to reflect the cumulative construction costs inflation over the prior two calendar years.

The GO Committee approved the following amendments to Bill 25-23:

- modify the calculation for the transportation and school impact tax excess carryover to a dollar amount instead of a percentage (lines 18-23 and 39-44);
- modify the approach for calculating the excess carryover for the school impact tax to occur *after* the biennial tax rate adjustment (lines 39-44); and
- clarify that the school impact tax calculation uses the average Montgomery County public school construction costs (lines 27-33).

In addition, the Committee unanimously recommended approval of the resolution with an amendment to add a table showing the public school utilization premium payment rate schedule increasing by 20% over existing rates, effective July 1, 2023.

ISSUES

1. Amendments to the carryover calculation for transportation impact tax.

Council staff was alerted by the Finance Department and Planning Board that the approach to calculating the transportation tax described in the Bill (lines 18-23) results in future adjustments *exceeding* the cumulative pace of inflation when there is an opportunity to add the excess carryover percentage.

The original intent of the provision, as introduced, is to provide stability to the development market and maintain the pace with cumulative inflation. Therefore, to avoid unintended consequences, the recommendation by Finance and Planning is to use the *dollar amount* carryover approach rather than a *percentage* carryover approach – this would ensure that the impact tax rates will return to the true rate and avoid overcompensating because the banked percentage is being applied to a higher rate. The Planning Board provided a hypothetical breakdown of both approaches, see page ©23.

Council staff recommends the following amendment to lines 18-23 of the Bill:

Carryover of biennial tax rate adjustments in excess of 20%. If the biennial tax rate adjustment exceeds 20%, the excess [[percentage]] dollar amount must be carried over and added to the tax rate before calculating the next biennial adjustment. If this total adjustment, [[which is also capped at 20%]] including any carried-over value, again exceeds 20%, the excess [[percentage]] dollar amount must be carried over and added to the tax rate before calculating the [[following]] biennial adjustment.

Decision Point #3: Whether the Committee approves the recommendation to amend the carryover calculation for the transportation impact tax. **Approved by the Committee (3-0)**.

2. Amendments to the carryover calculation for the public school impact tax.

Council staff agrees the dollar amount carryover approach should also be applied to the public school impact tax. We note that the Planning Board disagrees with this approach and cited in its memo:

> "On the school side, the true value is achieved automatically every time the rates are updated. Applying the carryover after the biennial recalculation would cause the impact tax rates to overcharge developers for their impact on enrollment. Essentially, future projects would be overpaying for the discounts offered to earlier projects. Staff illustrates this in the hypothetical example." ©23.

The purpose of this carryover provision is for future development to pay a somewhat higher impact tax than it would normally to make up for the foregone impact tax revenue due to the capped rate in the 2023-2025 period. Therefore, new development *as a whole* would ultimately pay its fair share, although later developments would essentially be paying for the tax break granted to developments proceeding in 2023-2025.

Council staff recommends the following amendment to lines 39-44:

Carryover of biennial tax rate adjustments in excess of 20%. If the biennial tax rate adjustment exceeds 20%, the excess [[percentage]] dollar amount must be carried over and added to the tax rate [[before]] after calculating the next biennial adjustment. If this total adjustment, [[which is also capped at 20%]] including any carried-over value, again exceeds 20%, the excess [[percentage]] dollar amount must be carried over and added to the tax rate [[before]] after calculating the [[following]] biennial adjustment.

Decision Point #4: Whether the Committee approves the recommendation to amend the calculation for the carryover for the public school impact tax, including for the excess dollar amount to be added *after* the biennial adjustment is calculated. **Approved by the Committee (3-0).**

3. Clarifying Amendment

To better capture the school impact tax calculation regarding school costs, the Planning Board recommends, and Council staff supports, the following amendment (lines 27-33):

The Director of Finance, after advertising and holding a public hearing as required by Section 52-17(c), must adjust the tax rates set in or under this Section effective on July 1 of each odd-numbered year in accordance with the update to the Growth and Infrastructure Policy using the latest student generation rates and average Montgomery County Public School **[[**school**]]** construction **[[**cost data**]]** costs.

Decision Point #5: Whether to adopt the described above clarifying amendment. **Approved by the Committee (3-0).**

4. **Councilmember Jawando's Proposal**

Councilmember Jawando recommends setting the cap at 25% instead of 20%. See ©29. If approved, the public school impact tax rates would be 4.17% higher than those in Bill 25-23 and the associated resolution. The rates would be:

Land Use ($/unit)	Infill Impact Areas	Turnover Impact Areas
Single-Family Detached	$26,046	$27,171
Single-Family Attached	$22,567	$30,683
Multi-Family Low Rise	$6,858	$14,193
Multi-Family High Rise	$3,895	$6,326
Farm Tenant House	$26,046	$27,171
Senior Residential	$0	$0

The transportation impact tax rates would be the same as in Bill 25-23 and the associated resolution.

The net result of Mr. Jawando's proposal would be a net revenue loss of about $19.7 million in FYs24-28. The year-by-year impacts are shown below ($000):

Impact Tax Bill – Jawando Proposal	FY23-28	FY24	FY25	FY26	FY27	FY28
Impact Tax Transportation - Inflation Adj	**4,255**	851	851	851	851	851
Impact Tax Schools - Inflation Adj 25% cap	**(23,992)**	(3,691)	(4,482)	(5,273)	(5,273)	(5,273)
change	**(19,737)**	(2,840)	(3,631)	(4,422)	(4,422)	(4,422)

Mr. Jawando also recommends not implementing a cap in perpetuity without a wider community conversation. If the Council concurs, then the simplest course of action would be to adopt the rate resolution (at 20%, 25%, or some other level) and not the recapture portion of the bill, and to return to this matter at a later time. For example, typically when the Planning Board sends over its draft of the Growth Policy—now called the Growth and Infrastructure (G&I) Policy—it also sends an accompanying bill with recommended revisions to the impact tax law. The G&I Policy is updated every 4 years. According to the County Code, the next draft of the G&I Policy is due from the Planning Board by August 1, 2024, so if the Board will be proposing revisions to the impact tax, it would be transmitting a bill then, too. According to the

Code, the Council must act on the G&I Policy by November 15, 2024, and so an accompanying impact tax bill would likely be acted upon then, too. This would be well in advance of the next biennial update: July 1, 2025.

In either case, this is an expedited bill because the published new tax rates by the Director of Finance would take effect on July 1, 2023, unless the Council enacts Bill 25-23 with the accompanying resolution to revise the rates by July 1.

Decision Point #6: Should the cap be set at 20% or 25%, or in the 12-14% range as recommended by MBIA? Note that if the cap is set in the 12-14% range, it may take a decade or two before the recapture is achieved. **The Committee (3-0) decided to keep the cap set at 20%, as originally introduced in the Bill.**

Decision Point #7: Whether the Bill should not include a recapture provision at this time, as recommended by Mr. Jawando and MCCPTA, with the understanding that this issue would be resolved in a subsequent bill prior to the next biennial update. **The Committee (3-0) decided to keep the recapture provision, also known as the excess carryover, as originally introduced in the Bill.**

This packet contains: Circle #

Expedited Bill No. 25-23
Concerning: Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments
Revised: 6/16/2023 Draft No. 5
Introduced: May 18, 2023
Expiration: December 7, 2026
Enacted: ____
Executive: ____
Effective: ____
Sunset Date: None
Ch. ____, Laws of Mont. Co. ____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Friedson, Glass, and Stewart
Co-sponsors: Councilmembers Fani-González and Balcombe

AN EXPEDITED ACT to:

(1) modify the calculations for tax rate adjustments for transportation improvements by requiring cumulative increase or decrease in the construction cost index rather than an annual average every two years;
(2) set a cap on the development impact tax rate for school and transportation improvements;
(3) allow certain carryover increases of the biennial tax rate adjustments; and
(4) generally amend the law governing transportation and school development impact taxes.

By amending
Montgomery County Code
Chapter 52, Taxation
Sections 52-49 and 52-55

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

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

Sec. 1. Sections 52-49 and 52-55 are amended as follows:

52-49. Tax rates.

* * *

(f) *Biennial tax rate adjustment.* The Director of Finance, after advertising and holding a public hearing as required by Section 52-17(c), must adjust the tax rates set in or under this Section on July 1 of each odd-numbered year by the [annual average] cumulative increase or decrease in a published construction cost index specified by regulation [for] over the [two most recent calendar years] prior two calendar years. The Director must calculate the adjustment to the nearest multiple of 5 cents for rates per square foot of gross floor area or one dollar for rates per dwelling unit. The Director must publish in the County Register the amount of this adjustment not later than May 1 of each odd-numbered year.

(1) *Inflation cap on biennial tax rate increases.* Notwithstanding subsection (f), the Director must cap the biennial tax rate adjustment not to exceed 20%.

(2) *Carryover of biennial tax rate adjustments in excess of 20%.* If the biennial tax rate adjustment exceeds 20%, the excess [[percentage]] dollar amount must be carried over and added to the tax rate before calculating the next biennial adjustment. If this total adjustment, [[which is also capped at 20%]] including any carried over value, again exceeds 20%, the excess [[percentage]] dollar amount must be carried over and added to the tax rate before calculating the [[following]] biennial adjustment.

* * *

52-55. Tax rates.

* * *

(d) The Director of Finance, after advertising and holding a public hearing as required by Section 52-17(c), must adjust the tax rates set in or under this Section effective on July 1 of each odd-numbered year in accordance with the update to the Growth and Infrastructure Policy using the latest student generation rates and **[[**school**]]** average Montgomery County Public School construction **[[**cost data**]]** costs. The Director must calculate the adjustment to the nearest multiple of one dollar. The Director must publish in the County Register the amount of this adjustment not later than May 1 of each odd-numbered year.

(1) *Inflation cap on tax rate increases.* Notwithstanding subsection (d), the Director must cap the biennial tax rate adjustment not to exceed 20%.

(2) *Carryover of biennial tax rate adjustments in excess of 20%.* If the biennial tax rate adjustment exceeds 20%, the excess **[[**percentage**]]** dollar amount must be carried over and added to the tax rate after calculating the next biennial adjustment. If this total adjustment, **[[**which is also capped at 20%**]]** including any carried over value, again exceeds 20%, the excess **[[**percentage**]]** dollar amount must be carried over and added to the tax rate after calculating the **[[**following**]]** biennial adjustment.

