



Committee: Joint
Committee Review: At a future date
Staff: Robert H. Drummer, Senior Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #SilverSpringBID

AGENDA ITEM 8
February 23, 2021
Public Hearing

SUBJECT

Bill 3-21, Special Taxing Area Laws – Silver Spring Business Improvement District – Established

Lead Sponsors: Councilmember Riemer and Council President Hucker

Co-Sponsors: Councilmembers Friedson, Katz, Navarro and Rice

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Public Hearing – no vote expected

DESCRIPTION/ISSUE

Bill 3-21 would:

- establish a business improvement district in Silver Spring;
- establish guidelines for the District and authorize a district corporation to manage the District; and
- authorize a tax on nonexempt property located in the District to finance the operations of the district corporation.

SUMMARY OF KEY DISCUSSION POINTS

Would a business improvement district benefit property and persons within the district?

How would a BID work with the existing Silver Spring Urban District?

This report contains:

Bill 3-21	©1
Legislative Request Report	©17
Sponsor Memorandum	©18
Racial Equity and Social Justice Impact statement	©20
Economic Impact statement	©26
County Attorney Bill Review Memorandum	©40

\\Ccl-App01.McGov.Org\\I\DEPT\Central_Staff\LA\BILLS\2103 Business Improvement District - Silver Spring\PH Cover Sheet.Docx

Alternative format requests for people with disabilities. If you need assistance accessing this report you may [submit alternative format requests](#) to the ADA Compliance Manager. The ADA Compliance Manager can also be reached at 240-777-6197 (TTY 240-777-6196) or at adacompliance@montgomerycountymd.gov

M E M O R A N D U M

February 18, 2021

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney
Carlos Camacho, Legislative Analyst

SUBJECT: Bill 3-21, Special Taxing Area Laws – Silver Spring Business Improvement District – Established

PURPOSE: Public Hearing – No Council vote required

Bill 3-21, Special Taxing Area Laws – Silver Spring Business Improvement District – Established, sponsored by Lead Sponsors, Councilmember Riemer and Council President Hucker, and Co-Sponsors, Councilmembers Friedson, Katz, Navarro and Rice, was introduced on January 12, 2021. A joint Government Operations and Fiscal Policy/Planning, Housing and Economic Development Committee worksession, tentatively scheduled for March 25, 2021.¹

Bill 3-21 would:

- establish a business improvement district in Silver Spring;
- establish guidelines for the District and authorize a district corporation to manage the District; and
- authorize a tax on nonexempt property located in the District to finance the operations of the district corporation.

MD Code, Economic Development, §§ 12-601 through 12-612 authorizes the County to establish a business improvement district in the County. Section 12-602 states the purpose of a business improvement district must be to:

- (2) promote the general welfare of the residents, employers, employees, property owners, commercial tenants, consumers, and the general public within the geographic area of the business improvement districts.

The State law provides that the County must establish the district based on an application from a group of private property owners in the proposed district. Bill 3-21, as introduced, would establish a business improvement district in an area similar, but not identical, to the current Silver Spring Urban District created by Chapter 60 of the County Code based on the application filed by

¹#SilverSpringBID

property owners in the proposed district. The property owners submitted an updated and amended application that would cover the entire Silver Spring Urban District after the Bill was introduced. The amended application is posted on the Council website at: [BID Application \(montgomerycountymd.gov\)](http://montgomerycountymd.gov/BID_Application).

The district would be operated by a district corporation organized by the property owners in the district. The County would impose a business improvement tax on non-exempt property owners in the district and may provide additional funds, including a portion of the Silver Spring Parking Lot District revenues. The district corporation would be required to provide public services and facilities to serve the property and persons within the district instead of the County as a whole.

A memorandum from the lead sponsors, Councilmember Riemer and Council President Hucker, explaining the reason for this Bill is at ©18-19.

Background

A BID can generally be defined as “a privately directed and publicly sanctioned organization that supplements public services within geographically defined boundaries by generating multiyear revenue through a compulsory assessment on local property and/or businesses.”² While BID’s can vary in size and budget they typically have some common characteristics³:

- Largest and most frequently cited revenue source is tax assessments on property and/or business owners. However, assessments can be based on different factors, for example, assessed property (most common), square footage, sales receipts, business license fees, flat rate based on business location and type, or a combination of methods.
- Governed by a board of directors, which can vary in size, representing particular membership groups (e.g. retail business owners, property owners, tenants, etc.) and selected via elections or appointments by local governing bodies.
- Local government oversight often includes sunset provisions on either BID funding sources or the contract with the BID organization to provide services and also may require formal and informal reporting on use of funds, program accomplishments, assets and liabilities, income-producing activities, etc.
- BIDs generally provide maintenance, security, transportation, marketing, public space management (e.g. urban façade development and code compliance), social services, and business recruitment.

² Hoyt, L. and D. Gopal-Agge. 2007. "The Business Improvement District Model: A Balanced Review of Contemporary Debates." *Geography Compass*, Vol. 1, No. 4, pp. 946-958.

³ Craig Howard and Stephanie Bryant. “Case Studies of Local Business and Community Districts.” OLO Report 2015-7. February 24, 2015. Available at: https://www.montgomerycountymd.gov/OLO/Resources/Files/2015_Reports/OLO%20Report%202015-7.pdf

BIDs generally are required to produce annual reports for their constituents and local government partners, which typically include budget and financial reports, an independent financial audit, and an annual report on programming within the district. With regards to measuring the performance of a BID, metrics such as vacancy rates, number of visitors and businesses, crime statistics, property and rent values, and changes in local employment can be used to determine whether the BID is accomplishing its intended goals and objectives.

Montgomery County Urban Districts

Chapter 68A of the Montgomery County Code authorizes the creation of urban districts and urban district corporations – special taxing districts that provide additional services within a defined area in order to “maintain and enhance... areas of Montgomery County [that] have become, or may in the future become, intensely developed communities containing diversified commercial, institutional, and residential development.”

Chapter 68A states that the County should:

- (1) increase the maintenance of the streetscape and its amenities;
- (2) provide additional public amenities such as plantings, seating, shelters, and works of art;
- (3) promote the commercial and residential interests of these areas; and
- (4) program cultural and community activities.

These public services are meant to be “(1) primarily of benefit to the property and persons within the urban district rather than to the County as a whole; and (2) in addition to services and facilities that the County provides generally.

The County currently has urban districts in Silver Spring and Wheaton, and an urban district corporation in Bethesda.

Silver Spring Urban District. The Silver Spring Urban District (SSUD) website states the Urban District:

“provides enhanced services to the Central Business District to ensure that downtown Silver Spring is maintained as a clean, safe and attractive environment to promote a vibrant social and business climate to support long-term economic viability and vitality. SSUD services include ambassadorship, security, streetscape maintenance, walkway repairs, tree maintenance, marketing, promotions and special events. The Silver Spring Urban District sponsors a summer concert series, the Silver Spring Jazz Festival, the Montgomery County Thanksgiving Parade, and other events to attract people to downtown Silver Spring.”

The SSUD approved FY21 budget is \$3,834,053, of which 69% represents personnel costs and 31% covering other operating expenses. The SSUD currently employs 38 full-time County employees. Operating expenses consists of Program Administration, Enhanced Security and

Ambassadorship, Promotion of Community and Business Activities, Sidewalk Repair, Streetscape Maintenance, and Tree Maintenance.

	Actual FY19	Budget FY20	Estimate FY20	Approved FY21	%Chg Bud/App
URBAN DISTRICT - SILVER SPRING					
EXPENDITURES					
Salaries and Wages	1,720,541	1,785,339	1,815,770	1,861,026	4.2 %
Employee Benefits	728,970	825,242	728,365	786,373	-4.7 %
Urban District - Silver Spring Personnel Costs	2,449,511	2,610,581	2,544,135	2,647,399	1.4 %
Operating Expenses	1,284,963	1,117,190	708,632	1,186,654	6.2 %
Urban District - Silver Spring Expenditures	3,734,474	3,727,771	3,252,767	3,834,053	2.9 %
PERSONNEL					
Full-Time	37	37	37	38	2.7 %
Part-Time	0	0	0	0	—
FTEs	34.90	34.90	34.90	35.00	0.3 %
REVENUES					
Optional Method Development	108,674	150,000	150,000	150,000	—
Property Tax	882,668	1,003,131	1,003,308	1,022,638	1.9 %
Urban District - Silver Spring Revenues	991,342	1,153,131	1,153,308	1,172,638	1.7 %

The SSUD is expected to collect \$1,022,638 in property tax revenue in the form of an Urban District Tax that is currently set at \$.024 per \$100 of tax assessed value. The other primary funding source for the SSUD is the transfer from the Silver Spring Parking Lot District to the Urban District. Section 60-16(c)(1)(A) authorizes the Council to transfer revenue from parking fees to the fund of any urban district from which the fees are collected. In FY21, the Council approved the transfer of \$2,813,959 from the Silver Spring Parking Lot District to the SSUD.

