COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President, and at the request of the County Executive

AN ACT to:

(1) establish a fourth impact tax district encompassing certain areas of the County;
(2) phase in the application of the impact tax in certain areas of the County;
(3) [[repeal]] amend the requirement that the County Executive submit a biennial report on the impact tax [[rates]];
(4) [[provide for certain additional credits against the impact tax]] expand the definition of impact highways to include certain transportation facilities, and revise the restrictions on spending funds derived from the impact tax;
(5) provide for certain exemptions from the tax:
(6) make clarifying and stylistic changes; and
(7) generally amend the law governing the Development Impact Tax.

By amending
Montgomery County Code
Chapter 52, Taxation
Article VII, Development Impact Tax for Major Highways

Boldface
Underlining
[Single boldface brackets]
Double underlining
[[Double boldface brackets]]

Heading or defined term.
Added to existing law by original bill.
Deleted from existing law by original bill.
Added by amendment.
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. Chapter 52, Article VIII, is amended as follows:

ARTICLE VII. DEVELOPMENT IMPACT TAX [FOR MAJOR HIGHWAYS].

52-47. Definitions.

In this Article the following terms have the following meanings:

[[(a)]][* * *

[[b]] Adequate Public Facilities Ordinance staging ceiling standards means standards by which the area-wide adequacy of [[major highways and]] transportation facilities serving a proposed development are judged. APFO staging ceiling standards do not include requirements for other on-site or off-site transportation improvements that may be separately required, nor do they include] or standards relating to local area review[,] which may be independently required.

[[c]] Annual growth policy means [current] the annual growth policy most recently adopted under Chapter 33A to provide guidelines for the administration of the Adequate Public Facilities Ordinance.

[[d]] *[ * *

Roscience facility means any biological research and development or manufacturing facility that substantially involves research, development, or manufacturing of:

(1) biologically active molecules.
(2) devices that employ or affect biological processes.
(3) devices and software for production or management of specific biological information, or
(4) products or materials that purify or handle biologically active products:

[[e]] *[ * *
Development impact tax means a pro rata per unit or per square foot of
gross floor area tax imposed before a building permit is issued for
development [[in an impact tax district]] which is intended to defray a
portion of the costs associated with impact [highway] transportation
improvements [[in the tax districts]] that are necessary to accommodate
the traffic generated by the development.

Hospital means an institution licensed as a hospital under state law.

Impact tax district means a planning policy area or combination of
planning policy areas described under Section 52-49(c).

Impact tax district transportation program means the transportation
improvement program described under Section 52-58.

Improvement means a highway, intersection improvement, transit
center, [and] bus, bus shelter, hiker-hiker trail, sidewalk connection, or
park and ride [projects] lot, including planning, engineering, design
services, right-of-way acquisition, grading, paving, curbs, gutters,
and associated costs.

Master plan of highways means the “Master Plan of Highways”
[prepared by the Maryland-National Capital Park and Planning
Commission,] adopted by the [Montgomery County] Planning Board
and approved by the District Council, and any similar plan adopted by
either Gaithersburg or Rockville.
[(p)] Impact [highways] transportation improvement means [the arterial highway segments, transit centers, and park-and-ride facilities under] an improvement listed in Section 52-58.

[(q)] Maryland-National Capital Park and Planning Commission means the agency established under Article 28 of the Maryland Code.]

[(r)] Nonresidential means the use of a building that is not a residential use and includes:

(1) offices, including general, medical, office parks, research parks, townhouse office buildings, government offices, and other similar uses;

(2) industrial uses, including truck terminals, warehouses, light or heavy industrial and manufacturing, industrial parks, [[biotechnology research and development facilities and related office space.]][ ] and other similar uses;

(3) retail uses, including stores or shopping centers engaging in the sale of goods, restaurants, vehicle sales or service, banks or savings and loan institutions, theaters, post offices and other similar uses;

(4) places of worship;

(5) private elementary, [and] secondary, or post-secondary schools; and

(6) other nonresidential uses, including hotels, motels, day care centers, [[hospitals,]!] nursing homes, recreational facilities, and other public facilities and similar uses;

[(s)] Per-unit development impact tax means the development impact tax listed under Section 52-57(b).]
Planning policy area means any of the geographic areas described in the annual growth policy [for which the APFO staging ceiling standards are identified].

Programmed [highways] transportation improvement means [highway] an improvement [projects that are contained within] listed in the current approved county capital improvements program or the state consolidated transportation program or any similar program adopted by either Gaithersburg or Rockville.