* * *

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on July 1, 2023.

Sec. 3. Transition.

The amendments to the development impact tax for transportation improvements and the development impact tax for public school improvements added by Section 1 of this Act, must apply to any application for a building permit filed on or after the effective date of this Act.

Resolution No.: _______________
Introduced: May 18, 2023
Adopted: _______________

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Friedson, Glass, and Stewart
Cosponsors: Fani-González and Balcombe

SUBJECT: Development Impact Tax Rates for Transportation and Public School Improvements

Background

1. Under County Code §52-49(e), the County Council may, by resolution, after a public hearing advertised at least 15 days in advance, increase or decrease the development impact tax rates for transportation.

2. Under County Code §52-55(d), the County Council may, by resolution, after a public hearing advertised at least 15 days in advance, increase or decrease the development impact tax rates for public school improvements.

3. A public hearing was held on this resolution on June 13, 2023.

4. This resolution is necessary to update the impact tax rates for transportation and public school improvements.

Action

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

1. The development impact tax rates for transportation, effective for any payments made on or after July 1, 2023 are:

Tax per Dwelling Unit or per Square Foot (SF) of Gross Floor Area (GFA)				
Land Use	**Red Policy Areas**	**Orange Policy Areas**	**Yellow Policy Areas**	**Green Policy Areas**
Residential Uses ($/unit)				
Single-Family Detached	$9,663	$24,151	$30,190	$30,190
Single-Family Attached	$7,905	$19,761	$24,702	$24,702
Multi-Family Low Rise	$6,146	$15,366	$19,208	$19,208
Multi-Family High Rise	$4,930	$10,976	$13,720	$13,720
Multi-Family Senior	$1,705	$4,391	$5,488	$5,488
Student-Built Houses	$0	$0	$0	$0
Land Use	**Red Policy Areas**	**Orange Policy Areas**	**Yellow Policy Areas**	**Green Policy Areas**
Commercial Uses ($/SF)				
Office	$8.80	$22.10	$27.60	$27.60
Industrial	$4.45	$10.95	$13.85	$13.85
Bioscience Facility	$0.00	$0.00	$0.00	$0.00
Retail	$7.85	$19.70	$24.60	$24.60
Place of Worship	$0.00	$0.00	$0.00	$0.00
Clergy House	$0.00	$0.00	$0.00	$0.00
Private School	$0.70	$1.80	$2.25	$2.25
Hospital	$0.00	$0.00	$0.00	$0.00
Charitable/Philanthropic Institution	$0.00	$0.00	$0.00	$0.00
Other Non-Residential	$4.45	$10.95	$13.85	$13.85
Agricultural Facility	$0.00	$0.00	$0.00	$0.00

2. The development impact tax rates for public school improvements, effective for any payments made on or after July 1, 2023 are:

Land Use ($/unit)	**Infill Impact Areas**	**Turnover Impact Areas**
Single-Family Detached	$25,004	$26,084
Single-Family Attached	$21,664	$29,456
Multi-Family Low Rise	$6,584	$13,625
Multi-Family High Rise	$3,739	$6,073
Farm Tenant House	$25,004	$26,084
Senior Residential	$0	$0

3. The public school utilization premium payments, effective for any payments made on or after July 1, 2023 are:

	Elementary School	**Middle School**	**High School**
Residential TIER 1 UPP (per unit)			
Infill Impact Areas			
Single-Family Detached	$4,168	$2,448	$3,334
Single-Family Attached	$3,611	$2,166	$2,888
Multi-Family Low Rise	$1,098	$659	$878
Multi-Family High Rise	$623	$374	$498
Turnover Impact Areas			
Single-Family Detached	$4,348	$2,609	$3,478
Single-Family Attached	$4,909	$2,946	$3,928
Multi-Family Low Rise	$2,270	$1,362	$1,817
Multi-Family High Rise	$1,013	$607	$810
Residential TIER 2 UPP (per unit)			
Infill Impact Areas			
Single-Family Detached	$8,335	$5,000	$6,668
Single-Family Attached	$7,222	$4,333	$5,777
Multi-Family Low Rise	$2,195	$1,316	$1,756
Multi-Family High Rise	$1,247	$748	$997
Turnover Impact Areas			
Single-Family Detached	$8,695	$5,216	$6,956
Single-Family Attached	$9,818	$5,891	$7,855
Multi-Family Low Rise	$4,542	$2,725	$3,634
Multi-Family High Rise	$2,024	$1,214	$1,620
Residential TIER 3 UPP (per unit)			
Infill Impact Areas			
Single-Family Detached	$12,503	$7,501	$10,002
Single-Family Attached	$10,832	$6,499	$8,665
Multi-Family Low Rise	$3,293	$1,975	$2,634
Multi-Family High Rise	$1,870	$1,122	$1,495
Turnover Impact Areas			
Single-Family Detached	$13,043	$7,825	$10,434
Single-Family Attached	$14,729	$8,837	$11,783
Multi-Family Low Rise	$6,812	$4,087	$5,450
Multi-Family High Rise	$3,037	$1,822	$2,429

This is a correct copy of Council action.

____

Sara Tenenbaum
Clerk of the Council

Montgomery County Register

May 1, 2023, Montgomery County Register Notice

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Pursuant to Chapter 52, Article IV and Article V of the Montgomery County Code (Development Impact Tax for Transportation Improvements and Development Impact Tax for Public School Improvements, respectively), the Director of Finance has adjusted the tax rates set under Sections 52-49, 52-55, and 52-59. As prescribed by law, the Director must adjust the Transportation Improvements tax rates by the annual average increase or decrease in a published construction cost index specified by regulation for the two most recent calendar years. The Director must calculate the adjustment to the nearest multiple of 5 cents for rates per square foot of gross floor area or one dollar for rates per dwelling unit. Based on the change in the Engineering-News Record's Baltimore Construction Cost Index for calendar years 2021 and 2022, the existing rates were increased by a rate of 9.47%. The rates were adjusted to the nearest 5 cents for rates calculated per square foot of gross floor area (GFA) or adjusted to the nearest dollar for rates calculated per dwelling unit.

The revised Public School Improvements Impact Tax Rates were developed by the Montgomery County Planning Board staff, with input from Montgomery County Public Schools staff, and are based on 2021-2022 school year construction costs and enrollment data.

TABLE 1		
Transportation Impact Taxes		
New Rates for the Period 7/1/2023 through 6/30/2025		
	Existing Rates	New Rates
Residential Uses ($/unit)		
Red Policy Areas		
Single-Family Detached	$8,071	$8,835
Single-Family Attached	$6,603	$7,228

Multi-Family Low Rise	$5,134	$5,620
Multi-Family High-Rise	$3,667	$4,014
Multi-Family Senior	$1,466	$1,605
Student-Built Houses	$0	$0
Orange Policy Areas		
Single-Family Detached	$20,173	$22,084
Single-Family Attached	$16,506	$18,069
Multi-Family Low Rise	$12,835	$14,051
Multi-Family High-Rise	$9,168	$10,036
Multi-Family Senior	$3,668	$4,015
Student-Built Houses	$0	$0
Yellow Policy Areas		
Single-Family Detached	$25,217	$27,605
Single-Family Attached	$20,633	$22,587
Multi-Family Low Rise	$16,044	$17,563
Multi-Family High-Rise	$11,460	$12,545
Multi-Family Senior	$4,584	$5,018
Student-Built Houses	$0	$0
Green Policy Areas		
Single-Family Detached	$25,217	$27,605
Single-Family Attached	$20,633	$22,587
Multi-Family Low Rise	$16,044	$17,563
Multi-Family High-Rise	$11,460	$12,545
Multi-Family Senior	$4,584	$5,018
Student-Built Houses	$0	$0
Commercial Uses ($/SF)		
Red Policy Areas		
Office	$7.35	$8.05
Industrial	$3.70	$4.05
Bioscience Facility	$0.00	$0.00
Retail	$6.55	$7.15
Place of Worship	$0.00	$0.00
Clergy House	$0.00	$0.00
Private Elementary and Secondary School	$0.60	$0.65
Hospital	$0.00	$0.00
Charitable/Philanthropic Institution	$0.00	$0.00
Other Non-Residential	$3.70	$4.05
Agricultural Facility	$0.00	$0.00

Orange Policy Areas		
Office	$18.45	$20.20
Industrial	$9.15	$10.00
Bioscience Facility	$0.00	$0.00
Retail	$16.45	$18.00
Place of Worship	$0.00	$0.00
Clergy House	$0.00	$0.00
Private Elementary and Secondary School	$1.50	$1.65
Hospital	$0.00	$0.00
Charitable/Philanthropic Institution	$0.00	$0.00
Other Non-Residential	$9.15	$10.00
Agricultural Facility	$0.00	$0.00
Yellow Policy Areas		
Office	$23.05	$25.25
Industrial	$11.55	$12.65
Bioscience Facility	$0.00	$0.00
Retail	$20.55	$22.50
Place of Worship	$0.00	$0.00
Clergy House	$0.00	$0.00
Private Elementary and Secondary School	$1.90	$2.10
Hospital	$0.00	$0.00
Charitable/Philanthropic Institution	$0.00	$0.00
Other Non-Residential	$11.55	$12.65
Agricultural Facility	$0.00	$0.00
Green Policy Areas		
Office	$23.05	$25.25
Industrial	$11.55	$12.65
Bioscience Facility	$0.00	$0.00
Retail	$20.55	$22.50
Place of Worship	$0.00	$0.00
Clergy House	$0.00	$0.00
Private Elementary and Secondary School	$1.90	$2.10
Hospital	$0.00	$0.00
Charitable/Philanthropic Institution	$0.00	$0.00
Other Non-Residential	$11.55	$12.65
Agricultural Facility	$0.00	$0.00

TABLE 2		
Public School Improvements Impact Taxes		
New Rates for the Period 7/1/2023 through 6/30/2025		
	Existing Rates	New Rates
Infill Impact Areas		
Single-Family Detached	$20,837	$30,343
Single-Family Attached	$18,053	$26,028
Multi-Family Low Rise	$5,487	$9,275
Multi-Family High Rise	$3,116	$4,911
Farm Tenant House	$20,837	$30,343
Senior Residential	$0	$0
Turnover Impact Areas		
Single-Family Detached	$21,737	$30,719
Single-Family Attached	$24,547	$35,018
Multi-Family Low Rise	$11,354	$17,827
Multi-Family High Rise	$5,061	$11,601
Farm Tenant House	$21,737	$30,719
Multi-Family Senior	$0	$0