Currently, the Silver Spring Regional Services Center manages the SSUD program. In addition, the Silver Spring Urban District Advisory Committee, created by § 68A-5 of the County Code, advises the County Government “on all aspects of the program, management, and finances of the Urban District.” The Committee meets monthly and is comprised of 11 members appointed by the County Executive and confirmed by the County Council. Two members are persons nominated by the Silver Spring Chamber of Commerce, three members represent optional method developers, three business representatives that employ fewer than 25 employees, two residential community members from the Urban District, and one member who is on the Silver Spring Citizens Advisory Board.⁴

One of the issues that must be worked out to establish the Silver Spring BID through Bill 3-21 is how the BID would work with the existing Silver Spring Urban District and avoid duplication of efforts?

⁴ <https://www.montgomerycountymd.gov/silverspring/boardscommittees/uac/index.html>

The Economic Impact Statement anticipates Bill 3-21 would result in positive net economic impacts on businesses and residents of the district, but the costs and benefits would be unevenly distributed among stakeholders. OLO also noted that the economic benefits would be dependent on the resolution of other issues raised by the Bill. See ©26-39.

The Racial Equity and Social Justice Impact Statement anticipates a possible negative impact on racial equity and social justice. First, the initial application forming the basis of the OLO review excluded certain properties located in Fenton Village where 80% of the business owners are people of color. The updated application appears to now include these properties. OLO also noted that the BID would be mostly governed by large business owners instead of the broad group of stakeholders helping to operate the Urban District. See ©20-25.

The County Attorney's Office (OCA) did not find any legal impediments to the enactment of Bill 3-21. The OCA provided an opinion that the board of directors for the district corporation would be subject to the Open Meetings Act and that the corporation would likely be subject to the Maryland Public Information Act. The OCA also concluded that the County Ethics Law and the Maryland Local Government Tort Claims Act would not apply. Finally, the OCA recommended an amendment to reflect the current Charter § 305 limit on property tax rates. See ©40-47.

This packet contains:	<u>Circle #</u>
Bill 3-21	1
Legislative Request Report	17
Riemer and Hucker Memorandum	18
Racial Equity and Social Justice Impact statement	20
Economic Impact statement	26
County Attorney Bill Review Memorandum	40

\\Ccl-App01.Mcgov.Org\\I\DEPT\Central_Staff\LAW\BILLS\2103 Business Improvement District - Silver Spring\PH Memo.Docx

Bill No. 3-21
Concerning: Special Taxing Area Laws –
Silver Spring Business Improvement
District – Established
Revised: 1/21/2021 Draft No. 8
Introduced: January 12, 2021
Expires: July 12, 2022
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmember Riemer and Council President Hucker
Co-Sponsors: Councilmembers Friedson, Katz, Navarro and Rice

AN ACT to:

- (1) establish a business improvement district in Silver Spring;
- (2) establish guidelines for the District and authorize a district corporation to manage the District;
- (3) authorize a tax on nonexempt property located in the District to finance the operations of the district corporation; and
- (4) generally amend the laws governing a business improvement district in Silver Spring.

By adding

Montgomery County Code
Chapter 62, Silver Spring Business Improvement District
Sections 62-1, 62-2, 62-3, 62-4, 62-5, 62-6, 62-7, 62-8, and 62-9

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

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

1 **Sec. 1. Sections 62-1, 62-2, 62-3, 62-4, 62-5, 62-6, 62-7, 62-8, and 62-9 are**
 2 **added as follows:**

3 **Chapter 62. [Reserved] Silver Spring Business Improvement District.**

4 **62-1. Definitions. As used in this Chapter:**

5 Board means the board of directors of the Silver Spring Business Improvement
 6 District corporation.

7 Commercial tenant means a lessee or other lawful occupant, other than the
 8 owner, of nonexempt property within the District.

9 Condominium means property subject to a condominium regime as stated in
 10 §11-101 of the Real Property Article of the Annotated Code of Maryland.

11 Cooperative housing corporation means a corporation where each stockholder
 12 or member, by virtue of such ownership or membership, has a cooperative
 13 interest in the corporation as defined in §5-6B-01 of the Corporations and
 14 Associations Article of the Annotated Code of Maryland.

15 Department means the Department of Transportation or another County
 16 department or office designated by the Executive to perform functions under
 17 this Chapter.

18 District means the Silver Spring Business Improvement District established
 19 under this Chapter and covering the geographic area of the County described in
 20 Section 62-2.

21 District corporation means the Downtown Silver Spring Business Improvement
 22 District, Inc. which was formed to operate the Silver Spring Business
 23 Improvement District in accordance with this Chapter.

24 Homeowners association means an incorporated or unincorporated association
 25 with the authority to enforce the provisions of a declaration imposing a
 26 mandatory fee for the benefit of some or all of the lots in a development as
 27 defined in §11B-101 of the Real Property Article.

Maintaining streetscape amenities means cleaning, repairing rehabilitating, or replacing streetscape amenities.

Maintaining the streetscape includes cleaning sidewalks, driveways, streets, and other public areas; collecting trash; and caring for trees and other plantings. Maintaining the streetscape includes streetscaping of the medians and street sweeping but does not include maintaining the road or the curbs.

Members of the district means the owners of nonexempt property in the District.

Nonexempt property means all real property in the District that is not exempt from paying real property taxes except a:

(1) condominium unit or cooperative housing corporation unit that exists on or before the date this law takes effect;

(2) homeowner's association; and

(3) residential property with fewer than 4 dwelling units.

Streetscape amenity includes such items as bulletin boards and electronic displays; communication systems; containers for growing things; fountains and pools; drinking fountains; functional and decorative lighting; outdoor seating; restrooms; seating and other street furniture; shelters for pedestrians and persons using public transportation; non-standard paving; sidewalks; trees and other plantings; trash containers; vending booths and kiosks; works of art; any outdoor item that an optional method developer agreed to install and maintain as a condition of site plan approval; and other items of a similar character or purpose.

62-2. Silver Spring Business Improvement District – Established.

(a) Findings. The Council, after receiving an application to establish a district corporation and conducting a public hearing on the application, as required by §§12-608 and 12-609 of the Economic Development Article of the Annotated Code of Maryland, finds that a business improvement district would promote the general welfare of the residents, employers,

employees, property owners, commercial tenants, consumers and the general public within the downtown area of Silver Spring.

(b) Established. The Silver Spring Business Improvement District is established pursuant to §§12-601 to 12-612 of the Economic Development Article of the Annotated Code of Maryland.

(c) Boundary. The Silver Spring Business Improvement District includes all land in the thirteenth election district of the County within the area described as follows:

(1) beginning at a point on the Maryland-District of Columbia boundary line at the intersection of the west right-of-way of Georgia Avenue with the Maryland-District of Columbia boundary line, and running in a northwesterly direction along the Maryland-District of Columbia boundary line, and crossing Sixteenth Street along an extension of that boundary line to its intersection with the west right-of-way line of Sixteenth Street;

(2) then in a northerly direction along the west right-of-way line of Sixteenth Street, crossing East-West Highway to its intersection with a southwesterly extension of the northerly right-of-way line of Spring Street;

(3) then in a northeasterly direction along that extension crossing Sixteenth Street to its intersection with the east right-of-way line of Sixteenth Street;

(4) then in a northeasterly direction along the northern right-of-way line of Spring Street, crossing Second Avenue, First Avenue, Georgia Avenue, and Alton Parkway, then continuing southeasterly crossing Fairview Road and Cameron Street, to its intersection with Colesville Road;

- (5) then in a southeastern direction along the extension of the northeastern boundary of Spring Street across Colesville Road, crossing Roeder Road and across its intersection with Ellsworth Drive;
- (6) then in a southwesterly direction along the southeast right-of-way line of Cedar Street;
- (7) then in a southeasterly direction along the northeast right-of-way line of Cedar Street, crossing Wayne Avenue, to its intersection with the southeast right-of-way line of Wayne Avenue;
- (8) then in a southwesterly direction along the southeast right-of-way line of Wayne Avenue to its intersection with Fenton Street;
- (9) then in a southern direction along the eastern right-of-way of Fenton Street crossing Bonifant Street, Easley Street, Thayer Avenue, and Silver Spring Avenue, Sligo Avenue, to its intersection with Gist Avenue;
- (10) then in a southern direction along the extension of the eastern right-of-way of Fenton Street crossing Gist Avenue to the extension of its intersection with the south right-of-way line of Gist Avenue;
- (11) then in a western direction along the extension of the south right-of-way of Gist Avenue crossing Fenton Street to its intersection with the west right-of-way line of Fenton Street;
- (12) then in a western direction approximately 260 feet to the extension of the northeast corner of Lot 44, Block C-1, Blair, as shown in Plat No. 23916, recorded November 20, 2008, among the land records of Montgomery County, Maryland;
- (13) then in a south and southwesterly direction along the east line of Lot 44, as shown in Plat No. 23916, recorded November 20, 2008,

among the land records of Montgomery County, Maryland, to the northeast right-of-way line of Philadelphia Avenue;

(14) then crossing Philadelphia Avenue to the intersection of the southwestern right-of-way line of Philadelphia Avenue and the east corner of Lot 58, Block H, Blair Section One, as shown in Plat No. 7074, recorded June 20, 1963, among the land records of Montgomery County, Maryland;

(15) then in a southwesterly direction along the lot line, which is the southeast line of Lot 58, Block H Blair section One as shown in Plat No. 7974, recorded June, 20, 1963, among the land records of Montgomery County, Maryland, to its intersection with the northeast lot line of Lot 34, Block H, Blair as shown in Plat No. 229, recorded June, 7, 1922, among the land records of Montgomery County, Maryland;

(16) then in a northwesterly direction along the northeast property line of Lot 34 to its intersection with the common lot line, which is the east line of Lot 35 and the west lot line of Lot 34, Block H, Blair, as shown in Plat 229, recorded June 7, 1922, among the land records of Montgomery County, Maryland;

(17) then in a southwesterly direction along the common line of Lot 35 and Lot 34, Block H, as shown in, Plat 229, recorded June 7, 1922, among the land records of Montgomery County, Maryland, to the intersection of the northeast right-of-way line of Selim Road;

(18) then in a southeasterly direction along the northeastern right-of-way line of Selim Road to its intersection with the northern right-of-way line of Burlington Avenue;

(19) then in a southwesterly direction along the extension of the northern right-of-way line of Burlington Avenue crossing Selim Avenue;

(20) then in a southwesterly direction along the northern right-of-way of Burlington Avenue to its intersection with the east right-of-way of Georgia Avenue;

(21) then in a western direction crossing Georgia Avenue to the western right-of-way;

(22) then in a southerly direction along the western right-of-way of Georgia Avenue to the point of beginning; and

(23) any lot that is partially within and partially outside of the areas under paragraphs (1) through (22).