Residential means the use of a building as a dwelling unit.

1. Single-family detached residential includes:
   (A) detached single-family dwelling units; and

2. Single-family attached residential includes townhouses, duplexes and other attached single-family dwelling units.

Multifamily residential includes:

(A) garden apartments;
(B) mid-rise and high-rise [apartments] dwelling unit structures; and
(C) condominiums other than townhouses; and
(D) mobile homes.

Multifamily-senior residential means:

(A) multifamily housing and related facilities for elderly or handicapped persons, as defined in Section 59-A-2.1, with occupancy restricted as provided in Section 59-G-2.35(b);
multifamily housing units located in the age-restricted 
section of a planned retirement community, as defined in 
Section 59-C-7.441: and 
(C) a domiciliary care home, as defined in Section 59-A-2.1 
and subject to Section 59-G-2.37, which consists of 
separate assisted living units.

[(x)][(w)][[* * *]] Staging ceiling means the maximum amount of 
land development that can be accommodated in a planning policy area 
consistent with APFO staging ceiling standards given the programmed 
[[highways]] transportation facilities.

[(y)] Traffic Impact means the relative effect of different land uses on the 
need for impact highways in an impact district based on relative trip 
generation, average trip length, and the proportion of new trips, as 
described more fully in Section 52-57.]

[(z)] Unprogrammed highways means improvement projects not contained 
within the current approved County CIP or the state consolidated 
transportation program, and which, if programmed, would increase the 
transportation system capacity and therefore the staging ceiling in an 
impact tax district.]

52-48. Findings; purpose and intent.

(a) The master plan of highways indicates that certain roads are needed in 
planning policy areas. Furthermore, the [comprehensive planning 
policies report] Annual Growth Policy indicates that the amount and 
rate of growth projected in certain planning policy areas will place 
significant demands on the County for provision of major highways 
necessary to support and accommodate that growth.
(b) Montgomery County, through its adoption of the Capital Improvements Program, indicates its commitment to provide transportation infrastructure.

(c) Montgomery County has determined that a combination of approaches will be necessary to fully achieve the level of [highway] impact transportation improvements needed to accommodate growth in the [impact tax districts] County. Thus, Montgomery County proposes to fund [certain master planned highways up to 50 percent] a program of transportation improvements through development impact taxes to allow new growth in [impact tax districts] the County.

(d) Imposing a development impact tax that requires new development [in certain impact tax districts] to pay [their] its pro rata share of the costs of impact [highway] transportation improvements necessitated by [such new] that development in conjunction with other public funds is a reasonable method of raising the funds to build [such] improvements in a timely manner.

(e) The development impact tax will fund, in part, the improvements necessary to increase the transportation system capacity [[in the impact tax districts]], thereby allowing development to proceed. Development impact taxes will be used exclusively for impact [highways] transportation improvements.

(f) In order to assure that the development impact taxes reflect the reasonable pro rata share of the costs of the additional highway improvements associated with each new development, the development impact tax is based on relative trip impact associated with the number and type of dwelling units and square footage and type of nonresidential development.]
In order to assure that the necessary [highway] impact transportation improvements are constructed in a timely manner, the County intends to assure the availability of funds sufficient to construct the impact [highway] transportation improvements.

The County retains the power to determine the impact [highway] transportation improvements to be funded by development impact taxes; to estimate the cost of such improvements; to establish the proper timing of construction of the improvements so as to meet APFO staging ceiling standards where they apply; to determine when changes, if any, may be necessary in the County CIP; and to do all things necessary and proper to effectuate the purpose and intent of this Article.

It is the intent of the County to further the public purpose of ensuring that an adequate transportation system is available in support of new development [in the impact tax districts]. It is not the intent of this Article to collect a development impact tax from new development in the impact tax districts in excess of that development's pro rata share of the costs associated with the impact highway improvements, as measured by the development's contribution to traffic impact in the tax district.

* * *

[It is the intent of the] The County intends to impose development impact taxes [in an impact tax district] until [that area] the County has attained build-out as defined by the [applicable master plan].

**52-49**. Imposition and applicability of development impact taxes.
A development impact tax [for impact highways] must be imposed before a building permit is issued for development in [each impact tax district] the County.

An applicant for a building permit for development in an impact tax district must pay a development impact tax in the amount and manner provided in this Article, unless a credit in the full amount of the applicable tax [is determined to be applicable] applies under Section 52-55 or an appeal bond is posted under Section 52-56.