TABLE 3						
Public School Utilization Premium Payments						
New Rates for the Period 7/1/2023 through 6/30/2025						
	Existing Rates			New Rates		
	Elementary	Middle	High	Elementary	Middle	High
Residential TIER 1 UPP (per unit)						
Infill Impact Areas						
Single-Family Detached	$3,473	$2,084	$2,778	$5,057	$3,034	$4,046
Single-Family Attached	$3,009	$1,805	$2,407	$4,338	$2,603	$3,470
Multi-Family Low Rise	$915	$549	$732	$1,546	$928	$1,237
Multi-Family High Rise	$519	$312	$415	$819	$491	$655

Turnover Impact Areas						
Single-Family Detached	$3,623	$2,174	$2,898	$5,120	$3,072	$4,096
Single-Family Attached	$4,091	$2,455	$3,273	$5,836	$3,502	$4,669
Multi-Family Low Rise	$1,892	$1,135	$1,514	$2,971	$1,783	$2,377
Multi-Family High Rise	$844	$506	$675	$1,934	$1,160	$1,547
Residential TIER 2 UPP (per unit)						
Infill Impact Areas						
Single-Family Detached	$6,946	$4,167	$5,557	$10,114	$6,069	$8,091
Single-Family Attached	$6,018	$3,611	$4,814	$8,676	$5,206	$6,941
Multi-Family Low Rise	$1,829	$1,097	$1,463	$3,092	$1,855	$2,473
Multi-Family High Rise	$1,039	$623	$831	$1,637	$982	$1,310
Turnover Impact Areas						
Single-Family Detached	$7,246	$4,347	$5,797	$10,240	$6,144	$8,192
Single-Family Attached	$8,182	$4,909	$6,546	$11,673	$7,004	$9,338
Multi-Family Low Rise	$3,785	$2,271	$3,028	$5,942	$3,565	$4,754
Multi-Family High Rise	$1,687	$1,012	$1,350	$3,867	$2,320	$3,094
Residential TIER 3 UPP (per unit)						
Infill Impact Areas						
Single-Family Detached	$10,419	$6,251	$8,335	$15,172	$9,103	$12,137
Single-Family Attached	$9,027	$5,416	$7,221	$13,014	$7,808	$10,411
Multi-Family Low Rise	$2,744	$1,646	$2,195	$4,638	$2,783	$3,710
Multi-Family High Rise	$1,558	$935	$1,246	$2,456	$1,473	$1,964
Turnover Impact Areas						
Single-Family Detached	$10,869	$6,521	$8,695	$15,360	$9,216	$12,288
Single-Family Attached	$12,274	$7,364	$9,819	$17,509	$10,505	$14,007
Multi-Family Low Rise	$5,677	$3,406	$4,542	$8,914	$5,348	$7,131
Multi-Family High Rise	$2,531	$1,518	$2,024	$5,801	$3,480	$4,640

Montgomery County Planning Board
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

2425 Reedie Drive
Floor 14
Wheaton, MD 20902

MontgomeryPlanningBoard.org

June 8, 2023

To: The Honorable Evan Glass
President, Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

From: Montgomery County Planning Board

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

BOARD RECOMMENDATION

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on June 8, 2023 and reviewed Expedited Bill 25-23, Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments. The Planning Board supports modifications to the transportation impact tax recalculations, which includes a 20 percent cap and a dollar amount carryover system. For school impact taxes, the Planning Board supports the 20 percent cap on impact tax increases but does not support the carryover. The Planning Board is also recommending a Zoning Text Amendment be introduced to update the language for the Park Impact Payment (PIP) in the Bethesda Overlay Zone and the Civic Improvement Fund (CIF) in the Downtown Silver Spring Overlay Zone. The recommended Zoning Text Amendment is being transmitted via a separate transmittal letter to the District Council.

The current law requires the transportation impact tax rates to be recalculated based on the annual average increase or decrease in a published construction cost index over the most recent two calendar years. The law has been interpreted as taking the average of the two annual index changes.

School impact tax rates are calculated on a biennial basis by the Planning Department on behalf of the Department of Finance based on the latest school enrollment data (from MCPS), housing inventory data (from SDAT) and school construction costs (from MCPS). Student generation rates (SGRs) capture the average number of public school students living in a particular housing type and geography combination. Montgomery Planning calculates SGRs for eight combinations of housing types (single-family detached and attached, and multifamily low-rise and high-rise) and school impact areas (turnover and infill) using the current school year's official and complete enrollment and a corresponding housing dataset. For the school impact taxes, the tax rates are reset and recalculated to their true value every biennial update based on actual SGRs and actual MCPS school construction costs. This biennial increase for school impact taxes for the most recent update is much higher than previous adjustment updates.

On Bill 25-23E, the Planning Board makes the following recommendations:

- **For the transportation impact taxes, the Planning Board supports the cumulative approach, the 20 percent cap and the use of a carryover balance.** The cap and carryover system will help soften the impact of higher than average transportation impact tax updates, and the carryover ensures the easing of the previous discount to return to the true impact tax rates.

- **While the Planning Board supports the approach for transportation impact taxes, the Planning Board believes it would be most accurate in returning the rates to their true values by banking a dollar amount instead of a percentage.** By carrying over a percentage, the calculation overcompensates because the banked percentage is being applied in the second update to a higher base rate.

- **For the school impact taxes, the Planning Board supports the 20 percent cap**. Given the large increase seen in impact tax rates in the most recent biennial update, a cap will lessen the impact and ensure that impact taxes are not increasing at unattainable rates that could make development in Montgomery County untenable.

- **The Planning Board does not support the carryover on the school side.** On the school side, the true value is achieved automatically every time the rates are updated. Applying the carryover after the biennial recalculation would cause the impact tax rates to overcharge developers for their impact on enrollment.

- **If the Council keeps the school impact tax carryover provision, the carryover should be banked as a dollar amount, not a percentage.** School impact taxes are already calculated on a dollar basis, not as a percentage increase. Recommended modifications to incorporate this change can be found on page 9 of Planning staff's report.

- **The Planning Board also has a minor modification recommendation to Section 52-55, to help better capture the school impact tax calculation regarding school construction costs**. The recommended modification can be found in Planning staff's report on page 9.

- **To ensure consistency with updates to the transportation impact tax rates, a Zoning Text Amendment (ZTA) should be introduced to ensure updates to the Bethesda Park Impact Payment rate and Silver Spring Civic Improvement Fund rate apply a cumulative inflation factor.** The same methodology that was used to calculate the transportation impact tax rate adjustments was also used in the Bethesda Overlay Zone and the Silver Spring Overlay Zone sections of Chapter 59, the Zoning Ordinance. The recommended ZTA is being transmitted via a separate transmittal letter to the District Council.

The Planning Board appreciates the opportunity to review Bill 25-23E. The Board hopes the Council takes into consideration these recommendations as the Council discusses potential modifications to the recalculation of impact taxes.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, June 8 2023.

Jeff Zyontz
Chair

Attachment A: Planning Staff Report Package

Montgomery Planning

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

Description

Expedited Bill 25-23 would modify the calculations for tax rate adjustments for transportation improvements by requiring a cumulative increase or decrease in the construction cost index rather than an annual average every two years. The bill would also establish a cap on the development impact tax rate for school and transportation improvements, allow certain increases to the biennial tax rate adjustments, and generally amend the law governing transportation and school development impact taxes.

Montgomeryplanning.org

Planning Staff

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SUMMARY

- Expedited Bill 25-23 would do the following:
  - Modify the calculations for tax rate adjustments for transportation improvements by requiring cumulative increase or decrease in the construction cost index rather than an annual average every two years.
  - Set a cap on the development impact tax rate for school and transportation improvements.
  - Allow certain carryover increases of the biennial tax rate adjustments.
  - Generally, amend the law governing transportation and school development impact taxes.

BILL INFORMATION

Sponsors
Lead Sponsors: Councilmember Friedson, Glass, and Stewart
Co-sponsor: Councilmember Fani-González

Review Basis
Chapter 52, Taxation

Public Hearing
June 13, 2023

Introduction Date
May 18, 2023

Planning Division
Countywide Planning & Policy

Planning Board Information
MCPB
Item No. 5
June 8, 2023

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

BACKGROUND

Chapter 52 requires the Director of Finance to adjust and publish updated development impact tax rates for transportation and public schools every two years, by May 1 of odd-numbered years.

The current law requires the transportation impact tax rates to be recalculated based on the annual average increase or decrease in a published construction cost index over the most recent two calendar years. The law has been interpreted as taking the average of the two annual index changes. The increase in the index in 2021 over 2020 was 6.05 percent, and the increase in the index in 2022 over 2021 was 12.89 percent. The average of those two increases is 9.47 percent. Therefore, the Director of Finance published updated rates to take effect on July 1 reflecting 9.47 percent increases.

School impact tax rates are calculated on a biennial basis by the Planning Department on behalf of the Department of Finance based on the latest school enrollment data (from MCPS), housing inventory data (from SDAT) and school construction costs (from MCPS). Student generation rates (SGRs) capture the average number of public school students living in a particular housing type and geography combination. Montgomery Planning calculates SGRs for eight combinations of housing types (single-family detached and attached, and multifamily low-rise and high-rise) and school impact areas (turnover and infill) using the current school year's official and complete enrollment and a corresponding housing dataset. For the school impact taxes, the tax rates are reset and recalculated to their true value every biennial update based on actual SGRs and actual MCPS school construction costs.

The table below demonstrates the percentage increases by unit and area type set to take effect on July 1:

	Infill Areas	**Turnover Areas**
Single-family detached	+45.6%	+41.3%
Single-family attached	+44.2%	+42.7%
Multi-family low-rise	+69.0%	+57.0%
Multi-family high-rise	+57.8%	+129.2%

This biennial increase for school impact taxes is much higher than previous adjustment updates.

