

MEMORANDUM

TO: County Council

FROM:  Michael Faden, Senior Legislative Attorney
 Marlene Michaelson, Senior Legislative Analyst
 Glenn Orlin, Deputy Council Staff Director

SUBJECT: **Action:** Bill 50-10, Special Taxing District – White Flint – Creation

Management and Fiscal Policy Committee/Transportation, Infrastructure, Energy, and Environment Committee recommendation: enact with amendments.

Bill 50-10, introduced on October 5, 2010, by the Council President at the request of the County Executive, would establish a White Flint Special Taxing District. The Bill would also authorize the levy of an additional ad valorem property tax to fund transportation infrastructure improvements that are specified in an implementing resolution and authorize the issuance of a certain type of bond to finance those transportation infrastructure improvements. The Management and Fiscal Policy and Planning, Housing and Economic Development Committees held joint worksessions on this Bill on October 28 and November 16, and the Council held a worksession on it on November 23.

The only substantive amendments to the Bill as proposed by the Executive are:

- 4 specific apartment buildings, listed by address, are not included in the special taxing district (see ©5, lines 84-85, 91);
- paying the special taxing district tax does not entitle anyone to claim a credit against any other County tax, including the transportation impact tax (see ©6, lines 112-116); and
- the Council must adopt a financing plan, with certain questions answered, before the special taxing district can be required to repay funds advanced by the County (see ©7, lines 139-152).

This packet contains

Bill 50-10 with Committee and Council amendments

Circle

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Bill No. 50-10
Concerning: Special Taxing District -
White Flint - Creation
Revised: 11-29-10 Draft No. 4.1
Introduced: October 5, 2010
Expires: April 5, 2012
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) establish a White Flint Special Taxing District;
- (2) authorize the levy of an *ad valorem* property tax to fund certain transportation infrastructure improvements;
- (3) authorize the issuance of a certain type of bond to finance certain transportation infrastructure improvements;
- (4) generally authorize a White Flint Special Taxing District; and
- (5) generally amend or supplement the laws governing the use of infrastructure financing districts and similar funding mechanisms.

By adding

Montgomery County Code
Chapter 68C, White Flint Special Taxing District

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

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

1 **Sec 1. Chapter 68C is added as follows:**

2 **Chapter 68C. White Flint Special Taxing District.**

3 **68C-1. Definitions.**

4 For purposes of this Chapter, the following terms have the meanings indicated:

5 *Bond* means a special obligation or revenue bond, note, or other similar
6 instrument issued by the County that will be repaid from revenue
7 generated by ad valorem taxes levied under this Chapter.

8 *Cost* means the cost of:

9 (1) the construction, reconstruction, and renovation of any
10 transportation infrastructure improvement, including the
11 acquisition of any land, structure, real or personal property, right,
12 right-of-way, franchise, or easement, to provide a transportation
13 infrastructure improvement for the District;

14 (2) all machinery and equipment needed to expand or enhance a
15 transportation infrastructure improvement for the District;

16 (3) financing charges and debt service related to a transportation
17 infrastructure improvement for the District, whether the charge or
18 debt service is incurred before, during, or after construction of the
19 transportation infrastructure improvement, including the cost of
20 issuance, redemption premium (if any), and replenishment of
21 debt service reserve funds for any bond that finances a
22 transportation infrastructure improvement for the District;

23 (4) reserves for principal and interest, the cost of bond insurance, and
24 any other type of financial guarantee, including any credit or
25 liquidity enhancement, related to a transportation infrastructure
26 improvement for the District;

- 27 (5) architectural, engineering, financial, and legal services related to
 28 providing a transportation infrastructure improvement for the
 29 District;
- 30 (6) any plan, specification, study, survey, or estimate of costs and
 31 revenues related to providing a transportation infrastructure
 32 improvement for the District;
- 33 (7) any administrative expense incurred by the County necessary or
 34 incident to determining whether to finance or implement a
 35 transportation infrastructure improvement for the District; and
- 36 (8) any other expense incurred by the County necessary or incident
 37 to building, acquiring, or financing a transportation infrastructure
 38 improvement for the District.