62-3. District Corporation.

(a) *Establishment.* The owners of nonexempt property in the District established a district corporation called the Downtown Silver Spring Business Improvement District, Inc. located at 8757 Georgia Avenue, Silver Spring, MD 20910, and applied to the County to manage the District. The application included:

(1) a statement setting forth:

(A) the proposed name and address of the district corporation;
and

(B) the street address of each owner of nonexempt property within the District;

(2) a statement expressing the intent to establish a district corporation that is signed by:

(A) owners of at least 51% interest in the assessed value of the nonexempt property and, subject to subsection (b) of this

section, a designated board member of a condominium or cooperative housing corporation within the proposed district; and

(B) owners of at least 51% of the total number of parcels of nonexempt property and, subject to subsection (b) of this section, a designated board member of a condominium or cooperative housing corporation within the District;

(3) a proposed 3-year business plan that contains:

(A) the goals and objectives of the District;

(B) the annual proposed business improvement district tax for the proposed district's common operations and the formula used to determine each member's district tax; and

(C) the maximum amount and the nature of start-up costs incurred before the District's establishment;

(4) a tax assessor's map of the geographic area of the District;

(5) a list of the proposed initial board of the proposed district corporation;

(6) the proposed articles of incorporation and the bylaws of the district corporation; and

(7) for all nonexempt property within the District:

(A) the name and mailing address of each owner; and

(B) the most recent assessed value.

(b) *Condominiums or cooperative housing corporation may petition.*

(1) Notwithstanding any other provision of this Chapter, subject to paragraph (2) of this subsection, a condominium or cooperative housing corporation that is located in the District may petition to join the district corporation.

(2) A condominium or cooperative housing corporation described under paragraph (1) of this subsection may petition to join the District only if:

(A) the condominium or cooperative housing corporation is governed by a board;

(B) the board votes to join the district corporation; and

(C) the board has a representative member of the board sign the appropriate documents required under subsection (b)(2) of this section.

(3) For the purposes of the votes cast under subsection (b)(2) of this section:

(A) a condominium or cooperative housing corporation shall be considered a single parcel; and

(B) the decision reached by the board shall constitute the vote of the condominium or cooperative housing corporation.

62-4. Board of directors.

(a) *In general.* A board of directors must govern the district corporation.

(b) *Membership.*

(1) Subject to paragraph (2) of this subsection, the board of a district corporation consists of at least five members, but no more than nine members, appointed by the members of the District.

(2) Appointment procedures.

(A) Until the first meeting of the board of directors, the entire board must consist of the 8 directors constituting the initial board of directors, as set forth in the district corporation's articles of incorporation. Thereafter, the entire board must be comprised of such number of directors that may be

specified by resolution of the board. The directors must be classified by the time the directors hold office by dividing them into three classes, each of which shall contain the same number of directors (if necessary, one (1) class may contain one (1) more or one (1) less director than the other two (2) classes). After the initial members, the directors must be elected by the members.

(B) The first election of directors by the members must be held within 120 days after the date this law takes effect. Subsequent elections must be held annually as provided in subparagraph C.

(C) The board must appoint a nominating committee, which must nominate a slate of candidates for each annual election. Members may nominate additional candidates at the meeting called for the purpose of electing directors. Members and persons other than members are eligible to become directors. Only directors may serve on a committee.

(i) Prior to the first election of directors, the nominating committee must nominate three slates of candidates: one slate to serve as the first class of directors for the term of 3 years; one slate to serve as the second class of directors for the term of 2 years and one slate to serve as the third class of directors for the term of 1 year. At the first election of directors, the members must hold a separate election to elect each class of directors.

(ii) At each annual election of directors thereafter, the successors to the class of directors whose term expires that year must be elected for the term of 3 years, so that the term of office of one class of directors expires in each year.

(iii) For each election of directors, each member may cast no more than their total number of votes for any one candidate. Directors must not be elected through cumulative voting.

(iv) Each director elected by the members must serve until his or her successor is elected, or until his or her earlier death, resignation or removal in accordance with the district's bylaws.

(c) Chair; officers. From among its members, the board must elect a chair and other officers.

(d) Quorum.

(1) A majority of the voting members of the board is a quorum.

(2) The board may act on a resolution only by the affirmative vote of a majority of the voting members.

(e) Compensation; reimbursement for expenses. A member of the board:

(1) must not receive compensation as a member of the board; but

(2) may be reimbursed for expenses incurred in performing the member's duties.

(f) Powers. The board must exercise its powers by resolution.

(g) Annual report. The board must file an annual report with the Executive and the Council that includes:

(1) a financial statement for the preceding year;

- (2) a proposed operating budget for the current fiscal year;
- (3) any proposed revisions to the business plan; and
- (4) a narrative statement or chart showing the results of operations in comparison to stated goals and objectives.

62-5. District corporation net earnings; powers.

(a) Earnings. The net earnings of the district corporation must benefit only the district corporation.

(b) Powers.

(1) Except as limited by its articles of incorporation, the district corporation has all the powers set forth in §§12-601 to 12-612 of the Economic Development Article of the Annotated Code of Maryland and this Chapter.

(2) A district corporation may:

(A) receive money from the County, the State, other governmental units, or nonprofit organizations;

(B) charge fees for its services;

(C) have employees and consultants as it considers necessary; and

(D) use the services of other governmental units.

(c) Use of powers. A district corporation must operate and exercise its powers solely to accomplish one or more of the legislative purposes of §§12-601 to 12-612 of the Economic Development Article of the Annotated Code of Maryland and this Chapter.

62-6. Funding.

(a) Preliminary business improvement district tax roll. Within 10 days after the effective date of this law, the district corporation must provide the

Executive and Council with a preliminary business improvement district tax roll.

(b) Imposition of business improvement district tax.

(1) The Council must impose a business improvement district tax to provide funds for the operation of the District.

(2) The Council must impose on members of the District the district tax at a rate specified by the board and approved by the Council.

(3) The tax imposed under this subsection must not count against the limits on property tax revenue in Section 305 of the County Charter.

(c) Collection. The district tax must be collected in the same manner as real property taxes are collected and distributed each quarter to the District.

(d) Reimbursement for collection costs. The district corporation must reimburse the County for the costs incurred in collecting the district tax.

(e) Parking Lot District fees.

(1) The Council may transfer revenue from parking fees to the district corporation received from the fees that are collected in the District.

(2) The amount of revenue from parking fees transferred to the district corporation must not exceed the amount calculated by multiplying:

(A) the number of parking spaces in the District by

(B) the number of enforcement hours per year by

(C) 20 cents.

62-7. District corporation duties.

(a) In general. The district corporation must provide public services and facilities in the District that are:

(1) primarily of benefit to the property and persons within the District rather than to the County as a whole; and

(2) in addition to services and facilities that the County provides generally.

(b) Services. The district corporation must provide services that include:

(1) maintaining the streetscape and streetscape amenities on:

(A) public rights-of-way; and

(B) any property that is used by the general public;

(2) promoting and programming public interest activities that benefit both residential and commercial interests of the District (and which may incidentally benefit neighboring communities);

(3) providing additional streetscape amenities and facade improvements; and

(4) monitoring activities to enhance the safety and security of persons and property in public areas of the District.

(c) Allocation of duties. The Department is not responsible for streetscaping of the medians and street sweeping inside the curbs in the District. The Department is responsible for other maintenance inside, and including, the curbs. Outside of the curbs, the Department is only responsible for repair of standard concrete sidewalks. The district corporation is responsible for brick or other non-standard sidewalk maintenance. This allocation of functions may be altered by written agreement between the Department and the district corporation.

(d) Insurance. The district corporation must secure reasonable and appropriate insurance for its activities

62-8. Expansion of the District.

