Agenda Item 6B
November 17, 2015
Introduction

MEMORANDUM

November 13, 2015

TO: County Council

FROM: Glenn Orlin, Deputy Council Administrator GO
Amanda Mihill, Legislative Attorney AMihill

SUBJECT: **Introduction:** Expedited Bill 47-15, Taxation -- Transportation Impact Tax – Revisions

Expedited Bill 47-15, Taxation – Transportation Impact Tax – Revisions, sponsored by Lead Sponsor Council President at the request of the County Executive, is scheduled to be introduced on November 17, 2015. A public hearing is tentatively scheduled for December 8 at 11:00 a.m.

Expedited Bill 47-15 would revise the life of a credit certified after a certain date; allow a credit for reconstruction of an existing road; and generally amend County law regarding impact taxes.

Expedited Bill 47-15 includes 2 elements of Bill 34-15, Taxes – Transportation and School Impact Tax – Amendments, for which a public hearing was held on July 21, 2015.

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Expedited Bill No. Bill 47-15
Concerning: Taxes – Transportation Impact Tax - Revisions
Revised: 11/10/2015 Draft No. 1
Introduced: November 17, 2015
Expires: May 17, 2017
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ___, Laws of Mont. Co. ___

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the Request of the County Executive

AN EXPEDITED ACT to:
(1) revise the life of a credit certified after a certain date;
(2) allow a credit for reconstruction of an existing road; and
(3) generally amend County law regarding impact taxes.

By amending
Montgomery County Code
Chapter 52, Taxation
Sections 52-55 and 52-58

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

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

Sec. 1. Sections 52-55 and 52-58 are amended as follows:

52-55. Credits.

(b) A property owner must receive credit for constructing or contributing to an improvement of the type listed in Section 52-58 if the improvement reduces traffic demand or provides additional transportation capacity. However, the Department must not certify a credit for any improvement in the right-of-way of a State road, except a transit or trip reduction program that operates on or relieves traffic on a State road or an improvement to a State road that is included in a memorandum of understanding between the County and either Rockville or Gaithersburg.

* * *

(4) Any credit that was certified under this subsection on or after March 1, 2004, and before December 31, 2015, expires 6 years after the Department certifies the credit. Any credit that was certified under this subsection on or after January 1, 2016, expires 12 years after the Department certifies the credit.

* * *

52-58. Use of impact tax funds.

Impact tax funds may be used for any:

(a) New road, [or] widening of an existing road, or total reconstruction of all or part of an existing road required as part of widening of an existing road, that adds highway or intersection capacity or improves transit service or bicycle commuting, such as bus lanes or bike lanes.

* * *

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 on which it becomes law.

LEGISLATIVE REQUEST REPORT

Expedited Bill 47-15
Taxation – Transportation Impact Tax - Revision

DESCRIPTION: Amendments to Chapter 52 of the Montgomery County Code and Corresponding Executive Regulation that relates to the Development Impact Tax for Transportation Improvements. Revisions to the County Code are the result of requests by Council to change the approach by which credits are certified, and extend the life of a credit from its existing 6 years to 12 years. Amendments to the Executive Regulation provide guidance and clarification in interpreting the law with respect to the certification of impact tax credits for transportation.

PROBLEM: Historically, credits have been certified for the cost of improvements that meet the intent of the code by providing new transportation capacity. As a result, the cost of replacing or improving existing lanes in order to add new or additional lanes (i.e. 2-lanes to 4 lanes) were not eligible for a credit while the cost of providing the two new lanes would be eligible. The Council requested that the code be modified so that a credit can be certified for the total cost of the improvement. This explains the proposed change to Chapter 52-58 of the County Code. Chapter 52-55 is also being modified in this proposed amendment. That modification allows that any new credit certified after a date specific will have a 12-year credit life. The current law provides for a 6-year credit life.

GOALS AND OBJECTIVES: A primary goal of the Executive Regulation is to provide clarification and guidance as to the interpretation of the County Code.

COORDINATION: Departments of Permitting Services and Finance.