The main driver for these rate increases is the increase in school construction cost per student. Compared to the construction costs provided by MCPS two years ago, the current cost to construct an elementary school is 34 percent higher; the cost to build a middle school is 44 percent higher; and the cost to build a high school is 53 percent higher per MCPS.

Relatedly, while the main driver for the increases was increased construction costs, the increase in student generation rates played a role in the increase for multifamily impact taxes. While current school year enrollments are up from the last time SGRs were calculated using pandemic-depressed 2020-21 enrollments, the enrollment increase is not uniformly distributed across housing types. Countywide, single-family detached and single-family attached SGRs fell 1.3 percent and 0.6 percent, respectively. Meanwhile, the multifamily SGRs increased 19.1 percent for units in low-rise structures (four stories or less) and 14.3 percent for units in high-rise structures (five stories or more). As a result, the increase in student generation rates played a larger role in increasing multifamily impact taxes. For example, 47 percent of the increase in the Turnover Impact Area Multifamily High-Rise impact tax was due to increased enrollment from those units.

Figure 1 below demonstrates this increase in each of the eight school impact tax rates and the portions of each increase that can be attributed to increased school construction costs (in orange) and the change in student generation rates (in blue). As discussed above, the main driver for the increase was largely increased construction costs for schools, with the increase in student generation rates playing a larger role in increasing multifamily impact taxes.

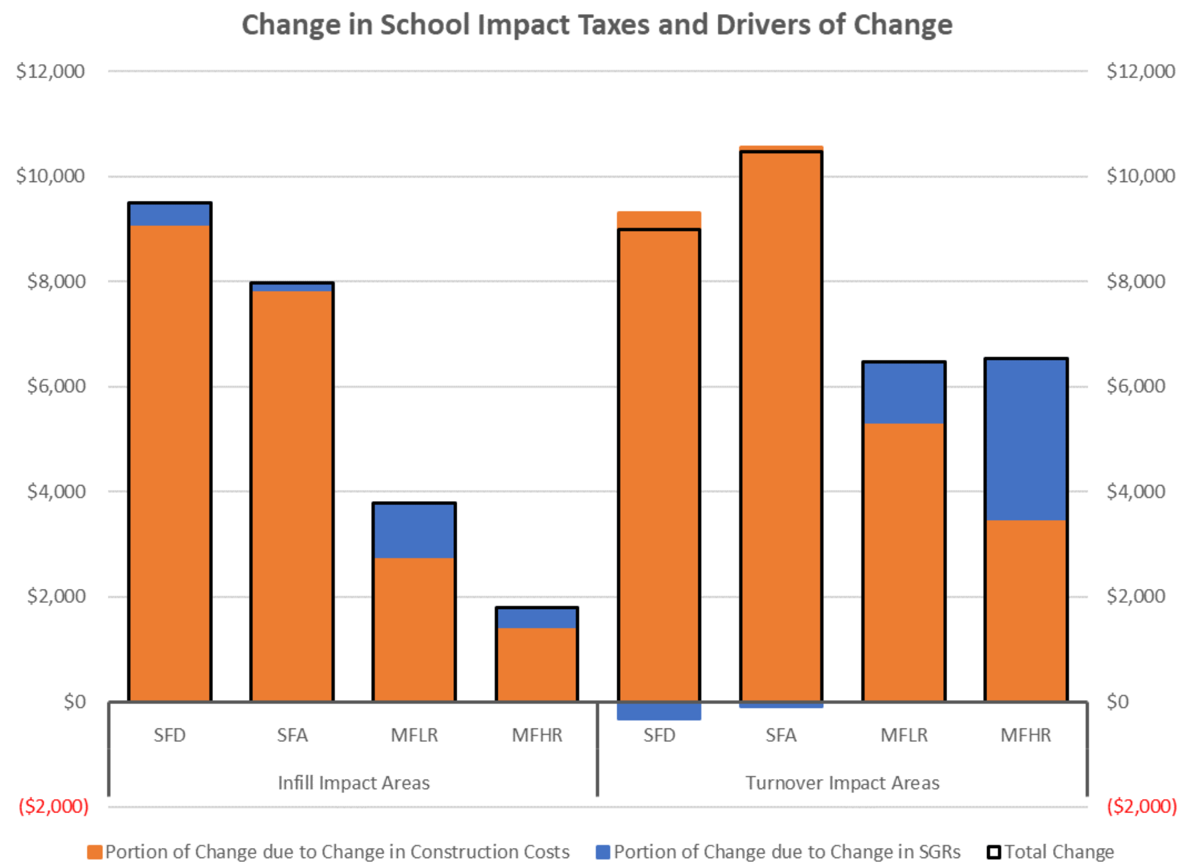

Figure 1 Change in School Impact Taxes and Drivers of Change

Planning staff also believes that the increase in multifamily student generation rates is indicative of the current housing market. Since 2019, the average sold price has increased by 32 percent for detached homes, and 18 percent for attached homes (Source: BrightMLS). Families are being priced out of single-family units and are opting instead to live in less expensive multifamily units (or live in them longer). Multifamily structures still see substantially fewer students on a per unit basis than single-family units. However, compared to enrollment data from two years ago when the impact tax rates were last updated, there are currently more students living in multifamily units.

BILL 25-23 OVERVIEW

Transportation Impact Taxes

Expedited Bill 25-23 would amend Section 52-49 regarding the calculation of tax rate adjustments for development impact taxes for transportation improvements by using a cumulative approach over the prior two years rather than an annual average. Applying the cumulative inflation factor to the current transportation impact tax rates would increase the rates by approximately 19 percent instead of the previously published increase of 9.47 percent.

There would also be a cap on biennial tax rate increases. The Director of Finance would have to cap the biennial tax rate to not exceed 20 percent. If the biennial tax rate adjustment is calculated to exceed 20 percent, the excess percentage amount must be carried over and added to the next biennial adjustment. If the next biennial tax adjustment again exceeded 20 percent, the excess percentage is then again carried over and added to the next biennial adjustment.

School Impact Taxes

Section 52-55, pertaining to the update of the school impact tax rates, would be amended to follow similar procedures as proposed for transportation impact taxes. The Director of Finance would have to cap the biennial impact tax adjustment to not exceed 20 percent. If the biennial tax rate adjustment is calculated to exceed 20 percent, the excess percentage amount must be carried over and added to the next biennial adjustment. If the next biennial tax adjustment again exceeded 20 percent, the excess percentage is then again carried over and added to the next biennial adjustment.

ANALYSIS AND RECOMMENDATIONS

On the transportation side, Planning staff supports the cumulative approach, the 20 percent cap and the use of a carryover balance. The cap and carryover system will help soften the impact of higher than average transportation impact tax updates, and the carryover ensures the easing of the previous discount to return to the true impact tax rates.

While Planning staff supports the approach for transportation impact taxes, staff believes it would be the most accurate to returning the rates to their true values by banking a dollar amount instead of a percentage.

Using a hypothetical example that assumes a true increase of 25 percent in the first update and a true increase of 10 percent in the second update, the tables below illustrate the difference between the percentage and dollar amount carryover approaches. Without the cap and carry provisions, a $5,000 tax rate would initially increase to $6,250 and then to $6,875 after the second update.

By carrying over a percentage, the calculation overcompensates because the banked percentage is being applied in the second update to a higher base rate. Instead of applying the banked 5 percent to the original $5,000, it is now being applied to $6,000, which results in increasing the impact tax rate beyond the true rate. Overtime, whether a future carryover applies or not, the rates will continue to move further and further away from the true rates.

Percentage Carryover Approach

Update	Starting Tax Rate	Inflation Factor	Updated Tax Rate	Carryover Percentage
1	$5,000	20% (25%-5%to carryover)	$6,000	5%
2	$6,000	15% (10%+5% from carryover)	$6,900	0%

However, the dollar amount carryover approach ensures that the impact tax rates will always return to the true rate.

Dollar Amount Carryover Approach

Update	Starting Tax Rate	Add Carryover	Inflation Factor	Updated Tax Rate	Apply 20% Cap	Carryover Amount
1	$5,000	$5,000	25%	$6,250	$6,000	$250
2	$6,000	$6,250	10%	$6,875	$6,875	$0

Staff recommends modifying Section 52-49 to add specificity, clarity, and to change the carryover from a percentage to a dollar amount for the transportation impact tax biennial update.

(2) *Carryover of biennial tax rate adjustments in excess of 20%.* If the biennial tax rate adjustment exceeds 20%, the excess **[[**percentage**]]** dollar amount must be carried over and added to the tax rate before calculating the next biennial adjustment. If this total adjustment, **[[**which is also capped at 20%**]]** including any carried over value, again exceeds 20%, the excess **[[**percentage**]]** dollar amount must be carried over and added to the tax rate before calculating the **[[**following**]]** biennial adjustment.

On the school side, Planning staff supports the 20 percent cap. Given the large increase seen in impact tax rates in the most recent biennial update, a cap will lessen the impact and ensure that impact taxes are not increasing at unattainable rates that could make development in Montgomery County untenable.

Staff does not support the carryover on the school side. Impact taxes rates are calculated to estimate the impact of new development on the county's school and transportation infrastructure. The point of the carryover should be to bring the tax rate to the true value over time after it has been artificially reduced due to the cap. The carryover makes sense on the transportation side because the biennial update does not involve a full reset of transportation infrastructure costs. On the school side, the true value is achieved automatically every time the rates are updated. Applying the carryover after the biennial recalculation would cause the impact tax rates to overcharge developers for their impact on enrollment. Essentially, future projects would be overpaying for the discounts offered to earlier projects. Staff illustrates this in the hypothetical example. On the transportation side, applying the carryover is just telling future projects that they'll be paying the appropriate share because we're applying previous inflation that was never factored into the tax rate because of the cap.

Update	Calculated Tax Rate	Calculated Tax Rate Increase	Used Tax Rate	Used Tax Rate Increase	Cumulative Carryover
0	$5,000		$5,000		
1	$7,100	42.0%	$6,000	20.0%	$1,100
2	$7,700	8.5%	$7,200	20.0%	$1,600
3	$8,100	5.2%	$8,640	20.0%	$1,060
4	$8,400	3.7%	$9,700	12.3%	$0
5	$8,750	4.2%	$8,750	-9.8%	$0

For the school impact tax recalculations, effectively, the carryover results in future projects paying in excess of their fair share (shown in red above) to pay for the discounts provided to earlier projects paying less than their fair share (shown in green).