The following impact tax districts are established, consisting of the following Planning Policy Areas as described in the Annual Growth Policy:

(1) Germantown: Germantown East, Germantown Town Center, and Germantown West;
(2) Eastern Montgomery County: Fairland/White Oak and Cloverly;
(3) Clarksburg: Clarksburg[];
(4) The County District: all planning policy areas and municipalities not located in the Germantown, Eastern Montgomery County, or Clarksburg impact tax districts.

The boundaries for impact tax districts and the need to create additional impact tax districts must be reviewed biennially using the methodology under Section 52-59. The County Council must hold a public hearing before changing the boundaries for an impact tax district or creating a new impact tax district.

Development impact taxes must be accounted for and segregated by the impact tax district from which the taxes are received. The taxes must be restricted in their use to funding improvements listed in [the impact tax district transportation program for the district] Section 52-58.
(e) Development impact taxes collected from developments located in the cities of Gaithersburg and Rockville must be accounted for separately according to the municipality where the funds originated. These tax revenues must be used only to fund transportation improvements listed in a memorandum of understanding between the County and the respective City, which must be approved by the County Council. If the County and the respective City do not agree on a memorandum of understanding regarding the use of impact tax revenues, the County Council may appropriate funds to improvements which are consistent with the master plan of the respective City after holding a separate hearing on any specific improvement if the City so requests.

(f) A development impact tax must not be imposed on [[the Montgomery County Government, Montgomery College, the Montgomery County Public School System, the Housing Opportunities Commission of Montgomery County, or the Maryland-National Capital Park and Planning Commission, or on]] any building owned and used primarily by any agency or instrumentality of federal, state, County, or municipal government.

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

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

2. any Productivity Housing [Unit] [Project] unit, as defined in Section 25B-17[(m)](i), which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

3. [[any development in which at least 20% of the dwelling units:
   (A) are multifamily senior-residential, having occupancy

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restricted to households who are elderly, disabled, or handicapped, and

(B) for which the price or rent charged for the unit makes the
unit affordable to households earning less than 60% of
the area median income, adjusted for family size.]]

[[4]] any other [dwelling unit] development in which at least 20% of
the dwelling units are built under a government regulation or
binding agreement that limits for at least 15 years the price or
rent charged for the unit in order to make the unit affordable to
households earning less than [50%] [[60%]] 50% of the area
median income, or 40% of the units are built under a similar
regulation or agreement that makes them affordable to
households earning less than 60% of the area median income,
adjusted for family size.[.]

[[5]] (4) any Personal Living Quarters [[facility]] unit built under
Sec. 59-A-6.15. which meets the price or rent eligibility
standards for a moderately priced dwelling unit under Charter
25A:

[[6]] any Accessory Apartment unit built under Section 59-G-2.00.]

[[7]] any dwelling unit in an Opportunity Housing Project built
under Sections 56-28 through 56-32. which meets the price or
rent eligibility standards for a moderately priced dwelling unit
under Charter 25A:

[[8]] [(7) any biological research and development or
manufacturing facility that substantially involves research.

development or manufacturing of:

(A) biologically active molecules.
(B) devices that employ or affect biological processes. [(or)]

(C) devices and software for production or management of specific biological information. or

(D) products or materials that purify or handle biologically active products;]

[(9) any optional method development for which a project plan approval, or equivalent approval in Gaithersburg or Rockville, has been issued prior to the effective date of this act and for which a building permit is issued within 2 years of the effective date of this act.]]

[(10) any standard method development for which subdivision approval, or equivalent approval in Gaithersburg or Rockville, has been issued prior to the effective date of this act and for which a building permit is issued within 2 years of the effective date of this act.]] and

[(11)] (6) any development located in an enterprise zone designated by the State [(of Maryland)].

(h) The development impact tax does not apply to:

(1) any reconstruction or alteration of an existing building or part of a building that does not increase the gross floor area of the building; and

(2) any building that replaces an existing building on the same site to the extent of the gross floor area of the previous building, if construction begins within one year after demolition or destruction of the previous building was substantially completed. However, if in either case the development impact tax due on the new reconstructed, or altered building is greater than the tax that would have
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been due on the previous building if it were taxed at the same time. the applicant must pay the difference between those amounts.

52-50. Collection of development impact taxes.

(a) The Department of Permitting Services must determine the amount of the applicable development impact tax.

(b) Applicants for building permits for development [in an impact tax district] that is not exempt from the development impact tax must supply to the Department of Permitting Services for each requested building permit:

(1) The number and type of dwelling units for residential development; and

(2) The gross floor area and type of development for nonresidential development.