(a) Expansion by the District. The District may expand the geographic area of the District if:

(1) a petition for inclusion is submitted from:

(A) owners of at least 51% interest in the assessed value of the nonexempt property and, subject to subsection (b) of this section, a designated board member of a condominium or cooperative housing corporation proposed for inclusion in the district; and

(B) owners of at least 51% of the total number of parcels of nonexempt property and, subject to subsection (b) of this section, a designated board member of a condominium or cooperative housing corporation proposed for inclusion in the district;

(2) the petition under paragraph (1) of this subsection is accepted by a majority vote of the board of the district corporation; and

(3) the appropriate documents, as applicable, are submitted under §12-608 of the Economic Development Article of the Annotated Code of Maryland and a hearing is held under §12-609 of the Economic Development Article.

(b) *Expansion by condominium or cooperative housing corporation.*

(1) Notwithstanding any other provision of this title and subject to paragraph (2) of this subsection, a condominium or cooperative housing corporation that is in the proposed expanded geographic area of the District may petition to join the expansion.

(2) A condominium or cooperative housing corporation described under paragraph (1) of this subsection may petition to join the expansion only if:

(A) the condominium or cooperative housing corporation is governed by a board;

(B) the board votes to join the district corporation; and

(C) the board has a representative member of the board sign the appropriate documents required under §12-608 of the Economic Development Article.

(3) For the purposes of the votes cast under subsection (a)(1):

(A) a condominium or cooperative housing corporation must be considered a single parcel; and

(B) the decision reached by the board must constitute the vote of the condominium or cooperative housing corporation.

62-9. Review and evaluation of the District.

(a) Review; development of procedures for evaluation. The Executive must:

(1) review the effectiveness and desirability of continuing the district every 3 years beginning from the time this Act takes effect;

(2) develop by method 2 regulation policies and procedures for evaluating the desirability of continuing the District; and

(3) recommend to the Council whether the District should continue.

(b) Effect of disapproval. If the Council adopts a resolution disapproving of the continuing existence of the District:

(1) the District must cease to exist as directed by the Council; and

(2) the district corporation must continue its existence only as long as necessary to terminate operation in a reasonable manner.

LEGISLATIVE REQUEST REPORT

Bill 3-21

Special Taxing Area Laws – Silver Spring Business Improvement District – Established

DESCRIPTION:	Bill 3-21 would: <ul style="list-style-type: none">• establish a business improvement district in Silver Spring;• establish guidelines for the District and authorize a district corporation to manage the District; and• authorize a tax on nonexempt property located in the District to finance the operations of the district corporation.
PROBLEM:	Property owners in Silver Spring are planning to apply for the establishment of a business improvement district.
GOALS AND OBJECTIVES:	Improve public services and facilities within the Silver Spring Urban District.
COORDINATION:	Regional Service Center, Finance
FISCAL IMPACT:	To be provided
ECONOMIC IMPACT:	To be provided
EVALUATION:	To be provided
EXPERIENCE ELSEWHERE:	To be researched
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	N/A
PENALTIES:	N/A



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

MEMORANDUM

To: Montgomery County Council

From: At-Large Councilmember Hans Riemer and Council President Tom Hucker

Date: December 7, 2021

Re: Silver Spring Business Improvement District (BID)

For years, we have worked hard to create dynamic urban centers across the County that can compete with other destinations in our region such as Alexandria, Arlington, downtown DC and Tysons Corner. Over the last two decades, Silver Spring has become a desirable place to live, locate a business, and enjoy entertainment. However, Silver Spring continues to face serious competition from neighboring jurisdictions and requires additional resources and support in order to address quality of life challenges and improve public service delivery in ways that keep residents happy and attract visitors. For that reason, we are introducing Bill 3-21 to establish the Silver Spring Business Improvement District to enhance the work of the Urban District and our Regional Services Center to create a thriving and economically competitive Silver Spring.

In an effort to provide a greater level of service, the Silver Spring BID will provide concerted coordination and services that are needed to make the area safer, especially at night, and to ensure visitors, residents, and businesses have a positive experience in Silver Spring. Beyond focusing on the immediate needs of ensuring that the area is clean, safe, and well-maintained, the BID will also focus on sustaining a vision of the area that is vibrant, dynamic and inclusive, paying particular attention to consumer and investor marketing. That includes:

- Promoting downtown Silver Spring as one of metropolitan Washington's most dynamic, diverse and livable urban centers, competitively positioned to attract new investment and recognition for its vibrant shopping, dining, entertainment, and living opportunities;
- Fostering an engaged community committed to showcasing Silver Spring's assets and realizing its potential;

- Nurturing and maintaining relationships with key business, real estate, development, nonprofit and community stakeholders by providing Silver Spring resources and information;
- Establishing a management program, which will allow the BID to engage with county agencies to ensure that the area receives the highest level of attention for its basic services, concerns, and community priorities;
- Establishing a public safety program to keep the downtown area safe. This program will ensure the BID staff remain in constant communication with the Montgomery County Police Department, other public agencies, businesses, and property owners;
- Increasing sales and occupancy; and
- Improving the perception of the area both for consumers and investors.

Silver Spring is one of the premiere destinations in the County, but it has yet to reach its tremendous potential. The BID will elevate Silver Spring by serving as a complementary partner with the Urban District by assisting with placemaking and focusing on branding and economic development.

Equally important, the proponents of the BID have collected signatures of support from over half of the property owners within the proposed BID boundaries, meeting requirements in state law to establish a BID. They have also met with and engaged numerous stakeholders, community leaders and large and small business owners, who have asked us to introduce local legislation to establish the BID as per the state law.

Ultimately, we believe this will be an important step toward unlocking the tremendous potential of Silver Spring and allowing it to better compete with other attractive regional urban centers, many of which have successful BIDs in place. We greatly appreciate your consideration of this legislation; we welcome your suggestions and look forward to discussing it further.

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 3-21: SPECIAL TAXING AREA LAWS- SILVER SPRING BUSINESS IMPROVEMENT DISTRICT- ESTABLISH

SUMMARY

The Office of Legislative Oversight (OLO) expects Bill 3-21 to *possibly* have a negative impact on racial equity and social justice depending on the impact of the proposed Silver Spring Business Improvement District on small businesses owned by entrepreneurs of color and located within the Silver Spring Urban District.

BACKGROUND

On January 12, 2021, the Council introduced Bill 3-21 in response to an application submitted by local property owners in Downtown Silver Spring to establish a privately run, business improvement district (SS BID) to manage their enhanced services.¹ The application from local property owners excludes property owners and business located in Fenton Village. As such, the SS BID would serve 171 of the 212 businesses served by the Silver Spring Urban District.²

Of note, the Silver Spring Urban District (SSUD) is a County-operated entity that provides enhanced public services to the Central Business district in Downtown Silver Spring.³ It seeks to maintain “a clean, safe and attractive environment to promote a vibrant social and business climate to support long-term economic viability and vitality.”⁴ SSUD services include: ambassadorship (“Red shirts”), security, streetscape maintenance, marketing, and special events.⁵ The SSUD also provides social services to assist homeless and other vulnerable populations in Downtown Silver Spring.⁶ The Silver Spring Parking Lot District serves as the primary source of revenue for SSUD followed by special tax revenue and fees from Downtown Silver Spring businesses and County revenue from the General Fund.⁷

Bill 3-21 seeks to form a business improvement district for a subset of the businesses included in the SSUD to deliver services aimed at promoting the economic growth of Downtown Silver Spring.⁸ Several of the functions proposed for the SS BID overlap with the services delivered by the SSUD. As noted by the International Downtown Association, business improvement districts generally have three key features:⁹

- **They create public districts.** Business improvement districts (BID) are publicly-authorized by governments under enabling statutes. As public districts, they rely on public funding that can include mandatory fees levied by the government on businesses and/or patrons on behalf of the BID.
- **They are managed by non-profits.** Government-collected revenues are administered by a nonprofit, which often has substantial authority to decide the level of funding, how funds will be expended, and the level of services provided. A non-profit's authority may be limited by federal, state and local law.
- **They perform three designated functions** - cleaning, security and marketing.

RESJ Impact Statement

Bill 3-21

Of note, the SSUD operates as a public district that delivers cleaning, security and marketing services for Downtown Silver Spring. OLO Report 2015-7, Case Studies of Local Business and Community Districts, also finds that BIDs can offer additional services to promote the economic development of urban cores that can include public space management, social services and business recruitment.¹⁰ The SSUD currently offers public space management services and social services for homeless persons and other vulnerable populations.

Bill 3-21 seeks to create a Silver Spring business improvement district that will deliver three sets of services: cleaning (place management), public space management, and marketing (place branding).¹¹ It remains unclear what consequence the development of a SS BID may have on the SSUD. While the functions of the SS BID directly overlap with the SSUD, the SS BID does not indicate that it will deliver two sets of services currently offered by the SSUD: security and social services. The SS BID proposal also excludes one business area included in the SSUD: Fenton Village.

Altogether, Bill 3-21 would make the following modifications to County Law:¹²

- Establish a business improvement district in Silver Spring;
- Establish guidelines for the District and authorize a district corporation to manage the District;
- Authorize a tax on nonexempt property located in the District to finance the operations of the district corporation; and
- Generally amend the laws governing a business improvement district in Silver Spring.

