Agenda Item 8
January 24, 2012
Public Hearing

MEMORANDUM

TO: County Council

FROM: MF Michael Faden, Senior Legislative Attorney
GO Glenn Orlin, Deputy Council Staff Director

SUBJECT: **Public Hearing:** Bill 39-11, Taxation – Development Impact Tax - Exemptions

Bill 39-11, Taxation – Development Impact Tax - Exemptions, sponsored by Councilmembers Floreen and Rice and Council Vice President Navarro, was introduced on December 6, 2011. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for January 30 at 2:45 p.m.

Bill 39-11 would exempt the market-rate dwelling units in any development which consists of at least 25% affordable housing units from the transportation and school development impact taxes.

An OMB/Finance Department fiscal and economic impact statement, shown on ©5-14, indicates that the exemption allowed under this Bill could result in as much as $56.7 million in impact tax revenue loss. Council staff will analyze this estimate for the Committee worksession but preliminarily believes that it may be substantially overstated because, among other reasons:

- it assumed that no transportation impact tax credits would be granted on account of the housing built in specific areas with major transportation programs; and
- it may not take into account a provision in current law (County Code §52-90(d)) which reduces the school impact tax by 50% for any non-exempt dwelling unit located in a development where at least 30% of the dwelling units are MPDU's or other affordable units.

This packet contains:

F:\LAW\BILLS\1139 Impact Tax - Exemptions - Affordable Housing\Public Hearing Memo.Doc

CORRECTED COPY

Bill No.	39-11
Concerning:	Taxation - Development Impact Tax - Exemptions
Revised:	12-6-11 Draft No. 3
Introduced:	December 6, 2011
Expires:	June 6, 2013
Enacted:	
Executive:	
Effective:	
Sunset Date:	None
Ch. ___, Laws of Mont. Co.	

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Floreen, Rice and Council Vice President Navarro

AN ACT to:

(1) exempt certain market-rate dwelling units from certain development impact taxes; and

(2) generally amend the law governing development impact taxes.

By amending

Montgomery County Code
Chapter 52, Taxation
Sections 52-49 and 52-89

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:

Section 1. Sections 52-49 and 52-89 are amended as follows:

52-49. Imposition and applicability of development impact taxes.

* * *

(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 other dwelling unit 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 60% of the area median income, adjusted for family size;

(3) any Personal Living Quarters unit built under Sec. 59-A-6.15, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(4) 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 Chapter 25A;

(5) any non-exempt rental dwelling unit in a development in which at least 25% of the dwelling units are exempt under paragraph (1), (2), (3), or (4), or any combination of them; and

[(5)] (6) any development located in an enterprise zone designated by the State or in an area previously designated as an enterprise zone.

* * *

52-89. Imposition and applicability of tax.

*   *   *

(c) The tax under this Article 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 other dwelling unit 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 60% of the area median income, adjusted for family size;

(3) any Personal Living Quarters unit built under Sec. 59-A-6.15, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(4) 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 Chapter 25A;

(5) any non-exempt rental dwelling unit in a development in which at least 25% of the dwelling units are exempt under paragraph (1), (2), (3), or (4), or any combination of them; and

[(5)] (6) any development located in an enterprise zone designated by the State or in an area previously designated as an enterprise zone.

*   *   *

Approved:

Valerie Ervin, President, County Council   Date

LEGISLATIVE REQUEST REPORT

Bill 39-11
Taxation – Development Impact Tax - Exemptions

DESCRIPTION:	Exempts the market-rate dwelling units in any development which consists of at least 25% affordable housing units from the transportation and school development impact taxes.
PROBLEM:	Need to encourage provision of affordable housing.
GOALS AND OBJECTIVES:	To create further incentives to increase the share of low- and moderate-income housing in new developments
COORDINATION:	Department of Permitting Services, Department of Housing and Community Affairs, Planning Board
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Not applicable.

Fiscal Impact Statement
Council Bill 39-11
Taxation – Development Impact Tax - Exemptions

1. **Legislative Summary.**

   Bill 39-11 would exempt the rental market-rate dwelling units in any housing development which consists of at least 25% affordable housing units from the transportation and school development impact taxes they would otherwise have to pay.

