Agenda Item 6A
September 30, 2014
Action

MEMORANDUM

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Action:** Expedited Bill 37-14, Real Property Transfer Tax – Exemption – Enterprise Zones

Government Operations and Fiscal Policy Committee recommendation: enact with amendments.

Expedited Bill 37-14, Real Property Transfer Tax – Exemption – Enterprise Zones, sponsored by Councilmembers Navarro, Floreen, and Riemer, Council President Rice, and Councilmember Berliner, was introduced on July 15, 2014. A public hearing was held on September 9 at which no speakers appeared (but see letter from Buchanan Partners on ©7). A Government Operations and Fiscal Policy Committee worksession was held on September 22, at which the Committee recommended enacting the Bill with technical and conforming amendments.

Bill 37-14 would exempt transfers of rezoned property located in an enterprise zone from the 6% rezoning transfer tax. Those properties would still be subject to the underlying 1% transfer tax. It would also repeal archaic and obsolete language and references, and make conforming and stylistic changes.

Fiscal impact The fiscal impact statement (see ©8-9) did not estimate a revenue loss from enacting this Bill because of the limited number of properties that are likely to be affected.

Conforming amendments To reflect updated terminology in the rewritten County zoning code which takes effect on October 30, the Committee recommended conforming amendments to ©2-4, lines 27-55, suggested by Legislative Attorney Jeff Zyontz, shown by double brackets and underlines.

Technical amendment The Committee also recommended a technical amendment submitted by the County Attorney on ©5, line 91, to clarify when the tax applies after a rezoning.

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Expedited Bill No. 37-14
Concerning: Real Property Transfer Tax – Exemption – Enterprise Zones
Revised: 9-24-14 Draft No. 4
Introduced: July 15, 2014
Expires: January 15, 2016
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Navarro, Floreen, and Riemer, Council President Rice, and Councilmember Berliner

AN EXPEDITED ACT to:

(1) exempt from a certain provision of the real property transfer tax certain transfers of rezoned property located in an enterprise zone;
(2) repeal archaic and obsolete language and references, and make conforming and stylistic changes; and
(3) generally amend County law regarding the real property transfer tax.

By amending
Montgomery County Code
Chapter 52, Taxation
Article II, Real Property Transfer Tax
Section 52-21

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. Section 52-21 is amended as follows:

52-21. Levied; amount.

There is hereby levied a tax on (1) [all transfers] <u>each</u> <u>transfer</u> in the [county] <u>County</u> of a fee simple interest in real property, except <u>a</u> <u>transfer</u> by [way of] mortgage, deed of trust<u>,</u> or deed of trust for the benefit of creditors, (2) the initial transfer of stock or other evidence of ownership in a cooperative housing corporation or similar entity, and (3) [all transfers] <u>each</u> <u>transfer</u> of a leasehold interest in real property where the lease or instrument by which a leasehold interest is [demised] <u>transferred</u> contains a covenant for perpetual renewal, known as ground rent. The tax [shall] <u>must</u> be computed on the value of the full consideration for [such] <u>each</u> transfer at the following rates:

* * *

(e) On rezoned property, [six (6)] <u>6</u> percent of the value of the consideration for any transfer of real property which[, after July 1, 1971,] has been rezoned to a more intensive use at the [instance] <u>request</u> of the transferor, transferee, or any other person who has or had at the time of application for rezoning a financial, contractual or proprietary interest in the property, [excluding] <u>not</u> <u>including</u> the value of [improvements] <u>any</u> <u>improvement</u> constructed after [such] <u>the</u> rezoning. "Rezoned" as used [herein shall mean] <u>in</u> <u>this</u> <u>subsection</u> <u>means</u> the classification, reclassification<u>,</u> or change from one zone to another of any property by local map amendment [by the county council sitting as the district council for that portion of the Maryland-Washington Regional District located within Montgomery County, on the "Zoning Map of the Maryland-Washington Regional District in Montgomery County, Maryland" dated May 31, 1958, and subsequent amendments thereto] <u>under</u> <u>Chapter</u> <u>59</u>. "Rezoned to a more intensive use" [shall mean] as used in this subsection means a classification, reclassification, or change in zone which permits a greater number of dwelling units per acre in any residential zone, or which permits a greater number of permitted uses regardless of area or allows more floor area in a commercial, [[zone]] commercial/residential, employment, or industrial zone, or is from any residential zone to any commercial, commercial/residential, employment, or industrial zone, or is from any industrial zone to any commercial, commercial/residential, or employment, zone.