ANALYSIS OF DEMOGRAPHIC DATA

Understanding the impact of Bill 3-21 on racial equity and social justice requires a review and analysis of available data disaggregated by race and ethnicity on the following:

- Businesses that will participate in the SS BID
- The stakeholders that will govern SS BID operations

If the SS BID will replace the SSUD, then comparing the changes in participating businesses, governance, and staffing from the shift from the SSUD to the SS BID is warranted. It remains unclear, however, whether the creation of a SS BID will necessitate the elimination of the SSUD. It seems plausible that the creation of the SS BID will reduce the scope of the SSUD, particularly since the SS BID would rely on some funding sources currently used to fund the SSUD (e.g. parking lot district revenue). Given the uncertainty of how the SS BID would impact the SSUD, this section offers an analysis of available demographic data to consider two questions:

- What is the potential impact of Bill 3-21 on RESJ in the County if the SS BID replaces the SSUD?
- What is the potential impact of Bill 3-21 on RESJ in the County if the SS BID is offered in addition to the SSUD?

Participating Businesses. If the SS BID replaces the SSUD, this could reduce racial equity and social justice in the County because Fenton Village businesses could lose essential services currently offered by the SSUD. The SS BID, as proposed, carves out a portion of Fenton Village properties from that are currently serviced by the SSUD.¹³ Business owners of color (Black, Latinx, Asian, and Other) account for 80 percent of Fenton Village businesses¹⁴ whereas business owners of color accounted for about half of all businesses (with or without employees) in the County in 2012.¹⁵

(21)

RESJ Impact Statement

Bill 3-21

Alternatively, if the SS BID does not replace the SSUD, the impact of Bill 3-21 on business owners of color would depend on the racial and ethnic makeup of the firms served by the SS BID, their size in terms of sales and profits, and the affordability of increased special district taxes on their businesses participating in the SS BID. If businesses of color benefit from the additional services of the SS BID more than White-owned businesses, inequities among businesses by race and ethnicity could be narrowed. However, if White-owned businesses benefit more from the SS BID than businesses of color, inequities among businesses by race and ethnicity would widen, undermining racial equity and social justice in the County.

Public District Governance. If the SS BID replaces the SSUD, this could reduce racial equity and social justice in the County by shifting the governance of the public district for Downtown Silver Spring from a broad group whose representatives include stakeholders representing residents to a narrower group that only includes property and business owners.¹⁶ All eight members of the proposed board of directors for the SS BID would represent commercial property and business owners.¹⁷ Bill 3-21 also grants board members with greater property tax assets more voting power than their peers who have fewer property tax assets (e.g. smaller businesses and property owners).

The exclusion of residents from the SS BID board, and the concentration of voting power for board members with the largest assets, shifts the power of public district decision-making from a stakeholder group representing diverse culture and income backgrounds to a stakeholder group that predominantly represents the interests of medium and large businesses. Granting greater voting power to board members with larger businesses also shifts decision-making power from People of Color-owned businesses to White-owned businesses as the latter on average are larger than the former.

For example, available data on local business owners finds that: Black, Latinx, Asian, and Other person-owned firms accounted for half of all Montgomery County businesses in 2012, but only 8 percent of total sales in the County.¹⁸ The racial and ethnic gap in business ownership versus sales is driven in part by the significant difference in the size of firms by race and ethnicity. In 2012, White firms averaged over \$2 million in annual sales compared to \$286,000 for Asian-owned firms, \$110,000 for Black-owned firms, and \$96,000 for Latinx-owned firms.¹⁹

If the SS BID does not replace the SSUD, the consequences of the proposed governance structure of the SS BID on racial equity and social justice in the County is less severe, but still potentially problematic as there will be competing urban business districts with overlapping missions and with different lines of authority and community representation. With two entities offering similar services, it will be difficult for business owners and the public at large to hold either entity accountable for services.

ANTICIPATED RESJ IMPACTS

The analysis of available data suggests that if the SS BID proposed under Bill 3-21 replaces the SSUD, it could reduce:

- Urban district services for Fenton Village businesses where business owned by People of Color account for 80 percent of local businesses; and
- Opportunities for community and small business input on County-funded operations.

As such, OLO anticipates that if Bill 3-21 eliminates the SSUD, it could negatively impact racial equity and social justice in the County. If Bill 3-21 does not eliminate the SSUD or diminish urban district services for Fenton Village businesses, the potentially negative impact of Bill 3-21 on racial equity and social justice may be tempered.

(22)

RESJ Impact Statement

Bill 3-21

Nevertheless, OLO still anticipates a net negative consequence of Bill 3-21 on racial equity and social justice in the County as the SS BID is primarily designed to benefit larger businesses in the Silver Spring urban core. Available data suggests that White entrepreneurs primarily own such businesses. If the SS BID works as intended and promotes economic development primarily for larger business and property owners, this intended outcome could widen the gap in business receipts by race and ethnicity in Montgomery County whether the SSUD continues or not.

METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

This RESJ impact statement and OLO's analysis rely on several information sources, including Census data, OLO Reports, the Silver Spring BID application, the Montgomery County Government Operating Budget, and County Council packets. OLO also reviewed several sources to understand trends and disparities in business ownership by race and ethnicity locally and nationally. These include:

- Minority-owned businesses – COVID-19 Recovery Outlook, Office of Legislative Oversight²⁰
- Racial Equity Profile, Montgomery County, Office of Legislative Oversight
- Brookings: Coronavirus economic relief cannot neglect Black-owned business²¹
- Bridging the Wealth Gap, Small Business Growth, The United States Conference of Mayors and the Council on Metro Economies and the New American City²²
- A Blueprint for Revamping the Minority Business Development Agency, Center for American Progress²³

OLO also spoke with stakeholders and visited the websites of Montgomery County Economic Development Corporation for information and the websites of several entrepreneurs of color groups that include the Hispanic Chamber of Commerce for Montgomery County and the Maryland Black Chamber of Commerce.²⁴

RECOMMENDED AMENDMENTS

The County's Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequalities are warranted in developing RESJ impact statements.²⁵ Based on requests made by the Urban District Advisory Committee,²⁶ and the RESJ review of Bill 3-21, this statement offers three considerations for recommended amendments to Bill 3-21 as follows:

- Seek the support and inclusion of Fenton Village businesses in the SS BID in case the SSUD is disbanded so that they do not lose access to the urban district services that they currently receive;
- Add community participation requirements to the BID board that replicate the broad-representation of 11 member SSUD Advisory Committee that includes citizens, residents and small and large business owners;
- If the SSUD is disbanded, require the SS BID to offer social services, including funding the crisis intervention team to assist with homeless and other vulnerable individuals. If this is determined to be beyond the scope of the SS BID, the County should reserve revenue from the SSUD to fund the provision of such services via the Department of Health and Human Services directly and through contracts with community-based providers.

(23)

RESJ Impact Statement

Bill 3-21

OLO also notes that Bill 3-21 remains silent on the need to increase economic development opportunities for business and property owners of color within Downtown Silver Spring or the County at large. If the Council decides to propose legislation aimed at narrowing inequities among businesses by race and ethnicity, OLO encourages the Council to work in partnership with Black and Latinx business owners, the Montgomery County Economic Development Corporation, and other key stakeholders and to consider enacting best practices for assisting entrepreneurs of color. These may include:²⁷

- Collecting and analyzing data on local business disparities by race and ethnicity, including data collected by financial institutions required under the Dodd-Frank Act.
- Improving access to properly structured credit opportunities for entrepreneurs of color.
- Helping entrepreneurs of color access credit and other services particularly among institutions with a history of supporting minority-owned business, such as Community Development Financial Institutions and credit unions.
- Improving programs aimed at enabling entrepreneurs of color to access and succeed at securing contracting opportunities.
- Expanding funding for targeted business development assistance for growth-oriented minority firms.
- Considering short-term strategies for forgiving or reducing the student debt of entrepreneurs that create new firms.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO staffer Dr. Theo Holt, RESJ Performance management and Data Analyst, drafted this RESJ statement with assistance from Dr. Elaine Bonner-Tompkins, OLO Senior Legislative Analyst.

¹ Montgomery County Council, Bill 3-21, Special Taxing Area Laws- Silver Spring Business Improvement District- Establish, Introduced January 12, 2021, Montgomery County, Maryland.

² Ibid

³ Silver Spring Urban District <https://www.silverspringdowntown.com/go/silver-spring-urban-district>

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ Urban Districts, Recommended FY21 Budget, Montgomery County, Maryland; Gene Smith, FY20 Operating Budget: Urban Districts, Memorandum to Montgomery County Council Planning, Housing and Economic Development Committee, May 1, 2019 https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2019/20190503/20190503_PHED1.pdf

⁸ Bill 3-21

⁹ Craig Howard and Stephanie Bryant, Case Studies of Local Business and Community Districts, February 2015, Office of Legislative Oversight, Montgomery County Maryland. https://www.montgomerycountymd.gov/OLO/Resources/Files/2015_Reports/OLO_Report_2015-7.pdf

RESJ Impact Statement

Bill 3-21

¹⁰ Ibid

¹¹ Downtown Silver Spring Business Improvement District Application

¹² Ibid

¹³ Montgomery County, Maryland, BID vs. Urban District Map. [file:///C:/Users/Downloads/BID_vs_UD_boundaries%20\(1\).pdf](file:///C:/Users/Downloads/BID_vs_UD_boundaries%20(1).pdf)

¹⁴ Fenton Village Survey, Fenton Village Inc. Unpublished document and Downtown Silver Spring Business Improvement District Application.

