MFP ITEM 6
May 6, 2010
Worksession

MEMORANDUM

TO: Management and Fiscal Policy Committee

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

SUBJECT: **Worksession:** Expedited Bill 14-10, Recordation Tax – Allocation of Revenue

Expedited Bill 14-10, Recordation Tax – Allocation of Revenue, sponsored by the Council President at the request of the County Executive, was introduced on March 23, 2010. A public hearing was held on May 4 (see testimony, ©15-17).

Recordation tax background As Councilmembers will recall, the County recordation tax, levied under state law and shown in County Code §52-16B, since 2008 has 3 levels or tiers which determine how the revenue from this tax is allocated:

Tier	Rate	Use of funds
1	$4.40/$1000	General Fund (unrestricted)
2	$2.50/$1000	MCPS capital, College educational technology
3	$3.10/$1000 (>$500,000)	50% County government capital improvements 50% new funding for rental assistance programs

Summary Bill 14-10 would suspend for the next 2 fiscal years the current requirement that certain revenue from the recordation tax (Tier 3) be allocated to the cost of County Government capital projects and rental assistance programs for low and moderate income households.

On April 27, the Executive proposed a further amendment (see ©7-8) that would also suspend, for the next 3 fiscal years, the requirement that another portion of the recordation tax (Tier 2) be allocated to capital improvements to County schools and educational technology for Montgomery College.

Fiscal impact Total reallocations of $13.22 million. See fiscal impact statement on ©9-10 and OMB Director's testimony on ©15-16. **Economic impact**: none assumed (effect of lowering rental assistance funding not discussed).

Options Other options before the Council for allocation of recordation tax revenue include:

- suspend the statutory revenue allocations in Tiers 2-3 only for the next fiscal year, FY11 (this was Montgomery College's recommendation – see ©11-14);
- repeal the statutory revenue allocations in Tiers 2-3 so that all recordation tax revenue goes to the General Fund and is available for any appropriation.

At the hearing Councilmember Knapp asked, if this revenue is reallocated as the Executive proposed, what amount would be moved from current revenue funding to bond funds. OMB Director Beach said he would have that number for the Committee.

This packet contains:

F:\LAW\BILLS\1014 Recordation Tax\MFP Memo.Doc

Expedited Bill No. 14-10
Concerning: Recordation Tax – Allocation of Revenue
Revised: 3-22-10 Draft No. 1
Introduced: March 23, 2010
Expires: September 23, 2011
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 EXPEDITED ACT to:
(1) revise the allocation of certain revenue received from the recordation tax; and
(2) generally amend County law related to the recordation tax.

By amending
Laws of Montgomery County 2009
Chapter 17

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. Chapter 17 of the Laws of Montgomery County 2009 is amended as follows:

*　　*　　*

Sec. 3. Allocation of Revenue. During any fiscal year that begins on or after July 1, [2010] 2012, the net revenue attributable to the increase in the rate of the recordation tax enacted in this Act must be reserved for and allocated equally to:

(a) the cost of County government capital improvements; and

(b) rental assistance programs for low- and moderate-income households, which must not be used to supplant any otherwise available funds.

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:

____

Nancy Floreen, President, County Council　　Date

Approved:

____

Isiah Leggett, County Executive　　Date

This is a correct copy of Council action.

____

Linda M. Lauer, Clerk of the Council　　Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 14-10
Recordation Tax – Allocation of Revenue

DESCRIPTION: This Bill would suspend the current requirement that portions of the recordation tax be allocated to: (a) the cost of County Government capital projects; and (b) rental assistance programs for low and moderate income households.

PROBLEM: In order to meet current fiscal challenges facing the County, the County must increase the amount of revenue available to maintain core Government programs and services.

GOALS AND OBJECTIVES: To enhance the amount of revenue available to support core government programs and services.

COORDINATION: Office of Management and Budget; Department of Finance

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: Subject to the general oversight of the County Executive and the County Council.

EXPERIENCE ELSEWHERE:

SOURCES OF INFORMATION: Joseph Beach, Director of Management and Budget
Kathleen Boucher, Assistant Chief Administrative Officer
Marc Hansen, Acting County Attorney

APPLICATION WITHIN MUNICIPALITIES: Revenue laws apply County-wide.

PENALTIES: N/A.