While staff understands the need to balance revenue and ensure the development industry as a whole pays for the impact of development, the impact tax system as it exists today has many waivers, exemptions, and discounts that are not offset by requiring other developers to pay more than their fair share. These waivers, exemptions, and discounts include Moderately Priced Dwelling Units and other affordable units, projects with 25 percent Moderately Priced Dwelling Units, and projects within Enterprise and Opportunity Zones, among others.

Planning staff would recommend eliminating the carryover provision for the school impact tax, to prevent any project from paying more than their fair share.

Without the carryover, here is a hypothetical example:

Update	Calculated Tax Rate	Calculated Tax Rate Increase	Used Tax Rate	Used Tax Rate Increase	Cumulative Carryover
0	$5,000		$5,000		
1	$7,100	42.0%	$6,000	20.0%	
2	$7,700	8.5%	$7,200	20.0%	
3	$8,100	5.2%	$8,100	12.5%	
4	$8,400	3.7%	$8,400	3.7%	
5	$8,750	4.2%	$8,750	4.2%	

In this approach to the hypothetical example, projects would get a discounted rate and pay less than their fair share during the earlier years (shown in green above). Later projects would simply pay their fair share (shown in yellow).

If the Council keeps the school impact tax carryover provision, the carryover should be banked as a dollar amount, not a percentage. School impact taxes are already calculated on a dollar basis, not as a percentage increase. Here is potential amendment language as noted in red:

(2) *Carryover of biennial tax rate adjustments in excess of 20%.* If the biennial tax rate adjustment exceeds 20%, the excess **[[percentage]]** dollar amount must be carried over and added to the next biennial adjustment. If this total adjustment, **[[which is also capped at 20%]]** including any carried over value, again exceeds 20%, the excess **[[percentage]]** dollar amount must be carried over and added to the following biennial adjustment.

Planning staff also has a minor modification recommendation to Section 52-55, to help better capture the process of the recalculation of school impact taxes regarding school construction costs. As noted in red:

(d) The Director of Finance, after advertising and holding a public hearing as required by Section 52-17(c), must adjust the tax rates set in or under this Section effective on July 1 of each odd-numbered year in accordance with the update to the Growth and Infrastructure Policy using the latest student generation rates and average MCPS school construction costs **[[data]]**. The Director must calculate the adjustment to the nearest multiple of one dollar. The Director must publish in the County Register the amount of this adjustment not later than May 1 of each odd-numbered year.

PARK IMPACT PAYMENT (PIP) / CIVIC IMPROVEMENT FUND (CIF) ZONING TEXT AMENDMENT

The same methodology that was used for calculating the transportation impact tax rate adjustments was also used in Chapter 59, the Zoning Ordinance.

Within the Bethesda Overlay Zone, there is a provision allowing applicants to exceed their mapped zoning by making a payment to the Park Impact Payment (PIP) fund. In the Downtown Silver Spring Overlay Zone, a similar provision exists, with payment to the Civic Improvement Fund (CIF). The Planning Board is required to hold a public hearing and adjust these rates by July first every two years. 2023 will see an adjustment to the PIP, and 2024 will see an adjustment to the CIF.

To update the inflation calculation to the cumulative rate, and to also mirror the 20 percent maximum bi-annual increase, a Zoning Text Amendment (ZTA) is recommended (Attachment 2). The language in the ZTA is nearly identical to that proposed by staff for the transportation impact taxes, tracking the cumulative change, but carrying forward any excess rate increases above 20 percent as a dollar amount rather than a percentage. The carried forward dollar amount would be added to the fund rates at the next adjustment before applying the cumulative inflation rate to ensure the rates stay as accurate as possible. Because the PIP in the Bethesda Overlay Zone is due to be updated this year, the ZTA will not have a chance to amend the code in time but would be able to correct the Downtown Silver Spring Overlay Zone before next summer.

CONCLUSION

Planning staff supports the modifications as recommended for the transportation impact taxes. The cap and carryover system will help soften the impact of higher than average transportation impact tax calculations, and the carryover ensures the easing of the previous discount and getting to the true rates.

For school impact taxes, staff supports the 20 percent cap on impact tax increases, but does not support the carryover. Planning staff would recommend eliminating the carryover provision for the school impact tax to prevent any project from paying more than their fair share.

Planning staff is also recommended a Zoning Text Amendment be introduced to update the language for the Park Impact Payment (PIP) in the Bethesda Overlay Zone and the Civic Improvement Fund (CIF) in the Downtown Silver Spring Overlay Zone.

ATTACHMENTS

Attachment 1: Expedited Bill 25-23, Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments Introduction Packet

Attachment 2: ZTA 23-## Park Improvement Payment and Civic Improvement Fund

June 13, 2023

Good Afternoon President Glass and Council Members,

My name is Laura Stewart and I am testifying as MCCPTA CIP Chair on Expedited Bill 25-23. First, I would like to thank you for the passage of the Recordation Tax Rate Modification. Raising a tax rate, even when it is progressive and is for the good of the county, is not an easy vote. I agree that Expedited Bil 25-23 and the proposed resolution are needed because the council should intervene when there are extraordinary swings in taxes year to year. This creates uncertainty and could depress economic growth in our county. Requiring a cumulative increase or decrease in the construction cost index rather than an annual average every two years is a fix that should move forward. I agree with Councilmember's Jawando's memo that suggests a more moderate cap of 25% so that we result in fewer cuts in the budget that was only passed weeks ago.

I absolutely believe capping is necessary for the near future, but I would prefer to wait to have the permanent fix in conjunction with the new Growth and Infrastructure Policy. We need to look hard at the new generation rates of high rise buildings because more families are looking at this option. The impact has also increased due to multiple inflationary pressures. Beyond supply and the post Covid economy, using prevailing wages increased costs. Those costs are more than recovered by MCPS qualifying for more state dollars, but the overall cost going up affects the impact tax charged. This means that the opportunity zones whose impacts are completely exempted are costing the county even more as students are generated from those developments.

We need to wait for the Planning Board to do the detailed job of analyzing the market and to calculate how our overall plan to concentrate growth in denser neighborhoods affect schools and how we pay for the resulting costs. There is a direct conflict between paying for new seats and housing affordability. The MCCPTA CIP committee is looking forward to working with the Planning Board and the County Council in the discussions over the next year as to how we can balance conflicting pressures. Remember that new impact tax laws could be implemented as soon as February 2025, 1.5 years from now. Let's fix the near term problem with a 25% cap, but fix the long term problem with a hard look at how we pay for the infrastructure that Montgomery County needs in order to attract businesses, the workers they need and their families. Current residents will see the benefit if we deliver the spaces we all need to thrive.

Laura Stewart
MCCPTA CIP Committee Chair

MARYLAND BUILDING INDUSTRY ASSOCIATION
11825 West Market Place | Fulton, MD 20759 | 301-776-6242

June 13, 2023

Hon. Evan Glass
President, Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, MD 20850

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

Dear President Glass and Councilmembers:

The Maryland Building Industry Association ("MBIA") is submitting testimony in response to Bill 25-23, which would modify the calculations for tax rate adjustments for transportation improvements by requiring a cumulative increase or decrease in the construction cost index rather than an annual average every two years and would also establish a cap on the development impact tax rate for school and transportation improvements, allow certain increases to the biennial tax rate adjustments. We appreciate the quick action of the council to address these enormous increases.

This is all about stability in costs and the ability to project impact taxes for a project. Impact taxes are often projected by the developer and builder months or years before those are actually assessed, and so the biannual review can very realistically kill a development, or result in higher costs passed through to the homebuyer, when the biannual change far exceeds the projections anticipated. With the huge increase in recordation taxes dedicated to school construction, shouldn't all of that increase (along with the current dedicated amount) be deducted from the cost to provide a new seat? This is especially true since a new house ends up paying the recordation fee when the raw land is sold to the developer (usually at the highest possible rate), when the finished lot is sold to the builder, and the finished home is sold to the homeowner.

The goal of the impact tax is for new development to pay 100% of the school cost and the subsequent creation of dedicated amounts from recordation taxes is not reflected in that calculation. By adding a cap, the council is greatly helping developers and builders project how much impact taxes will actually cost, capping both taxes is a laudable goal and we support it. However, 20 percent cap if combined with the "roll forward" provision, could ultimately end up meaning school Impact taxes will have hefty increases each time because the roll over amount will continue to accrue.

We would recommend a lower cap, somewhere closer to 12-14 percent and the ability to carry forward the amount over the cap is not perpetual. With the carryover approaches, you are essentially saying that future projects will pay in excess of their impact to offset the lost revenue from the discount provided to earlier projects.

Respectfully,

Griffin Benton, VP Government Affairs

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

WILL JAWANDO
COUNCILMEMBER, AT-LARGE
CHAIR, EDUCATION & CULTURE COMMITTEE
PLANNING, HOUSING, AND PARKS COMMITTEE

May 24, 2023

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

Dear Colleagues -

I believe a robust evaluation with various options for the Council to act upon is needed regarding Expedited Bill 25-23, Taxation - Development Impact Taxes for Transportation and Public School Improvements - Amendments. We should take our time with this proposal because it involves how we fund our transportation and school construction for years to come, which I know is important to all of us.

Implementing a cap in perpetuity – even as we anticipate significant increases in impact tax rates[1] – is a decision we should not rush. Indeed, many residents would find our voting for a tax cap in perpetuity for private industry startling, especially following an increase in residential property taxes and the recordation tax.

I know we will have many conversations about this proposal in the coming days. I recommend the Council, if we are inclined toward establishing a cap, set the cap at 25% *for one year only* (with the excess increase banked for future use as this bill models).[2] That would accomplish the goal of shielding private industry from the significant impact tax rate increases this year, and would allow us time to consider this important issue with the community.

Accordingly, I request that Council staff prepare for consideration multiple scenarios for a short-term stop-gap on the impact tax rate. In addition, for discussion purposes, I request a model of Bill 25-23 as is, but with a higher cap in perpetuity (i.e. 25%) to decrease the projected revenue loss.

Rushing into a long-term change on a matter this complex and critical to our economic future would be a mistake. I hope we as a Council will find the best path forward in a transparent and community-centered manner.