¹⁵ Jupiter Independent Research Group, Racial Equity Profile Montgomery County, July 2019, Office of Legislative Oversight, Montgomery County, Maryland.

¹⁶ Downtown Silver Spring Business Improvement District Application and Silver Spring Regional Service Center, Silver Spring Urban District, Montgomery County, Maryland <https://www.montgomerycountymd.gov/silverspring/boardscommittees/uac/index.html>

¹⁷ Fenton Village Survey

¹⁸ Racial Equity Profile Montgomery County

¹⁹ Ibid.

²⁰ "COVID-19 Recovery Outlook: minority Businesses"

²¹ Andre M. Perry and David Harshbarger, "Coronavirus economic relief cannot neglect Black-owned business," The Brookings Institution, April 2020. <https://www.brookings.edu/blog/the-avenue/2020/04/08/coronavirus-economic-relief-cannot-neglect-black-owned-business/>.

²² "Bridging the Wealth Gap"

²³ "A Blueprint for Revamping the Minority Business Development Agency"

²⁴ MCEDC, "Montgomery County Economic Development Corporation," <https://thinkmoco.com/>. Hispanic Chamber of Commerce, <https://hccmc.org/>. Maryland Black Chamber of Commerce, <https://www.marylandbcc.org/>.

²⁵ Montgomery County Council, Bill No. 27-19 Racial Equity and Social Justice, Montgomery County, MD.

²⁶ SSUD Advisory Committee, Letter for additional funding, Montgomery County, Maryland.

<https://www.montgomerycountymd.gov/silverspring/Resources/Files/pdfs/uac/062320SSUDACLetterFY21Budget.pdf>

²⁷ "Bridging the Divide: How Business Ownership Can Help Close the Racial Wealth Gap"

(25)

Economic Impact Statement

Office of Legislative Oversight

BILL 3-21

Special Taxing Area Laws – Silver Spring Business Improvement District – Established

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that by establishing the Silver Spring Business Improvement District (BID), Bill 3-21 would result in positive net economic impacts on businesses and residents in Silver Spring. However, it is likely that the costs and benefits of the Silver Spring BID would be unevenly distributed among stakeholders. Moreover, the magnitude of its economic impacts on businesses would depend on the resolution of outstanding questions related to the property tax implications of the bill, the future status of the Silver Spring Urban District, and the Silver Spring BID's boundaries, finances, governance structure, and working relationship with the County.

BACKGROUND

Bill Description

State law gives the Council the authority to establish a business improvement district (BID) in the County. According to state law, the purpose of BIDs are to “promote the general welfare of the residents, employers, employees, property owners, commercial tenants, consumers, and the general public within the geographic area of the business improvement districts.”¹ Property owners in Silver Spring have applied to establish a BID called the Downtown Silver Spring Business Improvement District, Inc. (hereinafter the “Silver Spring BID”).

In response to the application, the Council introduced Bill 3-21 on January 12, 2021. According to the lead sponsors of the bill, the purpose of the BID would be to enhance the work of the Silver Spring Urban District and Regional Services Center and to enhance the economic competitiveness of Silver Spring.² If enacted, Bill 3-21 would establish a BID in downtown Silver Spring.³ Its boundaries would largely, but not entirely, overlap the boundaries of the current Silver Spring Urban District. The bill would also establish guidelines for the BID and authorize a district corporation to manage the BID. To finance the operations of the district corporation, the bill would impose a tax on nonexempt property located within the BID and permit the County to provide additional funds to the BID, including a portion of the Silver Spring Parking Lot District revenues.

¹ MD Code, Economic Development, Section 12-602 quoted in Robert H. Drummer to Montgomery County Council, Memorandum, January 7, 2021, “Bill 3-21, Special Taxing Area Laws – Silver Spring Business Improvement District – Established.” See memo in Introduction Staff Report, https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2694_1_13171_Bill_3-2021_Introduction_20210112.pdf.

² At-Large Councilmember Hans Riemer and Council President Tom Hucker to Montgomery County Council, Memorandum, December 7, 2020, “Silver Spring Business Improvement District (BID).” See memo in Introduction Staff Report.

³ Montgomery County Council, Bill 3-21, Special Taxing Area Laws – Silver Spring Business Improvement District – Established, Introduced on January 12, 2021, Montgomery County, Maryland. See bill in Introduction Staff Report.

Economic Impact Statement

Office of Legislative Oversight

Brief Overview of BIDs

BIDs have been defined as “self-assessment districts that are initiated and governed by property or business owners and authorized by governments to operate in designated urban and suburban geographic areas.”⁴ The International Downtown Association has put forth a three-part definition:

1. **Public District:** A BID is publicly-authorized by a government that has passed enabling statutes permitting the formation of the BID and mandatory fees levied by the government on behalf of the BID.
2. **Administered by a Nonprofit:** Revenues are collected by the government and transferred to a nonprofit organization, which has substantial authority over the level of funding, how the funds will be used, and the level and nature of services it provides. The authority of the nonprofit is limited by federal, state, and local law.
3. **Performs Designated Functions.** BIDs perform services in the areas of cleaning, security, and marketing.⁵

BIDs are “quasi-governmental entities” that occupy the space between the public and private domains, functioning both as tools of service delivery and as participants in public policymaking. As described in one analysis, BIDs “serve simultaneously as policy tools through which state and local governments seek to advance general public interests and as self-help entities to further the more particular interests of local business communities.”⁶

Since 1970, more than 800 BIDs have been established in the United States and Canada. As shown in **Table 1**, there are currently 15 established BIDs in the District of Columbia and Northern Virginia, with five more being planned in the District. Researchers generally identify three factors to explain the rise of BIDs, namely the economic downturns in urban centers caused by the decline in manufacturing and increase in suburbanization in the 1980s and 1990s, the decrease in local government revenues from loss of jobs and residents, and the decrease in funds from the federal government to cities in the 1980s.⁷ These conditions encouraged policymakers and planners to search for new organizational solutions to the economic problems in urban centers. As evidenced by their steady increase across the United States over the last half century, BIDs have proven to be a popular, yet somewhat controversial, model of urban management for local leaders. Proponents of BIDs claim they are more innovative and efficient in their delivery of services within their domains than local governments.⁸ These purported advantages are due to their ability to identify the distinct needs of neighborhoods and bypass regulations placed on public sector agencies.⁹ However, BIDs have been criticized for giving undue influence to property owners, lacking accountability to elected governments, and causing inequalities.¹⁰

⁴ Göktuğ Morçöl, Lorraine Hoyt, Jack W. Meek, and Ulf Zimmerman, “Business Improvement Districts: Research, Theories, and Controversies,” in *Business Improvement Districts: Research, Theories, and Controversies*, ed. Göktuğ Morçöl, Lorraine Hoyt, Jack W. Meek, and Ulf Zimmerman (New York: CRC Press, 2008): 1-26.

⁵ See Craig Howard and Stephanie Bryant, *Case Studies of Local Business and Community Districts*, Office of Legislative Oversight, Report No. 2015-7, February 24, 2015, https://www.montgomerycountymd.gov/OLO/Resources/Files/2015_Reports/OLO%20Report%202015-7.pdf.

⁶ Jonathan B. Justice and Robert S. Goldsmith, “Private Governments or Public Policy Tools? The Law and Public Policy of New Jersey’s Special Improvement Districts,” in *Business Improvement Districts* (see note 4): 161-196.

⁷ Dan Ziebarth, “Business Improvement Districts and Contemporary Local Governance,” *State and Local Government Review*, October 2020; and Morçöl, et al, “Business Improvement Districts.”

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid. See also Lorraine Hoyt and Devika Gopal-Agge, “The Business Improvement District Model: A Balanced Review of Contemporary Debates,” *Geography Compass* 1, no. 4 (2007): 946-958.

Economic Impact Statement

Office of Legislative Oversight

There is a large body of research on BIDs that spans urban affairs, public policy, public administration, law, and other disciplines. While there appears to be no systematic reviews of the literature on BIDs,¹¹ the current state of research gives credence to claims from both proponents and critics of BIDs. As stated in a recent overview of the contemporary debates and research on BIDs:

“Overall, research to this point generally reflects that BIDs have the ability to augment public service delivery, reduce crime, and provide economic revitalization in urban communities, however these outcomes have the possibility of coming at the expense of reducing democratic accountability and transparency, limiting residents’ social capital, and contributing to economic inequality.”¹²

Table 1. Business Improvement Districts in the DC Metropolitan Region

District of Columbia	Northern Virginia
Georgetown	National Landing BID (previously Crystal City BID)
Adams Morgan	Ballston
Golden Triangle	Fairfax Boulevard
DowntownDC	
NoMa	
Capital Hill	
SouthWest	
Capitol Riverfront	
Anacostia	
Dupont Circle (new)	
Greater Brookland	
Congress Heights	
H Street	
Shaw	Existing BIDs
Midcity (U St and 14th St)	Potential BIDs

Source: Prince George’s County BID Toolkit, Planning Board Briefing, March 12, 2020.

The Silver Spring BID Proposal

As stated in its application, the Silver Spring BID’s mission is “to provide integrated services and programs that lead to a more vibrant, dynamic environment intended to help stimulate business and residential quality of life.” Some of its more concrete objectives are to:

- Increase business sales and residential and commercial occupancy;
- Retain and attract businesses, investment, and residents; and
- Improve safety and security.