39 District means the White Flint Special Taxing District created under
 40 Section 68C-2.

41 Transportation infrastructure improvement means:

- 42 (1) the construction, rehabilitation, or reconstruction of a road, street,
 43 or highway that serves the District, including any:
 - 44 (A) right-of-way;
 - 45 (B) roadway surface;
 - 46 (C) roadway subgrade or shoulder;
 - 47 (D) median divider;
 - 48 (E) drainage facility or structure, including any related
 49 stormwater management facility or structure;
 - 50 (F) roadway cut or fill;
 - 51 (G) guardrail;
 - 52 (H) bridge;
 - 53 (I) highway grade separation structure;

- 54 (J) tunnel;
- 55 (K) overpass, underpass, or interchange;
- 56 (L) entrance plaza, approach, or other structure that is an
- 57 integral part of a street, road, or highway;
- 58 (M) bicycle or walking path;
- 59 (N) designated bus lane;
- 60 (O) sidewalk or pedestrian plaza;
- 61 (P) streetscaping and related infrastructure; including placing
- 62 utilities underground; and
- 63 (Q) other property acquired to construct, operate, or use a road,
- 64 street, or highway; and
- 65 (2) a transit facility that serves the needs of the District, including
- 66 any:
 - 67 (A) track;
 - 68 (B) right-of-way;
 - 69 (C) bridge;
 - 70 (D) tunnel;
 - 71 (E) subway;
 - 72 (F) rolling stock;
 - 73 (G) station or terminal;
 - 74 (H) parking area;
 - 75 (I) related equipment, fixture, building, structure, or other real
 - 76 or personal property; and
 - 77 (J) service intended for use in connection with the operation
 - 78 of a transit facility, including rail, bus, motor vehicle, or
 - 79 other mode of transportation.

80 **68C-2. Creation; Boundaries.**

81 (a) The White Flint Special Taxing District is coterminous with the
 82 approved and adopted White Flint Sector Plan area.

83 (b) The following properties, identified by street address, are not included
 84 in the District: 5411 McGrath Boulevard, 5440 Marinelli Road, 5801
 85 Nicholson Lane, 11700 Old Georgetown Road, 11701 Old Georgetown
 86 Road, 11750 Old Georgetown Road, 11800 Old Georgetown Road,
 87 11801 Rockville Pike, 5800 Nicholson Lane, 5802 Nicholson Lane,
 88 5809 Nicholson Lane, 5440 Marinelli Road, 5503 Edson Lane, 5505
 89 Edson Lane, 5507 Edson Lane, 5509 Edson Lane, 11201 Woodglen
 90 Drive, 11203 Woodglen Drive, 11205 Woodglen Drive, 11207
 91 Woodglen Drive, 11209 Woodglen Drive, 11333 Woodglen Drive,
 92 11200-11219 Edson Park Place, 11222 Edson Park Place, 11224 Edson
 93 Park Place, 11226 Edson Park Place, 11228 Edson Park Place, 11230
 94 Edson Park Place, 11232 Edson Park Place, 11234 Edson Park Place,
 95 11236 Edson Park Place, 11238 Edson Park Place, and 11240 Edson
 96 Park Place.

97 **68C-3. Levy of Tax; Limits.**

98 (a) Each tax year the County Council may levy against all the assessable
 99 real and personal property in the District a sum on each \$100 of
 100 assessable property that does not exceed an amount sufficient to cover
 101 the costs of transportation infrastructure improvements that have been
 102 identified in a Council resolution approved under Section 68C-4.

103 (b) Under Section 9-1302 of Article 24, Maryland Code, the limit in
 104 Charter Section 305 on levies of ad valorem taxes on real property to
 105 finance County budgets does not apply to revenue from any tax imposed
 106 under this Chapter.