2. **An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

   DPS examined several areas that have major rental housing projects in the pipeline and that are assumed to be moving forward. This analysis assumes anticipated development in three planning areas (Great Seneca Science Corridor (GSSC); White Flint; and Shady Grove-County Service Park West (CSWP)) and projects the lost impact tax revenue if *all potential* projects took advantage of the proposed bill.

Potential Lost Impact Tax Revenues under Maximum-Loss Scenario

Master/Sector Plan Area	Total Rental Units Supplied	Additional MPDUs	Loss in Transportation Impact Taxes	Loss in School Impact Taxes	Loss in Total Impact Taxes	Cost per Additional MPDU
GSSC	1,550	193	$10,728,442	$15,401,448	$26,129,890	$135,388
White Flint	3,266	408	N/A	$15,727,790	$15,727,790	$38,525
CSPW	1,114	33	$3,850,222	$11,062,692	$14,912,914	$446,227
Totals:	**5,390**	**635**	**$14,578,664**	**$42,191,130**	**$56,770,594**	**$89,449**[1]

   Under the above scenario, the additional 635 affordable units provided under the waiver would result in $56,770,594 in lost impact tax revenues at an average cost of $89,449 per each additional MPDU constructed.

   See Attachment A for sources, assumptions, methodologies, additional scenarios, and potential lost impact tax revenues projections.

3. **Revenue and expenditure estimates covering at least the next 6 fiscal years.**

   No additional expenditures are expected as a result of this bill. Illustrative revenue impacts are described above.

[1]Total lost impact tax revenues divided by total additional MPDUs of 635 units.

4. **An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

   Not applicable.

5. **Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

   Not applicable.

6. **An estimate of the staff time needed to implement the bill.**

   No additional staff time is needed from DHCA, DPS, and Finance.

7. **An explanation of how the addition of new staff responsibilities would affect other duties.**

   Not applicable.

8. **An estimate of costs when an additional appropriation is needed.**

   Not applicable.

9. **A description of any variable that could affect revenue and cost estimates.**

   Revenues (or lost impact tax revenues) may be affected by changes in the impact tax rate. The quantity of additional MPDUs developers elect to build may also affect revenues (or lost impact tax revenues).

10. **Ranges of revenue or expenditures that are uncertain or difficult to project.**

    The change in impact tax receipts is difficult to project. Impact tax revenues would vary, depending on the number of developers that elect to build under this waiver.

    Additionally, the market dictates whether projects will be condominium or rentals and it is difficult to predict what future shifts will be. If expected development in different plan areas changes from rental to fee simple sales, fewer projects would make use of the provisions of this bill.

11. **If a bill is likely to have no fiscal impact, why that is the case.**

    The fiscal impact of this bill is difficult to determine since it depends completely on the number of developers who avail themselves of this credit. A number of developers have indicated it is unlikely that the credit provides them with a sufficient incentive to build additional MPDUs (up to the 25% required for the waiver).

    If that is the case, then it is unlikely this bill will result in a significant fiscal impact as it will not achieve the stated goal of the legislation.

12. Other fiscal impacts or comments.

Not applicable.

13. The following contributed to and concurred with this analysis:

Rick Nelson, Department of Housing and Community Affairs
Chris Anderson, Department of Housing and Community Affairs
Diane Schwartz Jones, Department of Permitting Services
Reginald Jetter, Department of Permitting Services
Mary Beck, Office of Management and Budget
Naeem Mia, Office of Management and Budget

J Hughes
Jennifer A. Hughes, Director
Office of Management and Budget

1/18/12
Date

7

Attachment A-1

Sources of Information:

1. Montgomery County Department of Housing Affairs (DHCA)
2. Montgomery County Department of Permitting Services (DPS)
3. Master Plans/Sector Plans for housing projects in GSSCMP, White Flint, and CSPW
4. Lost impact tax revenues are calculated by DPS based on current impact tax rates

Assumptions:

1. Developers to build to 25% of all units (in all projects) as MPDU under the legislative waiver
2. All units/projects are assumed to be rental units
3. No transportation impact tax for White Flint Area (current law)
4. All projects in White Flint are high-rise
5. Number of units are based on current Master/Sector plans or units under development

Methodologies:

DPS calculated lost impact tax revenues using the current impact tax rates as applied to all current or expected projects under development.