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

March 18, 2010

TO: Nancy Floreen, Council President

FROM: Isiah Leggett, County Executive

SUBJECT: FY 2011 Budget Reconciliation and Financing Act

I am attaching for Council's consideration a Budget Reconciliation and Financing Act (BRFA) which makes changes to the County Code that are necessary to reconcile my recommended FY 2011 operating budget with projected FY 2011 revenues. This bill will help the County address its current fiscal challenges by increasing the amount of revenue available to maintain and enhance core government programs and services. I am also attaching a Legislative Request Report for the bill. A Fiscal Impact Statement will be transmitted to Council soon.

The BRFA consists of five primary components. First, it increases the energy tax rates. Second, it temporarily redirects the portion of recordation tax revenues that are currently reserved for County Government capital projects and rental assistance programs to the general fund for general purposes. Third, it allows revenues generated by the Water Quality Protection Charge to be used to pay debt service on bonds that fund stormwater management infrastructure projects. Fourth, it transfers responsibility for administering equal employment opportunity programs from the Office of Human Resources to the Office of Human Rights. Fifth, it authorizes the Fire and Rescue Service to impose an Emergency Medical Services (EMS) Transport Fee.

As the Council knows, the County's energy tax is actually a tax on fuel oil, natural gas, and electric utility providers which is passed on to all utility customers. Because the energy tax is a broad-based tax, its impact on families is reduced by the fact that it is paid by businesses and households, and all levels of government, including federal agencies located in the County (that currently do not pay any other major County tax). Additionally, the energy tax is a consumption tax based on energy usage. It is not based on the overall size of the utility bill or the cost per unit of energy used as billed to the consumer. Therefore, the amount of the tax can be lessened by reduced energy usage. Based on existing usage patterns for the average homeowner, my recommended FY 2011 budget assumes an average increase in the energy tax of approximately $2.90 per month. I have also recommended additional funding in the Health and

Human Services budget for the County's Energy Assistance Program to minimize the impact to low-income households.

My recommended FY11 budget contains several efforts to restructure County Government to improve responsiveness and efficiency. One of these changes is the transfer of the Equal Employment Opportunity program from the Office of Human Resources to the Office of Human Rights. This shift takes advantage of existing staff resources to reduce costs and leverage the efforts of County staff to produce better outcomes for the community. This bill modifies the County code provisions relating to the responsibilities of the Office of Human Resources and Office of Human Rights to reflect this change.

The EMS Transport Fee is needed to fund fire and rescue services in the County. Without this fee, emergency response to residents will be impaired. EMS Transport Fees are widely employed throughout the nation and by local governments throughout the Washington region. These jurisdictions have not experienced any indication that people decline to use emergency transports as a result of the imposition of an ambulance fee. By creating a prepaid fund for uninsured County residents, the legislation that I am transmitting imposes a fee only on County residents with health insurance which covers EMS Transports. This arrangement more equitably distributes the economic burden of providing EMS transport services in the County between residents and nonresidents. The legislation provides for a hardship waiver for nonresidents who fall below 300 percent of federal poverty guidelines.

To provide the Council with a complete picture of the EMS Transport Fee program created by this bill, I am attaching a copy of the proposed Executive Regulation to implement the fee. This proposed regulation will be published in the April 2010 County Register and submitted to Council after the 30-day public comment period ends on April 30.

Finally, I note that the BRFA is consistent with Bill 31-09, Consideration of Bills – One Subject (enacted on September 29, 2009), which requires that a bill "contain only one subject matter". As noted in the Council staff packet for Bill 31-09, that bill was intended to adopt the "one subject rule" of the Maryland Constitution, which requires all laws enacted by the General Assembly to contain only one subject. The Maryland Attorney General has repeatedly concluded that budget reconciliation and financing bills do not conflict with the one subject rule. For example, in 2005, the Attorney General noted that "[f]or the past fourteen years, 15 budget reconciliation, budget reconciliation and financing acts or variations thereof, have been used to balance budgets, raise revenue, make fund transfers, redistribute funds, cut mandated appropriations and authorize or mandate appropriations."[1] The Attorney General concluded that all of those bills were consistent with the one subject rule because the provisions of the bills were "clearly germane to the single subject of financing State and local government". *See Panitz v. Comptroller of the Treasury*, 247 Md. 501 (1967) (Omnibus supplemental appropriation bill comprised a single subject for purposes of § 29 of Art III of the State Constitution even though

[1] See May 19, 2005 memorandum from Attorney General J. Joseph Curran, Jr. to Governor Robert Ehrlich regarding House Bill 147 (2005).

the bill combined such diverse elements as police aid to local government; teacher salaries and pensions; and general unrestricted grants to local government).