The applicant must submit for inspection relevant support documentation as the Department requires.

(c) The Department of Permitting Services must not issue a building permit for development [in an impact tax district] that is not exempt from the development impact tax unless:

(1) the applicant has paid the applicable development impact tax;

(2) the applicant is entitled to a credit under Section 52-55 in the amount of the applicable development impact tax; or

(3) an appeal has been taken and a bond or other surety posted under Section 52-56.

(d) When a person applies to a municipality in the County for a building permit for a building or dwelling unit, the applicant must show that all payments due under this Section with respect to the building or unit have been paid. The Director of Finance must promptly refund any
made for any building or part of a building for which a building permit is not issued by the municipality.

[(d)(e)] Nothing in this Article changes or supercedes any other requirement of City, County, state or federal law that may apply to the development, including County zoning and subdivision regulations that may impose on-site and off-site transportation improvement requirements and local area review requirements implemented by the [[Maryland-National Capital Park and]] Planning Board [[Commission]].

[(e)(f)  * * * [(f)(g)  * * * [(g)(h)  * * * [(h)(i)  * * * [(i)(j)  * * * [(j)(k)  * * *

52-51. Calculation of development impact tax.

(a) The Department of Permitting Services must calculate the amount of the applicable development impact tax due for each building permit by:

(1) determining the applicable impact tax district and whether the permit is for development that is exempt from the tax under Section 52-49(f);
(2) verifying the number and type of dwelling units and the gross floor area and type of nonresidential development for which each building permit is sought;
(3) determining the applicable [[per-unit development impact]] tax under Section 52-57; and
(4) multiplying the applicable [[per-unit development impact]] tax by:
(A) the appropriate number of dwelling units; and
(B) the gross floor area of nonresidential development [divided by 1000].

(b) If the development for which a building permit is sought contains a mix of uses, the Department [[of Permitting Services]] must separately calculate the development impact tax due for each type of development.

(c) If the type of proposed development cannot be categorized under [[Sections]] the definitions of nonresidential and residential in Section 52-47 [((r) and ((w) (v))], the Department [[of Permitting Services]] must use the rate assigned to the type of development which generates the most similar traffic impact characteristics.

(d) The Department [[of Permitting Services]] must calculate the amount of the development impact tax due under this Article in effect when the building permit application is submitted to the Department or before a building permit is issued by a municipality.

(e) A building permit application or if the property is located in a municipality with authority to issue building permits, a request to determine the amount of the impact tax must be resubmitted to the Department [[of Permitting Services]] if the applicant changes the project by:

(1) increasing the number of dwelling units;
(2) increasing the gross floor area of nonresidential development; or
(3) changing the type of development so that the development impact tax would be increased.

The Department must recalculate the development impact tax based on the plans contained in the resubmitted building permit application.
52-52. [Biennial recalculation of development impact tax.] [[Reserved]]

**Annual report.**

The County Executive must submit a report to the Council on the development impact tax not later than April 1 of each year. The report must include:

(a) a summary of the revenue collected from the tax in the previous calendar year in each impact tax district;

(b) a list of each building exempted from the tax during the previous calendar year under Section 52-49(g) or taxed at a rate of $0 under Section 52-57, and the tax that otherwise would have been paid for that building; and

(c) any other information that the Executive finds relevant.

[(a)] Before July 1, 1988, and at least every 2 years thereafter, the County Executive must prepare a report to the County Council on development impact taxes. The report must contain recommendations on:

(1) the methodology for establishing and the data in support of the per-unit development impact taxes;

(2) the impact tax district transportation program; and

(3) the alteration or addition of impact tax districts.

(b) After receipt of the report prepared by the County Executive, the per-unit development impact tax imposed for each impact tax district, must be reviewed, recalculated if necessary, and, after a public hearing, readopted by the County Council. Until the County Council takes action, the development impact taxes remain in effect. The County Council may amend the tax schedule at any time if a master plan revision is adopted that significantly alters the development buildout or transportation program in an impact tax district.
In the impact tax recalculation process, the County Council must consider the following factors:

1. inflation as measured by changes in a construction cost index used by the Department of Public Works and Transportation;
2. changes in the design, engineering, location, right-of-way, or other elements of the highways listed in the impact tax district transportation program;
3. a revision to the master plan for an impact tax district;
4. changes in the anticipated land uses projected for an impact tax district; and
5. changes in the methodology and the data by which the per-unit development impact tax is calculated.