- 107 (c) The tax imposed under this Chapter must be levied and collected as
 108 other County property taxes are levied and collected.
- 109 (d) The tax imposed under this Chapter has the same priority, bears the
 110 same interest and penalties, and in every respect must be treated the
 111 same as other County property taxes.
- 112 (e) Paying the tax imposed under the Chapter does not entitle any person to
 113 claim a credit against any other tax that the County imposes, including
 114 the development impact tax for transportation improvements imposed
 115 under Section 52-49 or the development impact tax for public school
 116 improvements imposed under Section 52-89.

117 **68C-4. Transportation Infrastructure Improvement Resolution.**

- 118 (a) After holding a public hearing, the Council may approve a resolution
 119 that lists each transportation infrastructure improvement that would be
 120 entirely or partly paid for by a tax imposed under Section 68C-3.
- 121 (b) The resolution must indicate the estimated cost, including a contingency
 122 amount, for each listed improvement.
- 123 (c) The Council may amend the resolution after holding a public hearing.
- 124 (d) The Council must present the resolution and each amended resolution to
 125 the Executive for approval or disapproval. If the Executive disapproves
 126 a resolution within 10 days after it is transmitted to the Executive and
 127 the Council readopts the resolution by a vote of 6 Councilmembers, or if
 128 the Executive does not act within 10 days after the resolution is
 129 transmitted, the resolution takes effect.
- 130 (e) Before the Council holds a public hearing under subsection (a) or (c),
 131 the Executive should transmit to the Council:

132 (1) a list of recommended transportation infrastructure improvements
 133 to be entirely or partly paid for by a tax imposed under Section
 134 68C-3;

135 (2) the estimated cost, including a contingency amount, for each
 136 listed improvement; and

137 (3) an estimated tax rate for each tax to be imposed under Section
 138 68C-3.

139 (f) Before the County loans or advances any funds to the District that the
 140 District is required to repay to the County, the Council must adopt a
 141 financing plan in a resolution under this Section, or as part of an
 142 approved Capital Improvements Program resolution, that specifies:

143 (1) each transportation infrastructure improvement for which funds
 144 would be advanced;

145 (2) the amount of funds advanced which the District must repay;

146 (3) the amount of interest, if any, the District must repay;

147 (4) the time period during which the District must repay the amount
 148 due;

149 (5) the number and timing of installment payments, if any; and

150 (6) any other principal term of repayment.

151 Any financing plan adopted under this subsection is binding on the
 152 District and the County, except as later modified in a Council resolution.

153 **68C-5. District Fund.**

154 (a) The Director of Finance must establish a separate fund for the proceeds
 155 collected from any tax imposed under this Chapter. The proceeds of
 156 any tax imposed under this Chapter must be pledged to and paid into
 157 this fund.

- 158 (b) The Director of Finance must use this fund only to pay the cost of any
 159 transportation infrastructure improvement related to the District.
- 160 (c) If in any fiscal year a balance remains in the fund, the Director of
 161 Finance may use the balance to:
- 162 (1) pay the cost of any transportation infrastructure improvement for
 163 the District;
- 164 (2) create a reserve to pay the future costs of any transportation
 165 infrastructure improvement for the District;
- 166 (3) pay bond-related obligations or retire bonds then outstanding; or
 167 (4) pay into a sinking fund required by the terms of bonds which
 168 finance the cost of any transportation infrastructure improvement
 169 for the District that may be incurred or accrue in later years.

170 **68C-6. Issuing Bonds.**

- 171 (a) Before the County issues any bond payable from ad valorem taxes
 172 levied under Section 68C-3, the Council must adopt a resolution
 173 authorizing the issuance of bonds that meets the requirements of this
 174 Section.
- 175 (b) Each resolution under this Section must:
- 176 (1) describe the types of transportation infrastructure improvements
 177 and related costs to be financed; and
- 178 (2) specify the maximum principal amount of bonds to be issued.
- 179 (c) Each resolution may specify, or authorize the Executive by executive
 180 order to specify:
- 181 (1) the actual principal amount of bonds to be issued;
 182 (2) the actual rate or rates of interest for the bonds;
 183 (3) how and on what terms the bonds must be sold;