Attachments (3)

cc: Joseph Adler, Director, Office of Human Resources
Jennifer Barrett, Director, Finance Department
Joseph Beach, Director, OMB
Kathleen Boucher, ACAO
Richard Bowers, Fire Chief, MCFRS
Marc Hansen, Acting County Attorney
Robert Hoyt, Director, DEP
Richard Y. Nelson, Jr., Director, DHCA
James Stowe, Director, Office of Human Rights

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

April 27, 2010

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Proposed Amendment to Bill 14-10, Recordation Tax—Allocation of Revenue

The County has experienced a steep decline in projected revenues from the income tax. This decline combined with the need to restore the County's reserve levels to the 6% policy level has opened a FY-11 budget gap of approximately $200 million. A major part of my recommended strategy for closing this budget gap is to reduce current revenue funding of capital projects.

In order to implement this strategy I am reluctantly recommending that Bill 14-10, Recordation Tax—Allocation of Revenue, be amended to suspend for two years the current requirement that a portion of the recordation tax be allocated to the cost of capital improvements to schools and educational technology for Montgomery College. A draft amendment to Bill 14-10 is attached to this memorandum.

IL:tjs

Proposed Amendment to Bill 14-10

Sec. 2. Chapter 9 of the Laws of Montgomery County 2002, Sec 4, as amended by Chapter 21 of the Laws of Montgomery County 2003, and further amended by Chapter 33 of the Laws of Montgomery County 2003, is further amended as follows:

Sec. 4. Allocation of Revenue

During any fiscal year that begins on or after July 1, 2004, the net revenue attributable to the increase in the rate of the recordation tax enacted in this Act must be reserved for and allocated to the cost of capital improvements to schools and educational technology for Montgomery College in the form of debt service for debt-eligible projects and current revenue for debt-eligible or non-debt-eligible projects. This allocation ends as of the effective date of this Act and begins again during any fiscal year that begins on or after July 1, 2013.

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OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

April 23, 2010

RECEIVED
MONTGOMERY COUNTY
COUNCIL
2010 APR 26 AM 8:55

TO: Nancy Floreen, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Expedited Bill 14-10, Recordation Tax-Allocation of Revenue

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

The proposed legislation suspends, for the next two fiscal years, a requirement that portions of the recordation tax be allocated to the cost of County Government capital projects and rental assistance programs for low and moderate income households.

FISCAL SUMMARY

Expedited Bill 14-10 will not affect the amount of recordation tax collected but instead permits the reallocation of $8.221 million in FY11 recordation tax premium revenues from capital projects and rental assistance programs to the general fund to be used for general purposes. The County Executive included the use of these revenues in his March 15 recommended operating budget to address the County's current fiscal challenges by increasing the amount of revenue available to maintain critical government programs and services.

On April 22, 2010, the County Executive transmitted budget adjustments to the County Council closing a new projected budget gap of nearly $200 million caused by a significant write-down in income tax revenues and the need to restore reserves to the policy level of 6 percent of resources. The Executive recommends redirecting $5 million of the portion of the recordation tax currently used to fund Montgomery College CIP information technology projects. The April 22 budget adjustment package includes details of the College CIP projects affected by this change. The Executive intends to propose an amendment to Expedited Bill 14-10 to authorize redirection of this additional $5 million to the general fund.

Office of the Director
101 Monroe Street, 14th Floor • Rockville, Maryland 20850 • 240-777-2800
www.montgomerycountymd.gov

ECONOMIC SUMMARY

This bill has no quantifiable economic impact.

The following contributed to and concurred with this analysis: Jennifer Bryant, Office of Management and Budget, and Michael Coveyou, Department of Finance.

JFB: bh

c: Kathleen Boucher, Assistant Chief Administrative Officer
Dee Gonzalez, Offices of the County Executive
Jennifer Bryant, Office of Management and Budget
Michael Coveyou, Department of Finance

Faden, Michael

From: Madden, Susan [Susan.Madden@montgomerycollege.edu]

Sent: Tuesday, May 04, 2010 11:48 AM

To: Ervin's Office, Councilmember; Trachtenberg's Office, Councilmember; Navarro's Office, Councilmember

Cc: Healy, Sonya; Bowser, Alan; Faden, Michael; Orlin, Glenn; Sherer, Chuck

Subject: recordation tax

Importance: High

Attached is the College's impact statement regarding the proposed reductions to the College's information technology projects funded with recordation tax revenue in the CIP.

We gave this document to Chuck Sherer for his packet for the Education Committee. But, I thought it might be of interest as MFP deliberates the allocation of the recordation tax revenue. We would be very grateful if the Council could limit the changes in the allocation of this revenue source to just FY 11.