Restrictions on use and accounting of development impact tax funds.

(a) The funds collected by the development impact tax must be used solely for the purpose of funding the impact tax district transportation program in the impact tax district from which the development impact tax was collected and in the County district, to fund County or municipal transportation improvements of the types listed in Section 52-58 located anywhere in the County. In any fiscal year, development impact tax funds may be spent only to the extent that the annual average amount of funds from other County or city sources spent for transportation improvements listed in Section 52-58 during the 3 previous fiscal years exceeds $12 million.

(b) Upon receipt of development impact taxes, the Department of Permitting Services must transfer the taxes to the Department of Finance for crediting to the appropriate account.
The Department of Finance must establish separate accounts for each impact tax district, the City of Gaithersburg, and the City of Rockville.

and must maintain records for each account so that development impact tax funds collected can be segregated by [the impact tax district of origin] each of these areas. [The following accounts must be initially established:

(1) Germantown;

(2) Eastern Montgomery County.]

The Department of Finance must maintain and keep adequate financial records for each account that must:

(1) Show the source and disbursement of all revenues;

(2) Account for all monies received; and

(3) Ensure that the disbursement of funds from each account is used exclusively for the financing of the transportation improvements listed in [[the applicable impact tax district transportation program]] Section 52-58.

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Development impact taxes must be disbursed from an account only for the purposes for which the [[development impact]] tax has been imposed, including reimbursement to the County or Gaithersburg or Rockville of advances made for these purposes from other available funds.

Development impact tax funds collected from a project in a Metro Station Policy Area, as defined by the Annual Growth Policy, under the Alternative Review Procedure for Metro Station Policy Areas, must be used for impact transportation improvements located in the same Metro Station Policy Area, or in an adjacent Planning Policy Area.
Refunds.

(a) Any person who has paid a development impact tax may apply for a refund of the tax if:

1. The county has [failed to provide impact highways in the applicable impact tax district in accordance with the applicable current impact tax district transportation program] not appropriated the funds for impact transportation improvements of the types listed in Section 52-58, or otherwise formally designated a specific improvement of a type listed in Section 52-58 to receive funds by the end of the sixth fiscal year after the tax is collected;

2. The building permit has been revoked or has lapsed because of noncommencement of construction;

3. The project has been physically altered, resulting in a decrease in the amount of the development impact tax due; or

4. A declaration encumbering the property for which the development impact tax has been paid has been recorded in the County land records as required under Section 14-17(c) and the applicant is entitled to a credit under Section 52-55(d).

(d) The Director of Permitting Services must investigate each claim and hold a hearing at the request of the petitioner. Within 3 months after receiving a petition for refund, the Director of Permitting Services must provide the petitioner, in writing, with a decision on the refund request. The decision must include the reasons for the decisions, including, as appropriate, a determination of whether impact [highways have been provided in the applicable impact tax district transportation program]
tax funds collected from the petitioner, calculated on a first-in-first-out basis, have been appropriated or otherwise formally designated for impact transportation improvements of the types listed in Section 52-58 within six fiscal years. If a refund is due the petitioner, the Director of Permitting Services must notify the Department of Finance [and request that a refund payment be made to the petitioner] and, if the property is located in Gaithersburg or Rockville, the finance director of that city.

(e) The Department of Finance must not pay a refund unless the petitioner has paid all other state, county, or municipal taxes, fees, or charges that the Department is responsible for collecting.

(f) The petitioner may appeal the determination of the Director of Permitting Services in accordance with Article 24, Title 9, of the Maryland Code or any successor law.

52-55. Credits.

(a) A property owner is entitled to a credit if the owner, before [July 29, 1986] [[(effective date of act)]] July 1, 2002, entered into a participation agreement or a similar agreement with the state or a municipality, the purpose of which was to provide additional [[staging ceiling]] transportation capacity [[in an impact tax district]]. A property owner is also entitled to a credit if the owner receives approval before [[(effective date of act)]] July 1, 2002, of a subdivision plan, development plan, or similar [[instrument]] development approval by the County or a municipality that requires the owner to build or contribute to a transportation improvement that provides additional transportation capacity. The Department of Public Works and Transportation must calculate the credit. The credit must equal the amount of any charge paid under the participation agreement. The Department may give
credit only for building permit applications for development on the site covered by the participation agreement. The Department must not give a refund for a credit earned under this subsection.