¹¹ A systematic review has been defined as “a review of the evidence on a clearly formulated question that uses systematic and explicit methods to identify, select and critically appraise relevant primary research, and to extract and analyze data from the studies that are included in the review.” See <https://guides.temple.edu/c.php?g=78618&p=4178713>.

¹² Ziebarth, “Business Improvement Districts and Contemporary Local Governance.”

Economic Impact Statement

Office of Legislative Oversight

The application also provides preliminary details on the organization's structure, operating plans, and financing. The organizational structure would consist of the following components:

- **Members:** Owners of nonexempt property within the boundaries of the district.
- **Voting Parameters:** Members would have 1 vote per \$500 dollars of the tax on nonexempt property imposed by Bill 3-21 (hereinafter the "BID tax"). No member or any number of members under common control would be allotted more than 33.33% of the total number of votes that may be cast.
- **Board of Directors:** Elected by members, the board would include between five and nine members. It would be composed of property owners and business tenants. The board would purportedly "reflect a range of ethnicities, socioeconomic status, and places of origin to reflect the racial and economic diversity of Silver Spring, including religious creed, age and sex."

The operating plan would consist of three pillars:

- **Place Management:** Maintain and secure public spaces through "clean and safe" activities such as cleaning sidewalks, collecting trash, removing litter, and engaging the Montgomery County Police Department and other public agencies.
- **Place Enhancement:** Make public spaces more "vibrant" through initiatives like planting and landscaping services, installing bike racks and public art, and holding events and activities
- **Place Branding/Economic Development:** Market and promote Silver Spring as an attractive urban center for living, shopping, investment, business growth, etc.

In terms of financing, the Silver Spring BID would rely on a combination of private and public sources, with a total projected budget ranging between approximately \$3.5 and \$4 million. The application assumes that approximately one-third of the budget would be funded through the BID tax and two-thirds through County funds from the parking lot district. According to the budget projections, the total budget would be allocated to the following three categories:

- **Place Enhancement and Management:** Approximately 73% of the total budget
- **Marketing/Place Branding/Economic Development:** Approximately 15% of the total budget
- **Administration and Leadership:** Approximately 12% of the total budget

There is substantial variation in BIDs in terms of revenue sources and size, geographic footprint, governance structure, and other conditions.¹³ The Silver Spring BID falls within the subset of "large" (or "Corporate") BIDs. This class of BIDs are characterized by budgets exceeding \$1.5 million, an extensive array of services provided, large amounts of retail and office space, memberships consisting largely of corporate and commercial property owners, and other conditions.¹⁴ Researchers have distinguished large BIDs from their mid-size and small (sometimes called "community") counterparts.

While sharing similarities with large BIDs, a unique aspect of the Silver Spring BID proposal is that it is the only example to the OLO analyst's knowledge of a BID that would be established alongside a public entity that performs many of the same functions of BIDs. The Silver Spring Urban District currently provides a range services and events to maintain downtown Silver Spring as a "clean, safe and attractive environment" for residents and businesses.¹⁵ It is important to note that Bill

¹³ Bryant and Howard, *Case Studies of Local Business and Community Districts*.

¹⁴ Jill Simone Gross, "Business Improvement Districts in New York City's Low-Income and High-Income Neighborhoods," *Economic Development Quarterly* 19, no. 2 (May 2005): 174-189.

¹⁵ See <https://www.silverspringdowntown.com/go/silver-spring-urban-district>

Economic Impact Statement

Office of Legislative Oversight

3-21 does not address the future funding or function of the Silver Spring Urban District. The organizers and proponents of the Silver Spring BID are dissatisfied with the Urban District's funding levels for promoting and marketing downtown Silver Spring. They believe that the BID would devote more resources and more efficiently and effectively use these resources to market and promote downtown Silver Spring as an attractive destination for households, businesses, and investment. Thus, activities covered in the marketing/place branding/economic pillar of the proposed budget would be the primary source of potential added value relative to the Silver Spring Urban District's activities. **Table 2** presents budget line items in this pillar. The BID organizers also believe that the BID would be more responsive and effective in the delivery of place management and enhancement services than the Urban District.¹⁶ However, as noted below, the OLO analyst spoke with other stakeholders in the Silver Spring business community who are highly satisfied with the Urban District.

Table 2. Marketing/Place Branding/Economic Development for Year 1 of the Silver Spring BID Proposed Budget

	Amount	Percentage of Total Budget
Strategic Communications Social Media and Marketing Director	\$120,000	3.26%
Planning and Economic Development Manager	\$90,000	2.44%
Brand management and marketing efforts	\$100,000	2.71%
Digital resources/online presence	\$35,000	0.95%
Events	\$210,000	5.70%
Total Marketing/Place Branding/Economic Development	\$555,000	15.06%
Total Budget	\$3,685,500	

Data Source: Downtown Silver Spring BID Application

Economic Profile of Silver Spring

Montgomery County Planning Department personnel provided OLO with data on private establishments and employment, the commercial and residential real estate markets, and demographics. Recent trends indicate that the Downtown Silver Spring BID's objectives to increase business sales and residential and commercial occupancy and to retain and attract businesses, investment, and residents are well-founded concerns.

In recent years, Montgomery County has lagged behind its peer jurisdictions in the DC metropolitan, particularly Northern Virginia counties, in the areas of business and job growth.¹⁷ Silver Spring has been particularly hurt by Discovery's exit from the County, which shed between 500 and 600 jobs from 2010 to 2018.¹⁸ **Table 3** presents private establishment and employment data broken down by area. For comparison, this table - and subsequent tables in this section - include the

¹⁶ Description of the organizers' position is based on OLO personnel conversations with Steve Silverman, founder/CEO of SS GOV RELATIONS, LLC, and other organizers/proponents of the Downtown Silver Spring BID.

¹⁷ See Robert McCartney, "Prince George's overtakes Montgomery as top job creator in Maryland suburbs," Washington Post, January 20, 2020, https://www.washingtonpost.com/local/md-politics/prince-georges-has-overtaken-montgomery-as-top-job-creator-in-maryland-suburbs/2020/01/19/218c3646-38b6-11ea-bf30-ad313e4ec754_story.html; and Dan Schere, "Montgomery County Lost Brick-and-Mortar Businesses Last Year," Bethesda Magazine, July 10, 2019, <https://bethesdamagazine.com/bethesda-beat/business/montgomery-county-lost-brick-and-mortar-businesses-last-year/>.

¹⁸ Estimate provided by Montgomery County Planning Department personnel.

Economic Impact Statement

Office of Legislative Oversight

area of operation of the Bethesda Urban Partnership, which is an urban district corporation that provides services in Bethesda similar to those that the Silver Spring BID would provide. There are two trends of note:

- First, there is a large disparity in the growth of private establishments in the area where the Silver Spring BID would operate (6.6%) and the area where the Silver Spring Urban District operates (2.4%), with private establishment growth within the Urban District boundaries lagging by 4.2%. The BID's boundaries do not overlap with some of the peripheral parcels that fall within the Urban District. The disparity in business growth indicates that the areas that fall outside the BID (but within the Urban District) have experienced economic challenges. Indeed, these areas lost approximately 40 establishments and 230 employees from 2010 to 2019.
- Second, the area where the Silver Spring Urban District operates has outperformed the area where the Bethesda Urban Partnership operates in terms of private business and employment growth, respectively by 1.9% and 10.2%. Business growth in the Silver Spring Urban District area increased by 2.4%, compared to the 0.5% increase in the Bethesda Urban Partnership. And private employment increased in the Silver Spring Urban District area by 6.7%, compared to the -3.5% decline in employment in the Bethesda Urban Partnership area.

Due to time limitations, determining the causes of these two noteworthy trends is beyond the scope of this analysis.

Table 3. Change in Private Establishments and Employment by Area (2010-2018)

Area	Indicator	2010	2018	Change	Percent Change
County Total	Private Establishments	31,931	32,501	570	1.8%
	Private Employment	358,601	377,978	19,377	5.4%
Silver Spring BID	Private Establishments	1,083	1,154	71	6.6%
	Private Employment	16,779	17,914	1,135	6.8%
Silver Spring Urban District	Private Establishments	1,261	1,291	30	2.4%
	Private Employment	17,693	18,870	1,177	6.7%
Bethesda Urban Partnership	Private Establishments	2,090	2,100	10	0.5%
	Private Employment	34,503	33,287	-1,216	-3.5%

Data Source: Montgomery County Planning Department; Private business data from the Quarterly Census of Employment and Wages, Maryland Department of Labor.

Table 4 indicates which industries have experienced business growth and decline in the areas where the Silver Spring Urban District and Bethesda Urban Partnership operate, from 2010 to 2018. Focusing on the more dominant industries in the Silver Spring sub-market, it is noteworthy that there were declines in the retail industry (-10%) and professional, scientific, technical service industry (-4%), whereas there were significant gains in the health care and social assistance industry (40%), other services (26%), and accommodation and food services (12%). The Bethesda Urban Partnership area of operation also experienced declines in the retail (-10%) and professional, scientific, and technical service (-12%) industries, but experienced business growth in the real estate and rental and leasing industry (14%), finance and insurance (13%), and other services (23%). The upshot is that the Silver Spring and Bethesda sub-markets have been undergoing meaningful changes in their industrial composition, which contextualize overall trends in business growth.