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Glenn Orlin, Deputy Council Administrator, 240-777-7936
Amanda Mihill, Legislative Attorney, 240-777-7815

APPLICATION WITHIN MUNICIPALITIES: Chapter 52 is applicable in municipalities

PENALTIES: N/A

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

November 10, 2015

TO: George Leventhal, President
Montgomery County Council

FROM: Isiah Leggett, County Executive Timothy L. Firestine (ACTING)

SUBJECT: Expedited Bill No. XX-15, Amendments to Montgomery County Code Chapter 52, Taxation, Sections 52-55 and 52-58

The purpose of this memorandum is to transmit, for the County Council's approval, Expedited Bill No. XX-15, Amendments to Chapter 52 of the Montgomery County Code that relates to the Development Impact Tax for Transportation Improvements. Executive Regulation 26-13 was transmitted to the Council on June 4, 2014 with the purpose of proposing revisions to the Executive Regulations for Development Impact Tax for Transportation. The purpose of this regulation was to (1) allow the Greenway Trail in Clarksburg to be eligible for an Impact Tax credit (which was a condition of the agreement for the Clarksburg Roads settlement); (2) clarify language related to credits for park-and-ride lots; and (3) add language for Bikesharing sites to be eligible for credits.

Council staff recommended, and the T&E Committee agreed at the July 28, 2014 T&E Committee meeting, that other sections of the Regulations be revised to provide credits for the full cost of an improvement where an existing road is being realigned or expanded, as opposed to just the pro-rata share for the highway capacity added by the newly constructed lanes (i.e., developers do not currently receive an impact tax credit for reconstructing the existing portion of the road). Following consultation with the Office of the County Attorney it was determined that the best plan of action would be to amend the County Code to reflect the Council's desire to change the approach by which credits are certified.

As a result, revisions to Sections 52-55 and 52-58 of the County Code are proposed to respond to two additional areas of concern beyond the changes proposed in Executive Regulation 26-13.

Section 52-55 of the Code is proposed to be amended to provide a credit life of 12 years for any new credit certified as of a specific date. Currently, the Code states that transportation impact tax credits have a life of 6 years. This reflects a compromise between the existing 6-year life and a previously proposed increase to 20 years.

Section 52-58 is also being amended and stems from a proposed change in the way the law has been applied. Under the proposed change to this section, in determining the amount of a credit for an expansion in the number of lanes that adds new highway capacity, the cost associated with reconstruction of the existing lanes can be factored into the overall calculation of the credit amount. The law has been consistently applied so that only the costs associated with "new" capacity are eligible for a credit. In this manner, the cost of providing new lanes was eligible but the cost of reconstructing, improving and/or realigning the existing road was not eligible. Under this proposed amendment, the costs associated with reconstructing the existing and constructing the new lanes would be eligible for a credit in that they all would be considered part of the cost of making the eligible transportation improvement.

Executive Regulation 26-13AMII remains with the Council for final action, and reflects language to ensure consistency between it and the proposed code amendments.

The amendments are transmitted for the Council's review and consideration. Please direct any questions to Emil Wolanin, Acting Deputy Director of the Department of Transportation at 240-777-8788.

AR:dm

Fiscal Impact Statement
Bill XX-15
Taxes – Transportation Impact Tax - Amendments

1. **Legislative Bill Summary**

   The proposed amendments to Chapter 52 of the Montgomery County Code relate to the Development Impact Tax for Transportation Improvements. Revisions to the County Code are the result of requests by Council to change the approach by which impact tax credits are certified and to extend the life of a credit from its existing 6 years to 12 years.

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.**

   The proposed bill does not directly impact County revenues and expenditures at this time.

   The proposed bill changes the method of calculation of impact tax credits for eligible capital projects. It is difficult to estimate which capital projects are eligible or how large the impact tax credit to a developer is; tax credits are determined by the developer's costs in constructing the improvement (in lieu of paying the impact tax).

   Any increase in the impact tax credit would result in a decrease in impact tax revenues to the County; this change is difficult to quantify until the eligible improvement and amount of the credit is identified.