(b) A property owner [may construct] must receive a credit for constructing or contributing to an improvement of the type listed in [the impact tax district transportation program] Section 52-58 if the improvement reduces traffic demand or provides additional transportation capacity. [Construction of the improvement, however, must be in addition to all other on-site transportation improvements required by the County or the Planning Board as a condition of subdivision, site plan, or other development approval.]

(1) If the property owner elects to make the improvement, the owner must enter into an agreement with a municipality or the County, or receive a development approval based on making the improvement before any building permit is issued. The agreement or development approval must contain:

(A) the estimated cost of the improvement, if known then,

(B) the dates or triggering actions [for initiating and completing] to start and, if known then, finish the improvement,

(C) a requirement that the property owner complete the improvement according to applicable municipal or County standards, and

(D) such other terms and conditions as the municipality or County finds necessary.

(2) The [Director of the] Department of Public Works and Transportation must:
(A) review the improvement plan,
(B) verify costs and time schedules,
(C) determine whether the improvement is an impact
    [highway] transportation improvement,
(D) determine the amount of the credit for the improvement
    that will apply to the development impact tax, and
(E) certify the amount of the credit to the Department of
    Permitting Services before that Department or a
    municipality issues any building permit.

(3) An applicant for subdivision, site plan, or other development
    approval from the County, Gaithersburg, or Rockville, or the
    owner of property subject to an approved subdivision plan,
    development plan, or similar [[instrument]] development
    approval, may seek a declaration of allowable credits from the
    Department of Public Works and Transportation. The
    Department must decide, within 30 days after receiving all
    necessary materials from the applicant, whether any
    transportation improvement which the applicant has
    constructed, contributed to, or intends to construct or contribute
    to, will receive a credit under this subsection. If during the
    initial 30-day period after receiving all necessary materials, the
    Department notifies the applicant that it needs more time to
    review the proposed improvement, the Department may defer
    its decision an additional 15 days. If the Department indicates
    under this paragraph that a specific improvement is eligible to
    receive a credit, the Department must allow a credit for that
    improvement when taking action under paragraph 2.
The County must not provide a refund for a credit which is greater than the applicable [[development impact]] tax. If, however, the amount of the credit exceeds the amount of the [[development impact]] tax due, the property owner may apply the excess credit toward the development impact taxes imposed on other building permits for development [[in the same [impact tax district] or an adjacent planning policy area and]] with the same ownership. In this Section, a property has the same ownership as another property if the same legal entity owns at least 30% of the equity in both properties.

* * *

Any property owner who, before May 1, 2001, built all or part of a project in the Clarksburg [impact district] planning policy area which is listed in the impact tax transportation program (including building any road which would be widened under the program) is entitled to a credit equal to the reasonable cost of the improvement. The Department of Public Works and Transportation must calculate the credit. The Department must not give a refund for a credit earned under this subsection.

A property owner may transfer a credit against the development impact tax to another property owner [[in the [impact tax district] planning policy area where the credit originated or an adjacent planning policy area]] if the transferor received the credit on or before August 7, 1992 in exchange for the sale of land to the County. The transferee is entitled to the amount of the credit transferred to it, up to the amount of unpaid tax the transferee owes. The Department must not give a refund for a credit.
used under this subsection. The Department must not allow more than $2,750,000 in credits under this subsection.

(2) Any credits for building or contributing to an impact transportation improvement do not apply to any development that is approved under the Alternative Review Procedure for Metro Station Policy Areas.

52-56. Appeals.

After determination of the amount of the development impact tax or credit due, an applicant for a building permit or a property owner may appeal to the Maryland Tax Court to the extent permitted by state law or, if the Maryland Tax Court does not have jurisdiction, to the Circuit Court under the Maryland Rules of Procedure that regulate administrative appeals. If the appealing party posts a bond or other sufficient surety satisfactory to the County Attorney in an amount equal to the applicable development impact tax as calculated by the Department of Permitting Services, the Department or municipality must issue the building permit if all other applicable conditions have been satisfied. The filing of an appeal does not stay the collection of the development impact tax until a bond or other surety satisfactory to the County Attorney has been filed with the Department of Permitting Services.

52-57. Development impact taxes[; methodology].

(a) Development impact taxes must be calculated by the following process:

(1) Calculate the difference between the amount of residential (in dwelling units) and nonresidential development (in 1,000 sq. ft. gross floor area increments) possible in each impact tax district based on existing or proposed zoning and existing development (including unbuilt development for which building permits have been secured). These figures establish the full range of development to which an impact tax will be applied as well as the
full amount of development that will need to be accommodated by the additional impact highways to be funded, in part, through the impact tax.