"Rezoned to a more intensive use" [shall] does not include:

(1) A zoning from a residential zone to a [[Planned Unit Development Zone]] [under division 59-C-7 granted after January 1, 1980], residential floating zone if the approved [[development]] floating zone plan, including any amendments to the plan, does not increase the total number of permitted dwelling units and does not permit commercial or industrial uses, [provided however, that] but the transfer [shall] must be subject to [additional] any tax otherwise due under this subsection if at any time an amendment to the [[development]] floating zone plan increases the total number of permitted dwelling units or permits commercial or industrial uses;

(2) A zoning from a residential zone to a commercial, commercial/residential, or employment, zone within one [(1)] year after the property was down zoned from a [[commercial]] zone of equal or greater intensity to a residential zone by sectional map amendment; [or]

(3) A rezoning from an industrial zone to a commercial, commercial/residential, or employment, zone which:

(i) Is necessitated by a previously adopted amendment to [the zoning ordinance text,] Chapter 59 that was not [upon application or at the instance of] requested by the transferor, transferee, owner, or former owner of the real property, or by any person who has or has previously had an interest of any kind in the property, including a contractual interest; and

(ii) Allows establishment or continuance of a use or uses which were permitted uses on the property under the industrial zone immediately [prior to] before the text amendment, to which use or uses the property was restricted by bona fide covenants recorded among the land records [prior to] before July 1, 1971, and which covenants are in effect at the time of a transfer; or

(4) a rezoning of any property that is located in an enterprise zone when the property is transferred.

[The tax levied and imposed in this subsection shall not apply to transfers which are made pursuant to a bona fide written contract or agreement of sale entered into prior to July 1, 1971; provided, that the director of finance may require satisfactory proof that the contract or agreement was entered into prior to such date. There shall be deducted from the consideration as defined in section 59-19 the] The taxpayer may deduct from the consideration on which the tax is based any cost [or expense] actually incurred by the transferor for public improvements, such as sewer, water, roads, sidewalks, storm drainage structures, and permanent soil erosion and sediment control measures, [subject to the submission to the director of finance of] if the taxpayer submits satisfactory proof of [such] costs [or expenses] documented by certificates from public agencies where applicable[; provided, that], but the rate of [such] the tax on a single transfer [shall] must not exceed [six (6)] 6 percent of the bona fide market value consideration for the transfer. [Where] If a transfer is subject both to the tax imposed by this subsection and the tax imposed by subsection (d), the tax imposed by this subsection [shall] must be the only tax imposed on the transfer. Any tax collected under this subsection [shall] must be collected only once on the first taxable transaction after each rezoning to a more intensive use, and [all transfers] any transfer that does not [subsequent to] follow a rezoning to a more intensive use [shall] must be [taxable] taxed at the rates applicable under other subsections of this section. The [county executive] Executive may [from time to time] issue [written] regulations under method (3) [of section 2A-15 of this Code, pertaining to] regarding the collection of the tax levied in this subsection.

* * *

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 the date when it becomes law.