Attachment A-2

Potential Lost Impact Tax Revenues under Different Scenarios

Pipeline of recent GSSCMP applications (assumes developer plans at minimum MPDUs)	Potential Loss in Transportation Impact Taxes	Potential Loss in School Impact Taxes	Potential Loss in Total Impact Taxes	Potential Additional MPDUs	Potential Cost per Additional MPDU
1480 mfd units (mid-rise)	$10,238,270	$14,708,610	$24,946,880	185	$134,848
1480 mfd units (high-rise)	$7,312,865	$6,235,425	$13,548,290	185	$73,234
1550 mfd units (mid-rise)	$10,728,442	$15,401,448	$26,129,890	193	$135,388
1550 mfd units (high-rise)	$7,662,979	$6,533,955	$14,196,934	193	$73,559

GSSCMP Maximum-loss scenario	Potential Loss in Transportation Impact Taxes	Potential Loss in School Impact Taxes	Potential Loss in Total Impact Taxes	Potential Additional MPDUs	Potential Cost per Additional MPDU
1550 mfd units (mid-rise)	$10,728,442	$15,401,448	$26,129,890	193	$135,388

White Flint Sector Plan (based on sketch plans)	Potential Loss in Transportation Impact Taxes	Potential Loss in School Impact Taxes	Potential Loss in Total Impact Taxes	Potential Additional MPDUs	Potential Cost per Additional MPDU
3266 mfd units	N/A	$15,727,790	$15,727,790	408	$38,525

County Service Park West	Potential Loss in Transportation Impact Taxes	Potential Loss in School Impact Taxes	Potential Loss in Total Impact Taxes	Potential Additional MPDUs	Potential Cost per Additional MPDU
1,114 mfd units	$3,850,222	$11,062,692	$14,912,914	33	$446,227

Attachment A-3

Potential Lost Impact Tax Revenues under Maximum-Loss Scenario

Master/Sector Plans	Total MFD units	Potential Additional MPDUs	Potential Loss in Transportation Impact Taxes	Potential Loss in School Impact Taxes	Potential Loss in Total Impact Taxes	Potential Cost per Additional MPDU
GSSCMP	1,550	193	$10,728,442	$15,401,448	$26,129,890	$135,388
White Flint Sector Plan	3,266	408	N/A	$15,727,790	$15,727,790	$38,525
County Service Park West	1,114	33	$3,850,222	$11,062,692	$14,912,914	$446,227
Totals:	**5,930**	**635**	**$14,578,664**	**$42,191,930**	**$56,770,594**	**$89,449**

Economic Impact Statement
Council Bill 39-11, Taxation – Development Impact Tax – Exemptions

Background:

1. This proposed legislation would exempt the market-rate dwelling units in any development which consists of at least 25% affordable housing units from the transportation and school development impact taxes. The goal of the proposed legislation is to create further incentives to increase the share of low- and moderate-income housing in the new development. Specially, Bill 39-11 (Bill) exempts "any non-exempt *rental* dwelling unit in a development in which at least 25% of the dwelling units are exempt."

   The analysis that follows is a determination of whether a developer of rental property would opt for the 25% exemption and is based on a number of economic assumptions and data sources.

2. The sources of information, assumptions, and methodologies used.

   Sources:

   Montgomery Department of Housing and Community Affairs (DHCA)
   National Apartment Association (www.naahq.org)
   "Determinants of Operating Costs of Multifamily Rental Housing", Jack Goodman, Hartrey Advisers, December 18, 2003.
   Engineering News Record
   McGraw-Hill Dodge Local Construction
   Metropolitan Regional Information System

   Assumptions:

   Current market rental rates for two high-rise developments (DHCA and Finance) with 250 units each.
   Current market rates for MPDUs (DHCA)
   Developments are located in the General County transportation area to employ the transportation impact tax rate for high-rise developments
   Gross operating profit margin for rental units (www.naahq.org and Goodman article)

Methodologies:

   Gross operating profit margin is derived from data provided by www.naahq.org and Goodman article by subtracting operating expenses and capital expenditures per unit from revenue per rental unit and dividing the result into the revenue per rental unit to derive gross operating margin. That result is used to calculate gross profit margin per unit.