(2) Determine the full range of highway improvements needed to accommodate the projected development through buildout, and establish the estimated costs of the improvements. These are the impact highway improvements included in the impact tax district transportation program under Section 52-58.

(3) Establish relative trip impacts for various land use categories in order to assure that each land use is subject to a reasonable pro rata charge based upon its relative impact on the impact highways system in the impact tax district. The relative impacts are measured by the calculation of a trip impact value which is a function of trip generation rates as modified by trip length characteristics and percent of new trips generated by a particular use.

(4) Multiply the number of units of projected new development for the major land use categories (residential and nonresidential) by the trip impact value for that category to establish the percent of impact highway improvement costs to be assigned to residential versus nonresidential development.

(5) Multiply the percent by the total costs to be borne by impact taxes to establish a total cost burden for residential versus nonresidential development; in the same way, divide the costs for residential and nonresidential among the specific land use categories.
(6) Divide the pro rata costs to be borne by each land use category by the per-unit traffic impact value of that land use category to arrive at a pro rata cost per unit for each land use category.

(7) Multiply 50% by the pro rata cost per unit for each land use category (calculated in Step 6) to determine the development impact tax for each land use category.

[(b)](a) The development impact tax rates for each impact tax district are:

<table>
<thead>
<tr>
<th>Land Use Type</th>
<th>Germantown</th>
<th>Eastern County</th>
<th>Clarksburg</th>
<th>County District</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single-family detached</td>
<td>$2,492</td>
<td>$1,727</td>
<td>$2,753</td>
<td>$2,100</td>
</tr>
<tr>
<td>residential (per dwelling unit)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Single-family attached</td>
<td>$2,492</td>
<td>$1,727</td>
<td>$2,753</td>
<td>$2,100</td>
</tr>
<tr>
<td>residential (per dwelling unit)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Multifamily residential</td>
<td>$1,794</td>
<td>$1,243</td>
<td>$1,981</td>
<td>$1,100</td>
</tr>
<tr>
<td>(per dwelling unit)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Multifamily senior residential</td>
<td>$531</td>
<td>$368</td>
<td>$573</td>
<td>$325</td>
</tr>
<tr>
<td>residential (per</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>dwelling unit)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dwelling unit)</td>
<td>Office (per sq. ft. GFA)</td>
<td>$2</td>
<td>$2</td>
<td>$2</td>
</tr>
<tr>
<td>Industrial (per sq. ft. GFA)</td>
<td>$1</td>
<td>$1</td>
<td>$1</td>
<td>$1[[.00]]</td>
</tr>
<tr>
<td>Bioscience facilities (per sq. ft. GFA)</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Retail (per sq. ft. GFA)</td>
<td>$5.08</td>
<td>$3.52</td>
<td>$5.61</td>
<td>$1.50</td>
</tr>
<tr>
<td>Places of worship (per sq. ft. GFA)</td>
<td>$0.29</td>
<td>$0.20</td>
<td>$0.32</td>
<td>$0.20</td>
</tr>
<tr>
<td>Private elementary and secondary schools (per sq. ft. GFA)</td>
<td>$0.48</td>
<td>$0.33</td>
<td>$0.53</td>
<td>$0.30</td>
</tr>
<tr>
<td>Hospitals (per sq. ft. GFA)</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Other nonresidential (per sq. ft. GFA)</td>
<td>$5.62</td>
<td>$3.89</td>
<td>$6.20</td>
<td>$1[[.00]]</td>
</tr>
</tbody>
</table>

(b) Each taxpayer in the County District must pay the development impact tax at 25% of the rates set in this Section for building permit
applications filed before June 30, 2003; 50% of the rates set in this
Section for building permit applications filed between July 1, 2003 and
June 30, 2004; 75% of the rates set in this Section for building permit
applications filed between July 1, 2004 and December 31, 2004; and
100% of the rates set in this Section for building permit applications
filed on or after January 1, 2005. To the extent that a taxpayer pays a
lower rate because of this subsection than the rate set in subsection (a),
any credit claimed under Section 52-55 must be reduced by the same
ratio.]

[(c)] (b) Except as provided in subsection [(d)] (c), any development
located in a Metro Station Policy Area, as defined in the Annual Growth
Policy, must pay the tax at 50% of the tax calculated in [(subsections)]
subsection (a) [(and (b) of this Section)].

[(d)] (c) Any development located in a Metro Station Policy Area that
receives approval of a preliminary plan of subdivision under the
Alternative Review Procedure for Metro Station Policy Areas must pay
the tax [(calculated in subsections)] at the rate listed in subsection (a)
[(and (b) of this Section)].