Approved:

Craig L. Rice, President, County Council — Date

LEGISLATIVE REQUEST REPORT

Expedite Bill 37-14
Real Property Transfer Tax – Exemption – Enterprise Zones

DESCRIPTION:	Exempts transfers of rezoned property located in an enterprise zone from the 6% rezoning transfer tax. Repeals archaic and obsolete language and references, and makes conforming and stylistic changes.
PROBLEM:	The current rezoning transfer tax acts as a disincentive to needed redevelopment in enterprise zones.
GOALS AND OBJECTIVES:	To encourage redevelopment in enterprise zones
COORDINATION:	Department of Finance
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:	Transfer tax applies county-wide.
PENALTIES:	Not applicable

BUCHANAN PARTNERS

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September 9, 2014

The Honorable Craig Rice, President
and Members of the Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, 5th Floor
Rockville, MD 20850

Re: Bill Number 37-14 - Enterprise Zone Rezoning Tax

Dear President Rice and Members of the Council:

We are writing in support of Bill Number 37-14, which proposes to exempt properties in enterprise zones from the additional real property transfer tax of 5% imposed on privately rezoned properties (meaning certain properties that achieved zoning via a local map amendment). As developers in Montgomery County with experience in developing areas in need of revitalization, we can attest to the critical nature of an enterprise zone designation and the important role it has played in other areas of the County. It is noteworthy that properties in Enterprise Zones have not typically been privately rezoned, and are therefore usually not impacted by this additional 5% transfer tax (as opposed to the normal 1% transfer tax). Properties that are rezoned as part of a comprehensive rezoning that have not been the subject of a local map amendment (*i.e.*, a sectional map amendment) are not subject to this tax. As you can imagine, this tax accounts for a substantial increase in the cost of a project that has gone through a local map amendment; by definition, projects in enterprise zones need economic assistance to be viable, not additional costs.

The transfer tax on rezonings in an enterprise zone will put certain properties targeted for redevelopment at a distinct disadvantage to other areas of the County and will work in opposition to the county's purpose of encouraging development and economic growth. To impose this additional tax on projects in enterprise zones belies common sense and is, perhaps, an overlooked flaw in the current legislation. The Bill is supported by sound public policy and is in the public interest.

Thank you for your consideration and we respectfully request that the Council approve the Bill.

Sincerely,

James E. Roembke
Buchanan Partners, LLC

Cc: Steven A. Robins, Esq.
Pete Jervey

9841 Washingtonian Boulevard, Suite 300 . Gaithersburg, Maryland 20878 . P: 301.417.0510 . F: 301.417.1594 . www.buchanapartners.com

Fiscal Impact Statement
Expedited Bill 37-14, Real Property Transfer Tax – Exemption – Enterprise Zones

1. Legislative Summary
   - This legislation would exempt from a certain provision of the 6% real property transfer tax, properties which are:
     - 1. Transferred;
     - 2. Rezoned to a more intensive use, and;
     - 3. Located in an enterprise zone.
   - The Bill also repeals archaic and obsolete language and references, and makes conforming and stylistic changes.
   - Currently, only properties that are rezoned to a more intensive use at the request of the property owner are subject to the 6% transfer tax. Properties in which a more intensive use is imposed by the County are subject to a lesser 1% transfer tax.
   - Properties exempted from the 6% transfer tax rate under this Bill would still be subject to the lesser 1% transfer tax rate.
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.
   - Sources of information include the Department of Finance, Treasury Division (Treasury).
   - Using historical data over the past six fiscal years, Treasury reported 87 enterprise zone credits. Of that number, seven (or eight percent of the total) transferred ownership.
   - None of the seven properties that transferred ownership were subject to the higher 6% more intensive use tax, only the lesser 1% tax rate.
3. Revenue and expenditure estimates covering at least the next 6 fiscal years.
   - It is not possible to determine the fiscal impact of the Bill over the next six fiscal years because of a number of variables (detailed in #9).
   - OMB is aware of one property that will be affected in the future, but at this time, the final terms of the sale are unknown. The fiscal impact to the County will be the difference between the 1% rate that the property would be subject to under this Bill and the higher 6% rate the property is currently subject to.
   - Due to the limited application of the legislation, it is unlikely that significant fiscal impacts will be realized.
4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.
   - N/A
5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