- 184 (4) how, when, and where principal of, and interest on, the bonds
 185 must be paid;
- 186 (5) when the bonds may be executed, issued, and delivered;
- 187 (6) the form and tenor of the bonds, and the denominations in which
 188 the bonds may be issued;
- 189 (7) how any or all of the bonds may be called for redemption before
 190 their stated maturity dates;
- 191 (8) the nature and size of any debt service reserve fund;
- 192 (9) the pledge of other assets in and revenues from the District to pay
 193 the principal of and interest on the bonds;
- 194 (10) any bond insurance or any other financial guaranty or credit or
 195 liquidity enhancement of the bonds; and
- 196 (11) any other provision consistent with law that is necessary or
 197 desirable to finance any transportation infrastructure
 198 improvement that has been identified in a Council resolution
 199 approved under Section 68C-4.
- 200 (d) (1) The County [[covenants]] must covenant to levy ad valorem
 201 taxes against all assessable real and personal property in the
 202 District at a rate and amount sufficient in each year when any
 203 bonds are outstanding to:
- 204 (A) provide for the payment of the principal of, interest on, and
 205 redemption premium if any, on the bonds;
- 206 (B) replenish any debt service reserve fund established with
 207 respect to the bonds; and
- 208 (C) provide for any other purpose related to the ongoing
 209 expenses of and security for the bonds.

- 210 (2) The County further [[covenants]] must covenant, when any bond
 211 is outstanding, to enforce the collection of all ad valorem taxes
 212 under this Chapter as provided by applicable law.
- 213 (e) All proceeds received from any issuance of bonds must be applied
 214 solely towards costs of the transportation infrastructure improvements
 215 listed in the resolution adopted under Section 68C-4, including the cost
 216 of issuing bonds and payment of the principal of, interest on, and
 217 redemption premium if any, on the bonds.
- 218 (f) The bonds issued under this Chapter:
- 219 (1) are special obligations of the County and do not constitute a
 220 general obligation debt of the County or a pledge of the County's
 221 full faith and credit or the County's general taxing power;
- 222 (2) may be sold in any manner, either at public or private sale, and on
 223 terms as the Executive approves;
- 224 (3) are not subject to Sections 10 and 11 of Article 31, Maryland
 225 Code; and
- 226 (4) must be treated as securities to the same extent as bonds issued
 227 under Section 9-1301 of Article 24, Maryland Code.
- 228 (g) To the extent provided by law, the bonds, their transfer, the interest
 229 payable on them, and any income derived from them, including any
 230 profit realized on their sale or exchange, must be exempt at all times
 231 from every kind and nature of taxation by the State of Maryland and any
 232 county or municipality in Maryland.
- 233 (h) The bonds must be payable from the fund required under Section 68C-5
 234 and any other asset or revenue of the District pledged toward their
 235 payment. When any bond is outstanding, the monies in the fund are
 236 pledged to pay the costs of any transportation infrastructure

237 improvement funded entirely or partly by the proceeds of the bonds,
238 including the costs of issuing the bonds and payment of the principal of,
239 interest on, and redemption premium if any, on the bonds. In addition
240 to ad valorem taxes, the bonds may be secured by any other asset in or
241 revenue generated in the District.

242 (i) Any ad valorem tax imposed under this Chapter must not be accelerated
243 because of any bond default.

244 **68C-7. Expiration of district.**

245 Any special taxing district created under this Chapter expires by operation of
246 law 30 days after the cost of all transportation infrastructure improvements identified
247 in a Council resolution approved under Section 68C-4, including all outstanding
248 bonds and cash advances made by the County, have been paid.

249 *Approved:*

250

Nancy Floreen, President, County Council Date

251 *Approved:*

252

Isiah Leggett, County Executive Date

253

254 *This is a correct copy of Council action.*

255

Linda M. Lauer, Clerk of the Council Date