[(e)] (d) The County Council by resolution, after a public hearing advertised
at least 15 days in advance, may increase or decrease the rates set in this
Section.

[(f)] (e) The Director of Finance must adjust the tax rates set in or under this
Section on July 1 of each odd-numbered year by the annual average
increase or decrease in the Consumer Price Index for all urban
consumers in the Washington-Baltimore metropolitan area, or any
successor index, 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. The Director must publish the amount of this adjustment not later
than May 1 of each odd numbered year.

52-58. Impact tax district transportation program.

The impact tax district transportation program is as follows:

* * *

(d) [Projects to] In the County district, projects that may be funded with impact
taxes [include] are any [improvements to master-planned major arterial
roadways, other planned arterials needed for access within impact tax
districts, and park-and-ride facilities]:

(1) new road or widening of an existing road that adds highwaw or
intersection capacity or improves transit service or bicycle
commuting, such as bus lanes or bike lanes:

(2) new or expanded transit center or park-and-ride lot, [or]

(3) bus added to the Ride-On bus fleet, but not a replacement bus;

(4) new bus shelter, but not a replacement bus shelter:

(5) hiker-biker trail used primarily for transportation:

(6) bicycle locker that holds at least 8 bicycles;

(7) sidewalk connector to a major activity center or along an arterial
or major highway; or

(8) in a Metro Station Policy Area or an adjacent policy area, the
operating expenses of any transit or trip reduction program.

(e) No more than 10% of the funds collected from this tax in the County
District, other than funds collected in a Metro Station Policy Area, may
be spent for the items listed in paragraphs (4)-(8) of subsection (d).

52-59. Methodology to determine impact tax districts.]
Impact tax districts are those planning policy areas, or combinations of planning policy area, in which existing and approved development is at or above the staging ceiling as defined by the Annual Growth Policy. Where existing development is at or above the staging ceiling, no further development can occur in the planning policy area without violating the adequate public facilities ordinance transportation standards, unless the staging ceiling is raised. The staging ceiling can be raised by the addition of major improvements beyond those that are programmed. The addition of these unprogrammed improvements will raise the staging ceiling, with the objective of allowing additional development consistent with APFO staging ceiling standards. After an impact tax district has been designated under subsection (b), it must remain an impact tax district until full buildout has occurred.

Additional planning policy areas or combinations of planning policy areas may be designated by the County Council as impact tax districts under the procedure in this Article. The County Council must consider the following factors in determining when and whether to add impact tax districts:

1. The Annual Growth Policy;
2. The standards incorporated in the APFO;
3. The projected buildout and timing of the projected buildout of planning policy areas;
4. The staging ceiling in planning policy areas;
5. The need for and cost of unprogrammed highways necessary to raise the staging ceiling or provide necessary improvements in support of projected development; and
6. Any other factor the County council finds relevant.
The principal reason for identifying a planning policy area or combination of planning policy areas as an impact tax district is to prevent the moratorium on development that would otherwise occur by application of APFO staging ceiling standards in a planning policy area where existing development is at or above the staging ceiling.

Sec. 2. Effective Dates: Transition.

(a) This Act takes effect on July 1, 2002, and applies to any development for which an application for a building permit is filed on or after that date.

(b) Each taxpayer in the County District must pay the development impact tax at 25% of the rates set in Section 52-57, as amended by Section 1 of this Act, for building permit applications filed between July 1, 2002 and December 31, 2002: 50% of the rates set in Section 52-57 for building permit applications filed between January 1, 2003, and June 30, 2003: 75% of the rates set in Section 52-57 for building permit applications filed between July 1, 2003 and December 31, 2003: and 100% of the rates set in Section 52-57 for building permit applications filed on or after January 1, 2004. To the extent that any taxpayer pays a lower rate than that set in Section 52-57 because this subsection applies, any credit claimed under Section 52-55 must be reduced by the same ratio.

(c) In the County District, the development impact tax does not apply to any building if:

1. a subdivision plan, project plan, or an equivalent development approval mechanism in Gaithersburg or Rockville, which includes that building was approved before July 1, 2002, and
2. a building permit is issued before July 1, 2003.
Approved:

Steven A. Silverman, President, County Council

3/14/02

Date

Douglas M. Durkan, County Executive

3/16/02

Date

This is a correct copy of Council action.

Mary J. Edgar, Clerk of the Council

3/26/02

Date