- N/A

6. An estimate of the staff time needed to implement the bill.
   - No additional staff time would be required by the Department of Finance.
7. An explanation of how the addition of new staff responsibilities would affect other duties.
   - See #6
8. An estimate of costs when an additional appropriation is needed.
   - N/A
9. A description of any variable that could affect revenue and cost estimates.
   - Variables affecting revenue and cost estimates include, but are not limited to:
     - Number of properties which are transferred, rezoned to a more intensive use at the request of the property owner, and are also located in an enterprise zone
     - Assessed value of properties
     - Sale price of properties
     - Transfer tax rates
     - Impacts of the zoning code rewrite
     - Market conditions
10. Ranges of revenue or expenditures that are uncertain or difficult to project.
    - See #3
11. If a bill is likely to have no fiscal impact, why that is the case.
    - Due to the limited application of the legislation (only affecting properties that are transferred and subject to the 6% transfer tax, rezoned to a more intensive use, and located in an enterprise zone), significant fiscal impacts are not likely to be realized.
12. Other fiscal impacts or comments.
    - N/A
13. The following contributed to and concurred with this analysis:
    - Jedediah Millard, Office of Management and Budget
    - David Platt, Department of Finance
    - Michael Coveyou, Department of Finance

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

9/17/14
Date

Economic Impact Statement
Bill 37-14, Real Property Transfer Tax – Exemption Enterprise Zones

Background:

This legislation would exempt from the 6% rezoning transfer tax transfers of rezoned property located in an enterprise zone; and repeal archaic and obsolete language and references, and make conforming and stylistic changes.

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

Sources of information include:

- Treasury Division, Department of Finance,
- MNCP&PC, Department of Planning,
- State Department of Assessments and Taxation, and
- Bureau of Labor Statistics, U.S. Department of Labor.

Each source of information provided the following data and assumptions:

- Treasury Division determined that there were eighty-seven (87) property tax accounts that received Enterprise Zone credits over the past six fiscal years. Of that number, seven accounts, or eight percent (8%), transferred during that period. However, there are no data on how many of the seven properties were rezoned. *This economic impact statement assumes that all seven properties were rezoned and are newly re-developed properties.*
- MNCP&PC, Department of Planning (Planning) provided data on the ratio of square footage to employee. The ratios are 255 square feet per office employee, 400 square feet per retail employee, and 450 square feet per industrial employee, and 500 square feet per "other" employee.
- The State Department of Assessments and Taxation (SDAT) provided the square footage for each of the seven properties that received an Enterprise Zone credit and the Department of Finance (Finance) divided the square footage by the data provided by MNCPPC to determine the maximum number of employees.
- The Bureau of Labor Statistics (BLS) provided the annual average pay for an employee in the private sector for Montgomery County in 2013. The annual average pay was $63,080 that year.

2. A description of any variable that could affect the economic impact estimates.

The following variables that could affect the economic impact estimates are:

- The number of rezoned properties. However, there are no data on how many of the properties that transferred over the six-year period were rezoned. For the purpose of this economic impact statement, Finance assumes that the seven properties were rezoned,
- The ratio of square footage per employee by sector,

- The amount of square footage for rezone property, and
- The annual average pay per employee in Montgomery County in future years.

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

   Given the limited application of the proposed legislation (i.e. properties in an Enterprise Zone that are rezoned and subsequently transferred) and the limited incentive to transfer or redevelop, it is unlikely that the subject legislation would result in a material economic impact.

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

   If Bill 37-14 has an economic impact, such an impact on employment and wage income would be modest at best for the reasons cited in paragraph #3 above.

5. **The following contributed to or concurred with this analysis**: David Platt and Michael Coveyou, Finance; Jedediah Millard, Office of Management and Budget

Joseph F. Beach

Joseph F. Beach, Director
Department of Finance

8/29/14
Date