Sincerely,

WILL JAWANDO

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[1] "The rates for school impact tax rates will increase substantially. In part depending on the type of unit and whether it is in an "infill" or "turnover" area, the rate may go up by anywhere between 41.3% to 129.2%. The school impact tax rates are developed by the Montgomery County Planning Board staff, with input from Montgomery County Public Schools staff, and are based on 2021-2022 school year construction costs and enrollment data." Council Staff Memo at 2 (May 18, 2023).

[2] I would favor a 25% cap rather than a 20% cap as proposed in the bill. Per Council staff, "[t]he net result of correcting the transportation impact tax biennial calculation and capping the transportation and school impact tax rate increases at 20% will result in a net revenue loss of about $24.5 million in FYs24-28." Council Staff Memo at 3. Per Council staff, setting the cap at 25% would result in a net revenue loss of about $19.7 million in FYs 24-28 with Bill 25-23 otherwise remaining the same.

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

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

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Expedited Bill 25-23 will have a 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.

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.[1] 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.[2]

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."[3]

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.[4]

If enacted, Bill 25-23 would make the following changes to the Transportation and School Development Impact Taxes:[5]

- 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.

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.[6]

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.[7] Please refer to this RESJIS for additional background on transportation infrastructure and racial equity.

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.[8] 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.[9] 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."[10]

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.[11] 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.[12]

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.

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.[13]

Highway construction and urban renewal efforts through the 1970s destroyed and displaced many Black neighborhoods, increasing isolation, crowding, and clustering of BIPOC communities.[14] 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.[15] 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.[16]

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.[17] 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.[18] 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.[19] 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.[20]

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.

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.[21]

  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.

- **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.[22]
- **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.

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.[23] 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.[24] 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.[25]

- **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.[26] 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.[27] 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.[28]

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.

CONTRIBUTIONS

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

APPENDIX

Table A: Constituent Demographics by Council District[29]

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.

[1] 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
[2] Ibid
[3] "County Development Impact Fees and Building Excise Taxes in Maryland," Maryland Department of Legislative Services, December 2013.
[4] "Development Impact Taxes," Montgomery County Department of Permitting Services.
[5] Introduction Staff Report for Expedited Bill 25-23, Montgomery County Council, Introduced May 18, 2023.
[6] Ibid

[7] RESJIS for Bill 24-22, Office of Legislative Oversight, August 22, 2022.
[8] "About the Capital Budget," Montgomery County Open Budget.
[9] Elliot Karl, "Prioritizing Community Values in Capital Budgeting," Government Finance Officers Association, June 2021.
[10] "History of African-American Education in Montgomery County," Montgomery History.
[11] Kristin Blagg, et. al., "Assessing the National Landscape of Capital Expenditures for Public School Districts," Urban Institute, January 2023.
[12] Ibid
[13] Deborah N. Archer, "'White Men's Roads Through Black Men's Homes': Advancing Racial Equity Through Highway Reconstruction," Vanderbilt Law Review, October 2020.
[14] "The Unequal Commute," Urban Institute, October 6, 2020.
[15] "A Legacy of Disenfranchisement and Underinvestment," from Beyond Traffic 2045 (PDF page 102), U.S. Department of Transportation, January 9, 2017.
[16] "Grand Prize Winner – What Happened to Gibson Grove?," C-SPAN StudentCam, March 2022.
[17] "The Unequal Commute"
[18] Table S0201, 2021 American Community Survey 1-Year Estimates, Census Bureau.
[19] Regan Patterson, "New Routes to Equity: The Future of Transportation in the Black Community," Congressional Black Caucus Foundation, September 2020.
[20] "Fighting for Equity in Transportation Policy and Infrastructure," The Center of Race Inequality & The Law, New York University School of Law.
[21] Introduction Staff Report for Expedited Bill 25-23
[22] "About MCPS," Montgomery County Public Schools.
[23] Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council
[24] Baltimore Neighborhood Indicators Alliance, "Equity Analysis of Baltimore City's Capital Improvement Plan, FY 2014 – FY 2020," Baltimore City Department of Planning, August 2019.
[25] Ibid
[26] Griffin & Strong, PC, "Disparity Study Final Report," Office of the County Attorney, June 11, 2014.
[27] Ibid
[28] Kalima Rose and Judith Dangerfield, "Strategies for Addressing Equity in Infrastructure and Public Works," PolicyLink.
[29] Latinx people are not included in other racial groups within this table.

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

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Expedited Bill 25-23 would have an overall positive impact on economic conditions in the County in terms of the Council's priority economic indicators. If the changes to the biennial tax rate adjustments reduce total development impact tax, then the Bill would reduce operating expenses for certain commercial and residential developers (holding all else equal). However, certain developers likely would pay higher development taxes due to the provision in the Bill that biennial tax rate adjustments exceeding 20% be carried over and added to the next biennial adjustment.

BACKGROUND AND PURPOSE OF EXPEDITED BILL 25-23

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

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

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

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

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[1] County Development Impact Fees.
[2] See Montgomery County Code, Article IV and Article V.
[3] Introduction Staff Report for Expedited Bill 25-23.

According to the Introductory Staff Report for the Bill, the net result of making these changes would be "a net revenue loss of about $24.5 million in FYs24-28."[4]

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

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess, both, the impacts of Expedited Bill 25-23 on residents and private organizations in terms of the Council's priority economic indicators and whether the Bill would have a net positive or negative impact on overall economic conditions in the County.[5]

To assess the Bill's impacts on the Council's priority indicators, OLO draws on the following sources of information:

- Data from the Engineering-News Record's Baltimore Construction Cost Index that Department of Finance personnel provided to OLO; and
- Consultations with Council and Department of Finance staff.

Because OLO does not know how any potential forgone County revenues would otherwise be used in the absence of enacting the Bill, this analysis does not account for the Bill's potential economic opportunity cost.

VARIABLES

The primary variables that would affect the economic impacts of Expedited Bill 25-23 are the following:

- Inflation in construction costs; and
- Magnitude of development impact taxes.

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organizations

OLO anticipates that Expedited Bill 25-23 would have overall positive impacts on certain private organizations in the County in terms of the Council's priority economic indicators.

The economic impacts of the Bill depend on whether it would affect the amount of development taxes paid by residential and commercial property developers. OLO concludes the Bill may reduce total development taxes paid by developers for the following reasons.

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[4] Ibid.

[5] Montgomery County Code, Sec. 2-81B.

First, Council staff analysis projects the changes to the biennial tax rate adjustments would result in a net revenue loss of about $24.5 million in FYs24-28. If accurate, the revenue loss over this time would reflect the reduction in development taxes paid by developers.

Second, the County calculates the transportation impact tax using biennial percent changes in the Engineering-News Record's Baltimore Construction Cost Index. As shown in Table 1, the biennial percent changes in January in odd years had exceeded 20% at certain periods. While future inflation in construction costs is highly uncertain, recent trends suggest that the 20% inflation cap may reduce transportation development tax rates at certain points in the future.

Third, the Council staff analysis indicates that the projected percentage increases for the school development taxes are significantly higher than 20%, thereby indicating that the inflation cap may reduce school development taxes in the future.

Table 1. Two-Year Change in Cost Construction Index

	2015	2016	**2017**	2018	**2019**	2020	**2021**	2022	**2023**
Jan	**3%**	0%	**2%**	20%	**23%**	8%	**6%**	11%	**20%**
Feb	2%	0%	5%	24%	20%	6%	6%	12%	13%
Mar	2%	0%	5%	23%	19%	6%	8%	13%	.
Apr	0%	4%	7%	19%	16%	6%	12%	16%	.
May	-1%	5%	8%	18%	16%	6%	14%	18%	.
Jun	0%	6%	9%	18%	19%	5%	12%	22%	.
Jul	-1%	6%	20%	20%	9%	4%	15%	22%	.
Aug	-2%	6%	20%	21%	9%	3%	16%	23%	.
Sept	0%	6%	20%	20%	8%	3%	17%	23%	.
Oct	1%	4%	18%	23%	8%	4%	13%	22%	.
Nov	0%	4%	20%	23%	8%	6%	11%	20%	.
Dec	0%	4%	20%	23%	8%	7%	11%	19%	.

If the changes to the biennial tax rate adjustments reduce total development impact tax, then the Bill would reduce operating expenses for certain commercial and residential developers (holding all else equal).

However, certain developers likely would pay higher development taxes due to the provision in the Bill that biennial tax rate adjustments exceeding 20% be carried over and added to the next biennial adjustment. Thus, the Bill likely would increase operating expenses (holding all else equal) for development projects following 20%+ increases in construction cost inflation.

OLO is unable to determine whether the Bill would induce commercial and residential development in the County that otherwise would not occur. However, OLO notes that the total decrease in development tax revenues projected by Council staff (if accurate) may be insignificant to induce development given the many factors responsible for development and the complex relationship between tax cuts and private sector investment.[6]

[6] Trombka, Establishing and Maintaining a Business Friendly Environment.

Residents

OLO anticipates that Expedited Bill 25-23 would have a minor impact on certain residents in the County in terms of the Council's priority economic indicators. In theory, a decrease in development impact taxes could cause developers to spend more on labor, thereby potentially increasing employment opportunities for residents. However, OLO cannot determine whether the total decrease in development tax revenues would be significant enough to induce job creation given the complex relationship between tax cuts and job creation.[7]

Net Impact

OLO anticipates that Expedited Bill 25-23 would have an overall impact on economic conditions in the County in terms of the Council's priority economic indicators. If the changes to the biennial tax rate adjustments reduce total development impact tax, then the Bill would reduce operating expenses for certain commercial and residential developers (holding all else equal). However, OLO is unable to determine whether the Bill would induce job creation or development that otherwise would not occur due to uncertainty about the magnitude of future construction costs and the total decrease in development impact taxes as well as the complex relationships between tax cuts and private sector investment/job creation.

DISCUSSION ITEMS

First, given that the Planning Department is responsible for calculating the development impact tax rates for schools, Councilmembers may want to consider consulting with department personnel regarding the potential for the Bill's cap on 20%+ inflation to reduce rates in the future.

Second, Councilmembers may want to consider alternative formulas for the carry over provision in the Bill (e.g., carrying over the excess amount rather than percentage).