The proposed reductions of the College's IT projects are quite severe --- a 72% reduction. While we certainly understand the fiscal challenges facing the Council, we ask that you not make a permanent decision for the allocation of this revenue source for FY 12 and beyond. Please limit the changes to the allocation of the recordation tax to FY 11 only. With this action, we may be able to keep key projects on track with the possibility of FY 12 funding from the recordation tax.

Thank you so much for your consideration. Susan

Susan Cottle Madden
Office of the President
Montgomery College

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April 30, 2010

Montgomery College Impact Statement for additional FY11 CIP Budget Reductions

The College understands that the County Executive has recommended a change to the allocation of the recordation tax revenue for FY2011. The impact of this proposed change in the County Code puts the College at great risk for a number of reasons. This proposed legislative change has the effect of eliminating all technology refresh including hardware, software, and maintenance. Our request is that this proposed change to the County Code be deferred until after the budget session so the proposed recommendation can receive adequate and thoughtful consideration.

The following executive summary highlights the implications of the proposed budget cuts. MC is currently engaged in the implementation of several critical projects that are likely to suffer major timeline setbacks or risk being abandoned all together given the proposed **72% reduction in funding** ($12,693,000). These projects include:

1. CIP – Student Learning Systems

- Replacement of Learning Management System for Distance Learning (all online courses and materials are impacted – the current system is end-of-life) – replacement of this system is not optional and has wide-ranging implications for the delivery of every online and hybrid course offered at the college. In addition, face to face courses also use this system to communicate with students—this was evident when the College had to be closed this past winter for one week due to weather conditions.

- Implementation of the Developmental Math Labs – this is for a state-of-the-art math intensive immersion program that relies heavily on computers and high-end networking for proper operation. The program is designed per a national model that has shown to increase student learning, retention and satisfaction. Data demonstrated that failure in mathematics is the number one barrier to successful student retention and graduation from Montgomery College. Implementation of this new model of mathematics instruction and support is viewed as critical if the College is to succeed in increasing its graduation rate.

2. CIP – Information Technology

- The college has suspended the replacement of all desktop computers, printers, and other assorted peripherals. This proposed reduction is nothing less than deferred maintenance, but to keep the college working properly will require greater expenditures to be made at a later date. The longer replacements are delayed, the longer it will take, and the more expensive it will be, to get back on schedule. Dollars will only be expended to replace broken equipment.

- Replacement of the Human Resource system (old system is end-of-life) – this system must be replaced but the loss of funding will impact the time frame for completing this project. This package does more than the straightforward recruiting module and touches every employee on the campus as it impacts everything from professional development to benefits calculations. This system also is critical in the College's recruitment of qualified part-time faculty, upon which the institution will increasingly rely due to operating budgetary constraints.

- Implementation of Room Scheduling and Reporting System (Impacts room utilization reporting to the state) – The state has been very focused on this effort and ties future building projects and formula funding to the College's ability to report high utilization rates. MC currently does not have this function in place and therefore has more difficulty making successful arguments for additional

  space. Further, the current manual system of room scheduling is time intensive and staff intensive. In addition, it does not necessarily afford the best use of limited space resources. An automated system would improve the College's ability to schedule in such a way as to maximize the use of classrooms and lab spaces.

- Student Tracking – Student Tracking has a direct impact on our institution's ability to win educational grants, as most granting agencies require an assessment of student activity. Portions of this effort are already in place but the project requires the tying together of many heterogeneous environments to make the data come together. This project is really the combination of a lot of smaller projects that feed data into a single repository. The repository has yet to be assembled, making the benefits of the project impossible to realize.

3. CIP – Network Infrastructure

- Replacement of computing components was planned to support efforts around building a cloud computing effort. The effort involves the deployment of VCL (Virtual Computer Labs) and is designed to save budget dollars by supplying more cost effective computer images to the PC desktop in student labs and classrooms – both on and off-campus. This effort allows the college to more tightly control software costs as well as overcome some of the educational barriers caused by the lack of PC replacements in the classrooms and labs. Without this project student achievement will decline as students are forced to rely on outdated equipment.

4. CIP– NOC (Network Operations Center)

- The move is almost complete but there is still work to be done in FY2011. The most visible impact of this proposed reduction is that the old work space on the Rockville Campus is in need of consolidation and clean up, so it can be repurposed into useable academic space. The result is space that could be made available for classrooms and academic offices will sit mostly vacant waiting for IT dollars to relocate cabling, networking equipment, HVAC, and other equipment that must be moved in order to turn the space back over to the campus.