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

   See item #2 above.

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

   Not Applicable.

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

   None.

6. **An estimate of the staff time needed to implement the regulation and/or Code.**

   The staff time needed to implement the Code modifications does not change; the proposed bill provides clarification as to what is required in order for an impact tax credit to be certified.

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

   The proposed bill does not create new staff responsibilities.

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.**

   The number of eligible capital improvements and the size of the impact tax credit are the primary variables which could affect revenue and cost estimates for the proposed bill.

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

    Changes in impact tax revenues are difficult to project as the number of credit-eligible projects and the size of the credit is unknown.

11. **If a regulation or revision to the County Code is likely to have no fiscal impact, why that is the case.**

    The proposed regulation serves the purpose of providing clarification, guidance, and direction as to what requirements must be met in order for an impact tax credit to be certified for certain specific types of improvements (hiker-biker trail, transit center, park-and-ride, and bikesharing). It also provides guidance in determining the amount of a credit to be certified for these improvements.

    Current County laws and regulations state that adding only *new* roadway capacity (i.e., adding a new lane) was eligible for impact tax credit. The proposed bill revises current law such that improvements to *existing* lanes are eligible for credits, resulting in larger credit than in the past. Since the credit is used in lieu of paying impact tax, the fiscal impact would be that less impact tax revenues are collected.

12. **Other fiscal impacts or comments.**

    None.

13. **The following contributed to this analysis:**

    Emil Wolanin, Department of Transportation

    David Moss, Department of Transportation

    Scott Foncannon, Office of County Attorney

    Brady Goldsmith, Office of Management and Budget

J Hughes

Jennifer A. Hughes, Director
Office of Management and Budget

11/10/15
Date

Economic Impact Statement
Bill ##-15, Concerning Taxes -Transportation Impact Tax -Amendments

Background:

This legislation would limit the life of an impact tax credit certified after January 1, 2016 to 12 years, and allow a credit for reconstruction of an existing road.

Bill ##-15 amends Section 52-55 of the County Code by providing any new credit certified on or after January 1, 2016 will have a twelve year life. The Code currently states that any credit certified after March 1, 2004, has a six year life.

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

   Sources of information include the Department of Transportation (DOT) and the Department of Permitting Services (DPS). According to data provided by DPS, the amount of unused credits outstanding is $45.5 million from transactions between April 30, 2008, and April 30, 2015. Since specific data on the start of the transaction is not available, the Department of Finance assumes that the amount of credit available is an average of approximately $6.5 million per year. Using this assumption and the first transaction period occurring between April 30, 2008, and April 29, 2009, the first set of credits under the six year limit has expired with the remaining $39.0 million of available credits remaining under the current six-year limit. Given the assumption of the $6.5 million average credit available per year, the remaining credit amount will expire by 2021. Since it is uncertain what the amount of credits are that will be available starting on January 1, 2016 the twelve-year time life, the economic impact on the developers' impact tax liability and business income cannot be estimated with any specificity.

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

   The variable that could affect the economic impact estimates attributed to Bill ##-15 is the amount of credits available starting with the transaction date of January 1, 2016 and a credit life of twelve years. Certainly by extending the life of the credit from six to twelve years, it will have some economic impact on business revenues but that impact is dependent on the number of development projects and the costs of such projects incurred by developers over the twelve year period and whether such extension will encourage more development. Since that information is not available on specific future development, it is uncertain with any specificity what the economic impact on business revenue, investment, and property values will be.

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

   Bill ##-15 could have a positive economic effect on business revenue and income, but without specific data as stated in paragraph #2, it is uncertain with any specificity what the amount of that impact will be. By extending the life of the credit, Bill ##-15 could delay annual project development by spreading such development over a twelve-year rather than a six-year period and have an effect on short-term business income, investment, and property values but would not have a long-term effect.

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

   Please see paragraph #3.

5. **The following contributed to or concurred with this analysis**: David Platt and Rob Hagedoorn, Department of Finance; and David Moss, Department of Transportation.

Joseph F. Beach, Director
Department of Finance

11/9/15
Date

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