Finally, Councilmembers may want to consider whether further analysis should be performed to determine whether the Bill would induce job creation or development that otherwise would not occur.

WORKS CITED

County Development Impact Fees and Building Excise Taxes in Maryland: Amounts and Revenues. Department of Legislative Services. December 2013.

Montgomery County Code. Sec. 2-81B, Economic Impact Statements.

Montgomery County Council. Introduction Staff Report for Expedited Bill 25-23, Taxation – Development Impact Taxes for Transportation and Public School Improvements – Amendments. Introduced on May 18, 2023.

Trombka, Aron. Establishing and Maintaining A Business-Friendly Environment: A Literature Review. OLO Report 2022-9. July 26, 2022.

[7] Ibid.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the Bill under consideration.

AUTHOR

Stephen Roblin (OLO) prepared this report.

OFFICE OF MANAGEMENT AND BUDGET

Marc Elrich
County Executive

Jennifer Bryant
Director

MEMORANDUM

June 13, 2023

TO: Evan Glass, President
County Council

FROM: Jennifer Bryant, Director
Office of Management and Budget

SUBJECT: Extension Request: Fiscal Impact Statement for Council Bill 25-23, Taxation – Development Impact Taxes for Transportation and Public School Improvements - Amendments

As required by Section 2-81A of the County Code, we are informing you that transmittal of the Fiscal Impact Statement for the above referenced legislation will be delayed because more time is needed to collect information to conduct meaningful analysis on the Bill. We are requesting a 2-week extension and will transmit the Fiscal Impact Statement no later than ***Tuesday, June 27, 2023.***

JB:cm

cc: Richard S. Madaleno, Chief Administrative Officer, Office of the County Executive
Fariba Kassiri, Deputy Chief Administrative Officer, Office of the County Executive
Sonia Mora, Assistant Chief Administrative Officer, Office of the County Executive
Earl Stoddard, Assistant Chief Administrative Officer, Office of the County Executive
Jake Weissmann, Assistant Chief Administrative Officer, Office of the County Executive
Debbie Spielberg, Special Assistant to the County Executive, Office of the County Executive
Dale Tibbitts, Special Assistant to the County Executive, Office of the County Executive
Ken Hartman, Director of Strategic Partnerships, Office of the County Executive
Mike Coveyou, Director, Department of Finance
Barry Hudson, Director, Public Information Office
Chris Mullin, Budget Manager, Office of Management and Budget
Abdul Rauf, Fiscal and Policy Analyst, Office of Management and Budget

Climate Assessment

Office of Legislative Oversight

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

Summary

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

Background and Purpose of Expedited Bill 25-23

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

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

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

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

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

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

ANTICIPATED IMPACTS

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

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

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

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

RECOMMENDED AMENDMENTS

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

CAVEATS

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

PURPOSE OF CLIMATE ASSESSMENTS

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

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

CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

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

Agenda Item#2A
June 20, 2023
Action Addendum

M E M O R A N D U M

June 16, 2023

TO:	County Council
FROM:	Ludeen McCartney-Green, Legislative Attorney
SUBJECT:	Expedited Bill 25-23, Taxation - Development Impact Taxes for Transportation and Public School Improvements – Amendments
PURPOSE:	Final Action - **Addendum**

We received the attached Fiscal Impact Statement for Bill 25-33 following the publication of this staff report on June 16, 2023. The Fiscal Impact Statement is attached at © A1.

This packet contains:	Circle #
Fiscal Impact Statement	A1

Fiscal Impact Statement

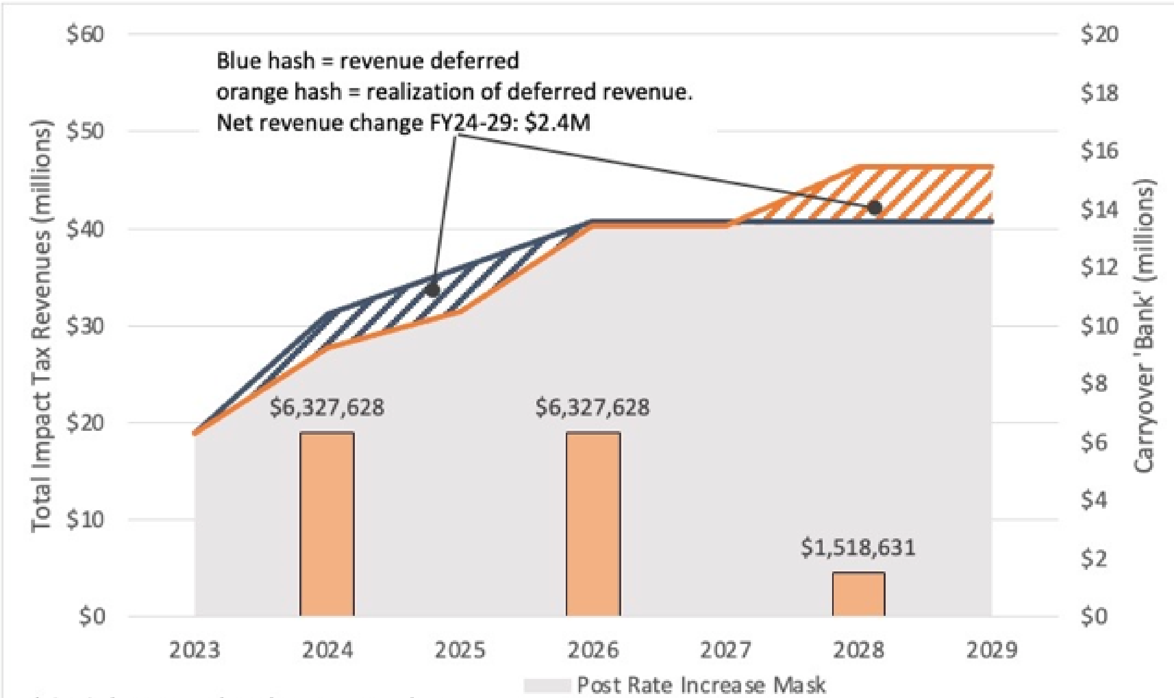
Office of Management and Budget

Bill 25-23	**Development Impact Taxes for Transportation and Public School Improvements - Amendments**
Bill Summary	Amended Bill 25-23 would i) modify the calculations for impact tax rate adjustments for transportation improvements by requiring cumulative increase or decrease in the construction cost index rather than an annual average every two years; ii) set a cap on the biennial increase in any development impact tax rate for school and transportation improvements of 20%; and iii) allow for carryover of the excess to the next biennial rate increase.
Fiscal Impact Summary	The analysis presents two different scenarios: i) a scenario in which impact tax rate growth exceeding the 20% cap is fully realized within the analysis period 2024-2029, and ii) a scenario in which none of the impact tax rate growth exceeding the 20% cap is realized within the analysis period. The anticipated change in impact tax revenues resulting from Amended Bill 25-23 from FY23 to FY28, aligning with the current Capital Improvement Plan (CIP), is estimated to range from a reduction of $3.3 million, to reduction of $29.9 million, as shown in Table/Chart 1 and Table/Chart 2, respectively. The anticipated change in impact tax revenues resulting from Amended Bill 25-23 from FY24 to FY29, aligning with the current Fiscal Plan, is estimated to range from an increase of $2.4 million, to a reduction of $38.1 million, as shown in table/chart 1 and table/chart 2, respectively. Table/Chart 1 assumes the unrealized rate increase is fully recaptured, while Table/Chart 2 assumes the rate increase is never fully recaptured because the periodic calculated rate increases are 20% or higher which is an unlikely scenario. The impact tax revenues projected in the County Executive recommended amendments to the FY23-FY28 CIP reflect the current rate structure. However, the County Council approved FY23-FY28 Amended CIP Impact Tax targets incorporate an assumption that revenues will be 20% lower in each year than those forecasted under the current rate structure, anticipating the introduction and passage of Bill 23-25. As a result the fiscal impact of Amended Bill 25-23 to the target revenues in the CIP is different from the impact compared to forecasted revenues under the existing rate structure shown in Table/Chart 1 and 2. As shown in Table/Chart 3, revenues forecasted after passage of amended Bill 25-23 exceed the revenue targets in the amended CIP by $21.3 million. In absence of the passage of Amended Bill 25-23, the transportation impact tax rates would have increased by 9.47%. Both scenarios in this FIS assume transportation impact tax rates and revenues increase by 19.72% in FY24 if Bill 25-23 is approved, consistent with the cumulative change in the Baltimore Construction Cost Index from January of 2021 to January of 2023. Each scenario assumes there is no further inflation in the Baltimore Construction Cost Index and as a result no change to transportation impact tax rates and revenues as a result of the FY26 and FY28 biennial adjustments.

Fiscal Impact Analysis

Table 1 & Chart 1: Amended Bill 25-23 – Full realization of FY24 rate growth >20% by FY28 as compared to impact tax revenue forecasted under the current rate structure

Fiscal Year	2024	2025	2026	2027	2028	2029
Personnel Costs	$0	$0	$0	$0	$0	$0
Operating Expenses	$0	$0	$0	$0	$0	$0
Total Expenditures	$0	$0	$0	$0	$0	$0
Revenues	-$3,578,509	-$4,527,654	-$414,695	-$414,695	$5,659,828	$5,659,828
Total Impact	-$3,578,509	-$4,527,654	-$414,695	-$414,695	$5,659,828	$5,659,828
FTE	0	0	0	0	0	0
Total FY23-FY28	-$3,275,726					
Total FY24-FY29	$2,384,102					