*Note: Table supplied by County Council Legislative Analyst:

SUMMARY OF IMPACT ON THE COLLEGE'S REQUEST FOR THE 4 PROJECTS

Item	FY10	FY11	Sum
1. Changes the Executive recommended on January 15 and the Council approved on March 9	(1,679)	(1,000)	(2,679)
2. Changes the Executive recommended on April 22 to eliminate short term financing		(4,514)	(4,514)
3. Changes the Executive recommended on April 22, other		(5,500)	(5,500)
4. Subtotal, Executive's April 22 changes		(10,014)	(10,014)
5. Total change	(1,679)	(11,014)	(12,693)

|

Testimony: Expedited Bill 14-10 Recordation Tax – Allocation of Revenue

Good afternoon, I am Joseph Beach, Director of the Office of Management and Budget, and I am here to testify on behalf of County Executive Isiah Leggett in support of Expedited Bill 14-10 Recordation Tax – Allocation of Revenue.

This legislation will amend the County law requiring the allocation of certain revenue received from the recordation tax to be applied to: 1) MCPS Capital projects and College Information Technology Projects (described as Tier 2 in the Council staff packet); and 2) County Government capital projects and rental assistance programs (described as Tier 3 in the packet). The purpose of this amendment is to allow a temporary redirection of these recordation tax revenues to the general fund for general purposes.

The proposed amendment will not change the rate or estimated collections for this tax, but will only allow the funds to be used without restriction. The Executive's proposed budget recommended that for FY11 all of the recordation tax premium revenues (tier 3) be redirected to the general fund. The FY11-16 CIP and the FY11-16 Fiscal Plan assume that these revenues would resume their previously legislated purpose in FY12-16 for both County Government CIP and rental assistance. The amount that would be redirected to the general fund in FY11 is estimated at $8.221 million.

The Executive's April 22 budget amendments recommended redirecting $5 million of the Tier 2 recordation tax revenues from College IT projects to the County General Fund for FY11 only.

Even though the budget assumptions include the redirection of these revenues for FY11 only, the proposed legislation is recommended with a sunset date for the end of FY12 in order to provide flexibility for the Executive and the Council to provide additional capacity for funding other government services during this period of severe economic downturn.

We urge the Council to approve this legislation.

May 4, 2010

GCAAR
GREATER CAPITAL AREA ASSOCIATION OF REALTORS®

TESTIMONY OF *THE GREATER CAPITAL AREA ASSOCIATION OF REALTORS®* BEFORE THE MONTGOMERY COUNTY COUNCIL REGARDING *"EXPEDITED BILL 14-10, RECORDATION TAX – ALLOCATION OF REVENUE"*

May 4, 2010

Council President Floreen and members of the council, my name is Shelly Murray and I am the 2010 President for the Greater Capital Area Association of REALTORS® ("GCAAR") – the voice of Montgomery County and the District of Columbia's nearly 9,300 REALTORS®, property managers, title attorneys and other real estate professionals. On behalf of GCAAR, I would like to express some concerns regarding Bill 14-10.

GCAAR understands the dismal economic conditions that all levels of government as well as the private sector are still facing today and probably will for several more years. However, as REALTORS® we strongly believe that the dedication of recordation tax funds towards capital improvements and rental assistance programs is extremely important. Last year, GCAAR commented on Bill 15-09, Recordation Tax – Use of Revenue, which we understood to be a temporary measure and appreciated the fact that the legislation had a sunset provision of 3 years to July 1, 2012. However, GCAAR was ultimately more supportive of the County Council's final changes to the legislation that had the legislation sunset after only one year to July 1, 2010.

We as REALTORS® are very concerned about these recordation tax funds continually being diverted away from the intended dedication for rental assistance programs and capital improvement projects. Back in 2007, GCAAR expressed many concerns with Bill 11-07, Recordation tax – Rate, which ultimately increased the recordation taxes on homes above $500,000. We were very concerned and still are today that Montgomery County remains a jurisdiction with some of the highest overall costs of taxes at the time of closing on a home. However, despite our concerns, we agreed that if the tax rate increased at least the funds raised should be dedicated to the rental assistance programs and capital improvements. We were told that these two areas were in dire need of money. So to continue to divert them away from something essential and just place them in the general fund seems to be counterproductive.

GCAAR understands that revenues are still down, particularly from the real estate industry, but we are concerned that these funds are going to continue to be depleted. We would strongly recommend that the county start looking for better sources of revenue and stop relying on real estate taxes like the recordation and transfer tax, which are extremely volatile, as we've seen the past few years.

As always, I would like to thank the County Council for your consideration of GCAAR's perspective on this issue.