AGENDA ITEM #4A
June 16, 2015
Introduction

MEMORANDUM

June 12, 2015

TO: County Council

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

SUBJECT: **Introduction**: Bill 30-15, Taxes – Development Impact Tax for Transportation Improvements - Amendments

On June 1 the County Executive transmitted this bill, which would: limit the enterprise zone impact tax exemption to the time an enterprise zone is in effect; extend the limit of the life of a credit certified after March 1, 2015 to 12 years (the limit is currently 6 years); to allow a credit for reconstruction of an existing road where capacity is being added; and to generally amend County law regarding impact taxes. It is sponsored by the Council President at the request of the County Executive. The Executive's transmittal memo is on ©1-2, Bill 30-15 is on ©3-5, the Legislative Request Report is on ©6-7, the Economic Impact Statement is on ©8-9, and the Fiscal Impact Statement is on ©10-11.

The public hearing on Bill 30-15 is tentatively scheduled for June 30, 2015 at 1:30. As the bill would allow for the law to be generally amended regarding impact taxes, certain Councilmembers have identified further proposals for which public comment is being solicited at the June 30 hearing:

> Councilmember Elrich proposes including transitways as an eligible expenditure under Section 52-58. He also proposes eliminating Metro State Policy Areas (MSPAs) as a separate rate category, and in so doing applying the General District tax rates there, except in White Flint and in those MSPAs that are enterprise zones. Furthermore he proposes eliminating Section 52-57(e), which sets the impact tax rates within one-half mile of the Germantown, Metropolitan Grove, Gaithersburg, Washington Grove, Garrett Park, and Silver Spring MARC stations at 85% of the General District Tax rates.
>
> Councilmember Rice proposes eliminating Clarksburg as a separate tax district and incorporating it into the General District.

The effect of these two sets of recommendations would be to equalize the tax rates across all geographic areas in the County (as is the case for the Development Impact Tax for Public School Improvements), with the exception of White Flint (where there is a special taxing district), and in active enterprise zones.

A Transportation, Infrastructure, Energy and Environment Committee worksession on Bill 30-15 and these and other potential amendments to the impact tax law is tentatively scheduled for July 20.

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

June 1, 2015

TO: George Leventhal, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Expedited Bill No. ~~XX~~ 30-15, Amendments to Montgomery County Code Chapter 52, Taxation, Sections 52-49, 52-55, and 52-58

The purpose of this memorandum is to transmit, for the County Council's approval, Expedited Bill No. ~~XX~~ 30-15, Amendments to Chapter 52 of the Montgomery County Code that relate 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 52-49, 52-55, and 52-58 of the County Code are proposed to respond to three additional areas of concern beyond the changes proposed in Executive Regulation 26-13.

The first proposed amendment relates to enterprise zones. Developments located in an enterprise zone are not subject to the impact tax. Enterprise zones have their own life and once the designation has exceeded that life there is no reason to continue to exempt them from the imposition of the impact tax. Thus, existing language under 55-49(g) (5) was amended to ensure that only currently designated enterprise zones are exempt.

Section 52-55 of the Code is proposed to be amended to increase the life of a credit from the existing 6 years to 12 years. This reflects a compromise between the existing life and a previously proposed increase to 20 years.

The final amendment involves Section 52-58 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 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 can be eligible for a credit. In this manner, the cost of providing new lanes would be eligible but the cost of improving and/or realigning the existing road has not been eligible. Under this proposed amendment, the costs associated with both the existing and 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.

The Executive Regulation that was transmitted last year had to be revised to ensure consistency between it and the proposed Code amendments. This is reflected in Executive Regulation 26-13AM, that proposes revised language to account for the increase in the life of a credit and the ability to have a credit certified for the costs associated with improvements to existing lanes as well as new lanes (Section 52-58).

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

AR:dm

Bill No. Bill 30-15
Concerning: Taxes – Transportation Impact Tax - Amendments
Revised: 6/12/2015 Draft No. 1
Introduced: 6/16/2015
Expires: 12/16/2016
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 ACT to:
(1) revise the application of the impact tax in an enterprise zone;
(2) revise the life of a credit certified after a certain date;
(3) allow a credit for reconstruction of an existing road; and
(4) generally amend County law regarding impact taxes.

By amending
Montgomery County Code
Chapter 52, Taxation
Sections 52-49, 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 52-49, 52-55 and 52-58 are amended as follows:

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

* * *

(g) A development impact tax must not be imposed on:

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

* * *

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 February 28, 2015, expires 6 years after the Department certifies the credit. Any credit that was certified under this subsection on or after March 1, 2015, 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.

* * *

Approved:

George Leventhal, 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

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LEGISLATIVE REQUEST REPORT

Bill 30-15

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, ensure that only currently designated Enterprise Zones are exempt from the imposition of impact tax, 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 the Chapter 52 of the County Code. There are two other changes in the proposed amendment to Chapter 52. These are extending the life of a credit from 6 years to 12 years and ensuring that only currently designated Enterprise Zones are exempt from the imposition of impact tax.

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: Following the T&E Committee meeting on Executive Regulation 26-13 last summer, the Office of the County Attorney recommended that the best way to accommodate the request of the Council was to amend the County Code and then ensure consistency to the Executive Regulation. In a coordinative effort the Department of Transportation worked with the County Attorney to develop the revisions to the County Code and Executive Regulation.

FISCAL IMPACT STATEMENT: The only fiscal impact resulting from the proposed amendment a potential reduction in the amount of impact tax revenue that is collected. This is a result of modifying what is considered to be eligible for a credit in cases where an existing roadway is being improved and expanded to create new capacity. By making the cost of the full improvement eligible for a credit, the amount of the credit can be higher. Since the credit is used in lieu of paying impact tax, the fiscal impact would be less tax collected, thereby reducing the revenue to be collected and having less revenue available for transportation improvements.

ECONOMIC IMPACT:	There is no direct economic impact resulting from the proposed changes to the Code and Executive Regulation.
EVALUATION OF THE RESULTS OF THE PROPOSED LAW:	The proposed changes to the County Code would result in extending the life of a credit from 6 to 12 years, ensuring that only currently designated enterprise zones can be exempt from impact tax, and under certain conditions to expand the amount of a credit to include the cost of improving the existing roadway as well as constructing new lanes.
EXPERIENCE ELSEWHERE:	N/A
SOURCES OF INFORMATION:	N/A
APPLICATION WITHIN MUNICIPALITIES:	Chapter 52 is applicable to the municipalities of Rockville and Gaithersburg as well as the remainder of the county.
PENALTIES:	N/A

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Economic Impact Statement

Bill ##-15, Concerning Taxes – Transportation Impact Tax – Amendments

Background:

This legislation would limit the application of the impact tax in an enterprise zone, limit the life of a credit certified after March 1, 2015 to 12 years, and allow a credit for reconstruction of an existing road.

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Bill ##-15 would not impact any development located in an enterprise zone that is currently designated by the State. Bill ##-15 amends Section 52-55 of the County Code by doubling the life of a credit certified on or after March 1, 2015 to twelve years instead of six years for credits that were certified between March 1, 2004, and February 28, 2015.

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 March 1, 2015 with 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 March 1, 2015 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, saving, 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 not on the 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, Finance; David Moss, Department of Transportation.

Joseph F. Beach, Director
Department of Finance

5/6/15
Date

(9)

Fiscal Impact Statement
Bill 30-15
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, ensure that only currently designated Enterprise Zones are exempt from the imposition of impact tax, and 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

for Amy Wilson

Jennifer A. Hughes, Director
Office of Management and Budget

5/26/15

Date