3. A description of any variable that could affect the economic impact estimates.
   a. Derivation of gross profit which is based on data based on a national survey and may or may not be truly reflective of the Washington Metropolitan Area or Montgomery County.
   b. Rental rates and MPDU rates are current rates and are not adjusted for inflation.

4. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

   The Bill could have an effect on the profitability of new rental development. However, this effect is based on the assumptions listed above. Those assumptions include: gross profit margin, impact tax rates, and rental rates – both market and MPDU.

   Using data provided by DHCA, Finance selected two sample properties located in the General County transportation impact tax district and calculated the gross profit margin (please see the tables, below).

Finance calculated the loss in *average annual gross profits* for a "new" rental development assuming 25 percent and 12.5 percent. For the two examples, Finance calculated an *average annual gross profit* of $2.6 million for the two properties providing 25 percent MPDUs, and slightly less than $2.8 million for the two properties providing 12.5 percent MPDUs. The impact tax fees are estimated at $3,321,750 (250 * $13,287/tax per unit) for the entire project. However, gross profits are higher than net profits or net income, therefore the book profits for the two properties will be less than the gross profits. Second, the gross profits are calculated based on a national survey and the gross profit margin used in this analysis may not reflect the actual gross profit margin for rental properties in Montgomery County. While the exemption of the impact taxes offset the loss of revenues/profits, that amount of offset depends on the assumptions listed above.

5. If a Bill is likely to have no economic impact, why is that the case?

   Not applicable.

6. The following contributed to and concurred with this analysis: David Platt, Finance; Mike Coveyou, Finance

Joseph F. Beach, Director
Department of Finance

1/18/12
Date

SAMPLE Project Initial Investment	12.5% MPDUs	25% MDPUs
Unit Construction Costs	$136,296	$136,296
Number of Units	250	250
TOTAL CONSTRUCTION COSTS	**$34,074,116**	**$34,074,116**
Development Impact Tax Per Unit		
--Residential (School)	$8,472	$8,472
--Transportaion (General County	$4,815	$4,815
Subtotal	$13,287	$13,287
Number of Units	250	250
TOTAL DEVELOPMENT IMPACT TAXES	**$3,321,750**	**$3,321,750**
DEVELOPMENT IMPACT TAX MPDU DEDUCTION RATE	12.50%	100.00%
DEVELOPMENT IMPACT TAX PAID	2,906,531	0
INITIAL INVESTMENT	**$36,980,647**	**$34,074,116**
CASH FLOW		
5 Years	$13,957,035	$12,703,910
10 Years	$27,914,070	$25,407,820
15 Years	$41,871,105	$38,111,730
20 Years	$55,828,140	$50,815,640
30 Years	$83,742,210	$76,223,460

SAMPLE Project Rent		
Efficiency Units	**12.5% MPDUs**	**25% MPDUs**
Total Rent for MPDUs	$11,302	$22,604
Total Rent for Market Units	$103,542	$88,750
	$114,844	$111,354
One Bedroom Units		
Total Rent for MPDUs	$12,135	$24,271
Total Rent for Market Units	$125,052	$107,188
	$137,188	$131,458
Two Bedroom Units		
Total Rent for MPDUs	$12,917	$25,833
Total Rent for Market Units	$172,083	$147,500
	$185,000	$173,333
Total Monthly Rent	$437,031	$416,146
Total Annual Rent	$5,244,375	$4,993,750
Total Annual Op. Expense	2,452,968	2,452,968
Gross Profits	$2,791,407	$2,540,782

SAMPLE Project Rental Rates		
	Market Rate Rent	MPDU Rate Rent
Sample Project	per Month	per Month
-efficiency units (1/3 of total)	$1,420	$1,085
-one room (1/3 of total)	$1,715	$1,165
-two room (1/3 of total)	$2,360	$1,240