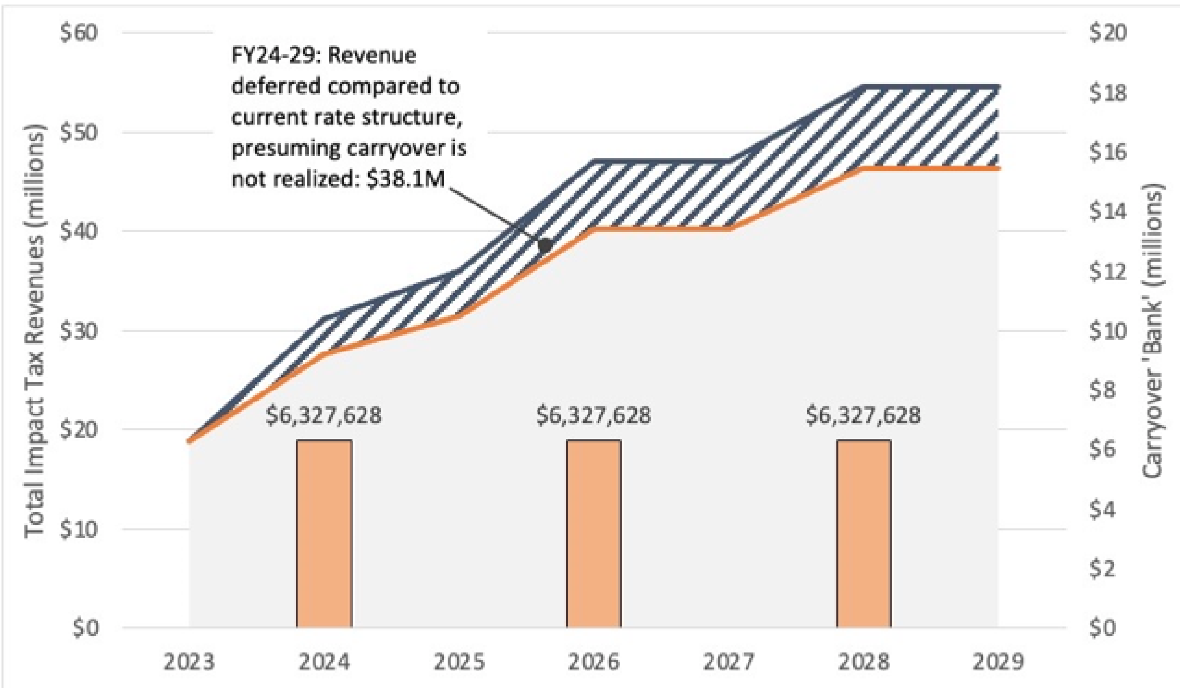


* Carried over rates have been converted to represent the annual revenues not realized as a result of the carryover

** Analysis presumes development continues at levels similar to the average of the last 10 years and that this level is not affected by change to the impact tax rates

Table 2 & Chart 2 – Amended Bill 25-23 If there is no realization of FY24 rate growth >20% by FY28 as compared to impact tax revenue forecasted under the current rate structure

Fiscal Year	2024	2025	2026	2027	2028	2029
Personnel Costs	$0	$0	$0	$0	$0	$0
Operating Expenses	$0	$0	$0	$0	$0	$0
Total Expenditures	$0	$0	$0	$0	$0	$0
Revenues	-$3,578,414	-$4,527,558	-$6,742,228	-$6,742,228	-$8,260,859	-$8,260,859
Total Impact	-$3,578,414	-$4,527,558	-$6,742,228	-$6,742,228	-$8,260,859	-$8,260,859
FTE	0	0	0	0	0	0
Total FY23-FY28	-$29,851,286					
Total FY24-FY29	-$38,112,145					

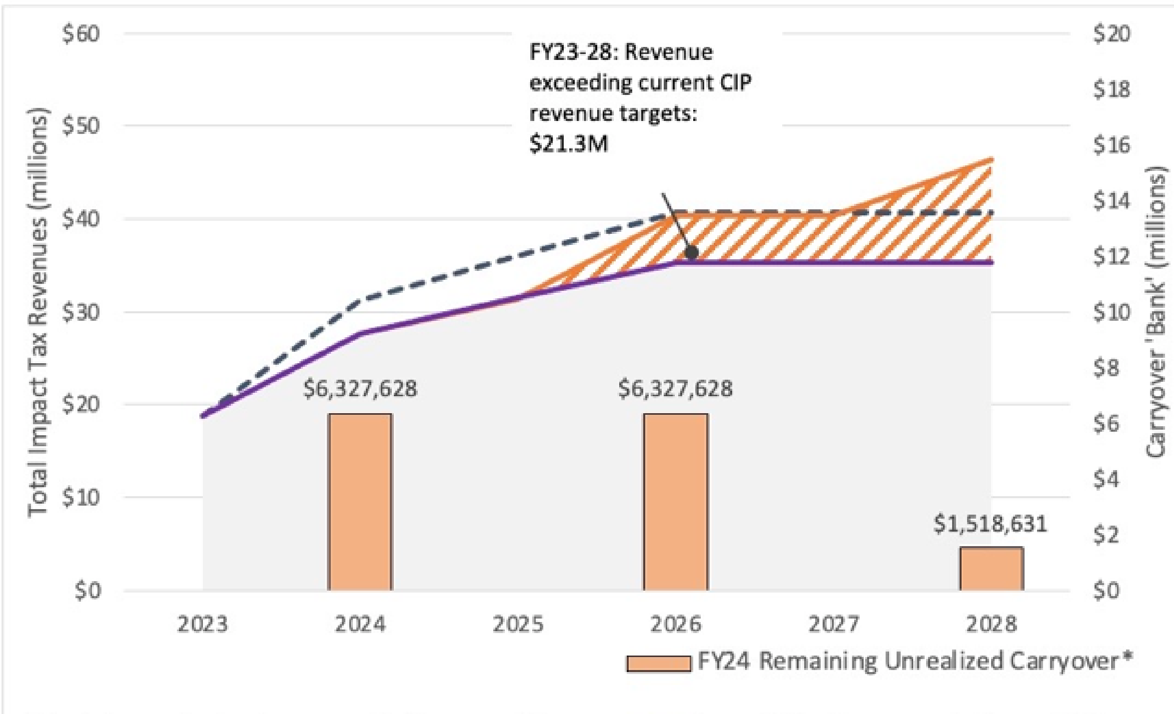


* Carried over rates have been converted to represent the annual revenues not realized as a result of the carryover

** Analysis presumes development continues at levels similar to the average of the last 10 years and that this level is not affected by change to the impact tax rates

Table 3 & Chart 3: Amended Bill 25-23 – Full realization of FY24 rate growth >20% by FY28 as compared to the County Council approved FY23-FY28 Amended CIP Impact Tax Targets

Fiscal Year	2023	2024	2025	2026	2027	2028
Jan 2023 Recommended FY23-FY28 CIP Revenue Target	$18,847,000	$31,237,000	$35,982,000	$40,728,000	$40,728,000	$40,728,000
CCL Reconciliation	$0	-$3,578,000	-$4,526,999	-$5,476,998	-$5,476,997	-$5,476,996
FY23-FY28 Amended CIP Revenue Targets	$18,847,000	$27,659,000	$31,455,001	$35,251,002	$35,251,003	$35,251,004
Amended Bill 25-23 Impact Tax Revenue Forecast	$18,847,335	$27,655,661	$31,452,238	$40,310,917	$40,310,917	$46,385,441
Amended Bill 25-23 Impact compared to Amended CIP	$335	-$3,339	-$2,763	$5,059,915	$5,059,914	$11,134,437
Total FY23-FY28	$21,248,499					



* Carried over rates have been converted to represent the annual revenues not realized as a result of the carryover

** Analysis presumes development continues at levels similar to the average of the last 10 years and that this level is not affected by change to the impact tax rates

1. Amended Bill 25-23 under the full realization of rate growth >20% scenario:

a. The FY24 increase in school impact tax rates (as a composite of all the individual school impact tax rates) is approximately 50%, generating an approximately 50% increase in school impact tax revenues absent the 20% cap.

b. Due to the 20% cap and required carryover provision, school impact tax revenues increase by 20% in FY24, 20% in FY26, and 4.17% in FY28. This allows full realization of the FY24 50% school impact tax rate increase by FY28 (1.2*1.2*1.417=1.5).
c. There are no other biennial increases assumed in FY26 and FY28 for school impact tax rates.
2. Amended Bill 25-23 under the no realization of growth >20% scenario:
a. The FY24 increase in school impact tax rates (as a composite of all the individual school impact tax rates) is approximately 50%, generating an approximately 50% increase in revenues absent the 20% cap.
b. Due to the 20% cap and required carryover provision, school impact tax revenues increase by 20% in FY24. Impact tax rate growth for schools[1] is 20% between FY24 and FY25, and another 20% between FY26 and FY27, preventing realization during the analysis period of the FY24 school impact tax rate increase that exceeded the 20% cap.

The following are the calculation details for the fiscal impact analysis:

The analysis is based upon the model produced by the Department of Finance in December of 2022 that generated the estimate of impact tax revenues for FY24-FY29 for the biennial CIP update before adjustments for existing fund balances and reconciliation. The model makes the assumption that for any percentage increase in the underlying impact tax rates, impact tax revenues will increase by the same percentage.
The school impact tax revenues are generated by 12 different rates for the public-school improvement impact taxes; A residential or apartment development will pay one rate for the public-school improvement impact taxes dependent upon the type of project (single-family or multi-family, etc) and whether it is in an infill or turnover zone.[2]
As a result of the complexity of the school impact tax revenue fee structure, the forecast model distills the anticipated increase in rates due to inflation down to one single value. For the December impact tax revenue estimate Finance assumed that school impact tax rates and revenues would increase by 50%, well within the 40% to 70% range that the majority of individual school impact tax rate would increase, absent Council action on Amended Bill 25-23.

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[1] School impact tax rates are the product of student generation rates and school construction costs.
[2] The analysis does not include school premium payments, an additional impact tax, as these are not affected by Bill 25-23 and are not material.

Staff Impact	The bill is not expected to impact staff time and duties of the Department of Finance or Department of Permitting Services.
Actuarial Analysis	The bill is not expected to impact retiree pension or group insurance costs.
Information Technology Impact	The bill is not expected to impact the County Information Technology (IT) or Enterprise Resource Planning (ERP) systems.
Other Information	
Later actions that may impact revenue or expenditures if	The Planning Department recommends and the Council enacts amendments and changes to the Growth and Infrastructure Policy every four years, with the next amendment process to occur in FY24. Changes to the Growth and Infrastructure Policy could affect the impact tax structure and by extension impact tax revenues realized. The future level of construction cost inflation and student generation rates are unknown and are anticipated to affect impact taxes and by extension impact tax revenues in unknown

future spending is projected	ways.
Contributors	Nancy Feldman, Department of Finance Dennis Hetman, Department of Finance Todd Fawley-King, Department of Finance Abdul Rauf, Office of Management and Budget