Economic Impact Statement

Office of Legislative Oversight

Table 4. Change in Private Establishments by Industry (2010-2018)

NAICS	DESCRIPTION	Silver Spring Urban District				Bethesda Urban Partnership			
		2010	2018	Change	Percent Change	2010	2018	Change	Percent Change
54	Professional, Scientific, and Technical Services	290	278	-12	-4%	531	466	-65	-12%
56	Administrative Support and Waste Management and Remediation Services	73	78	5	7%	119	100	-19	-16%
44-45	Retail	101	91	-10	-10%	189	171	-18	-10%
51	Information	39	41	2	5%	66	55	-11	-17%
48-49	Transportation and Warehousing	7	2	-5	-71%	18	11	-7	-39%
42	Wholesale Trade	23	15	-8	-35%	54	50	-4	-7%
23	Construction	21	20	-1	-5%	68	65	-3	-4%
31-33	Manufacturing	13	9	-4	-31%	27	29	2	7%
22	Utilities	0	0	0	0%	1	4	3	300%
55	Management of Companies and Enterprises	7	6	-1	-14%	12	17	5	42%
71	Arts, Entertainment, and Recreation	16	14	-2	-13%	28	33	5	18%
72	Accommodation and Food Services	97	109	12	12%	170	175	5	3%
62	Health Care and Social Assistance	119	167	48	40%	171	177	6	4%
61	Educational Services	28	32	4	14%	46	60	14	30%
53	Real Estate and Rental and Leasing	47	56	9	19%	182	207	25	14%
52	Finance and Insurance	57	53	-4	-7%	215	243	28	13%
81	Other Services (Except Public Administration)	145	183	38	26%	192	237	45	23%

Data Source: Montgomery County Planning Department; Private business data from the Quarterly Census of Employment and Wages, Maryland Department of Labor.

Data on the commercial and residential retail real estate markets in Silver Spring also reveal concerning trends. **Table 5** presents data on the multifamily, office, and retail real estate markets from 2016 Q1 to 2021 Q1 in the areas of the Silver Spring BID, Silver Spring Urban District, and Bethesda Urban Partnership. Most strikingly, vacancy rates in office space have been trending upward since 2016 and the office market has been particularly harmed by the pandemic, with vacancy rates further increasing since 2020 Q1 and rents decreasing. Also, vacancy rates in retail spaces have steadily increased throughout 2020. (Note that the retail vacancy rates presented below are low estimates due to limitations in the source data. Despite these limitations, the *trends* in the data should reflect real-world conditions in the market.)

Economic Impact Statement

Office of Legislative Oversight

Table 5. Real Estate Market Trends (2016-2021)

Period	Multifamily		Office		Retail	
	Vacancy Percent of Total	Effective Rent	Vacancy Percent of Total	Base Rent Overall	Vacancy Percent of Total	NNN Rent Overall
Silver Spring BID						
2021 Q1 QTD	6.4%	\$24.00	18.1%	\$29.69	5.0%	\$37.68
2020 Q1	7.3%	\$25.08	17.2%	\$30.51	3.0%	\$37.14
2019 Q1	5.7%	\$25.32	10.8%	\$29.68	5.0%	\$33.93
2018 Q1	7.7%	\$25.20	10.5%	\$29.64	3.3%	\$33.52
2017 Q1	8.0%	\$24.72	9.8%	\$28.61	3.6%	\$32.99
2016 Q1	6.7%	\$24.60	9.9%	\$27.86	3.9%	\$29.67
Silver Spring Urban District						
2021 Q1 QTD	6.5%	\$23.76	17.1%	\$29.62	4.9%	\$37.68
2020 Q1	7.2%	\$24.96	16.4%	\$30.42	2.8%	\$37.14
2019 Q1	6.2%	\$25.08	10.3%	\$29.66	4.7%	\$28.95
2018 Q1	9.3%	\$24.84	10.0%	\$29.61	3.1%	\$28.42
2017 Q1	7.9%	\$24.48	9.8%	\$28.56	3.4%	\$29.71
2016 Q1	6.7%	\$24.36	9.4%	\$27.81	3.7%	\$26.26
Bethesda Urban Partnership						
2021 Q1 QTD	7.40%	\$31.44	19.7%	\$38.93	5.2%	\$34.53
2020 Q1	5.2%	\$34.80	13.7%	\$39.35	3.2%	\$42.66
2019 Q1	9.4%	\$33.72	12.0%	\$37.63	5.2%	\$43.15
2018 Q1	4.9%	\$33.24	10.6%	\$37.48	5.4%	\$43.15
2017 Q1	14.2%	\$33.24	8.1%	\$36.38	5.0%	\$41.99
2016 Q1	11.8%	\$34.08	11.8%	\$36.67	3.9%	\$38.88

Data Source: Montgomery County Planning Department; Costar.

METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

Methodology and Assumptions

To anticipate the economic impacts of establishing the Silver Spring BID by enacting Bill 3-21, OLO draws assumptions based on findings from empirical studies on the impacts of BIDs with valid causal inferences. While there is a large body of research on BIDs, much of it is case studies. These studies have difficulty distinguishing the *causal* effects of BIDs from outcomes correlated with, but unrelated to, BIDs due to common methodological problems, particularly selection bias and confounding variables. Indeed, research indicates that areas with BIDs are systematically different than those without them, as the timing and location of BID formation is associated with various enduring and time-varying conditions, such as retail density, assessed property value, population characteristics, levels of crime, and civic infrastructure (see studies below). Studies that sample on areas with BIDs (selection bias) and/or fail to control for conditions associated with both

Economic Impact Statement

Office of Legislative Oversight

BID areas and the economic outcomes of interest (confounding) are prone to invalidly attributing changes in these outcomes to BID performance.

Despite the apparent limitations in the literature, three empirical studies with quasi-experimental designs that mitigate selection bias and confounding were identified. These studies use statistical matching (and other) techniques to simulate randomization to account for selection bias in the formation of BIDs. To put it simply, these studies compare the outcomes of interest—retail sales, employment, crime, and property values—in areas with BIDs (“treatment” groups) against areas that had a high probability of forming BIDs due to their characteristics but had not done so during the time-frame of the study (“control” groups). Ultimately, these studies provide the OLO analyst with greater confidence in their findings regarding the impacts of BIDs. See below for the studies:

- **Retail Sales and Employment:** Stacey Sutton, “Are BIDs Good for Business? The Impact of BIDs on Neighborhood Retailers in New York City,” *Journal of Planning Education and Research* 34, no. 3 (2014): 309-324.
- **Commercial and Residential Property Values:** Ingrid Gould Ellen, Amy Ellen Schwartz, Ioan Voicu, Leah Brooks, and Lorlene Hoyt, “The Impact of Business Improvement Districts on Property Values: Evidence from New York City [with Comments],” *Brookings-Wharton Papers on Urban Affairs* (2007): 1-39.¹⁹
- **Crime:** Leah Brooks, “Volunteering to be taxed: Business improvement districts and the extra-governmental provision of public safety,” *Journal of Public Economics* 92, no. 1-2 (2008): 388-406.

Sutton’s study investigated the impact of small and mid-sized BIDs on **retail sales and employment for independently-owned businesses** in New York City between 2000 and 2008. She found that the impact of BIDs on these outcomes was conditioned on BID size. Unlike small BIDs, mid-sized BIDs had a positive effect on sales and employment of independent retailers, with respective increases in these variables of 15 and 9 percent. However, the result for sales growth was modestly significant and was insignificant for employment. Sutton’s findings are consistent with previous studies found BID size moderates its organizational effectiveness and impacts. The conditional effect of BID size is understandable, given that larger BIDs tend to devote a larger portion of revenues to programs (and less to administration), offer a broader array of services, focus more on marketing and promoting, and have other characteristics that likely result in greater economic returns.²⁰ The Silver Spring BID would be larger than the mid-sized BIDs investigated in Sutton’s study. This fact increases the OLO analyst’s confidence that the BID would positively affect sales and employment for independent retailers.

Ellen et al’s study investigated the impact of BIDs on **commercial and residential property values** in New York City from 1984 to 2002. BIDs were found to have a large and significant impact on commercial property values—approximately a 15 percent increase over comparable properties outside BID areas. Like Sutton’s findings, this effect was driven mostly by larger BIDs, again suggesting that large BIDs achieve sufficient economies of scale for meaningful interventions within their areas of operation. Moreover, BIDs had little impact on residential property values.

Brooks study investigated the impact of BIDs on **crime** in Los Angeles between 1990 and 2002. She found that BIDs were associated with reductions in crime of 6 to 10 percent, with the bulk of reductions in serious crime. Importantly, Brooks found that the BIDs did not push crime into other neighborhoods.

- **Assumption:** OLO believes that the Silver Spring BID would be sufficiently large to potentially increase retail sales, employment and commercial property values and reduce crime within the district.

¹⁹ For an overview of the study written for a lay audience, see Ingrid Gould Ellen, Amy Ellen Schwartz, and Ioan Voicu, “The Benefits of Business Improvement Districts: Evidence from New York City,” Furman Center for Real Estate & Urban Policy, July 2007, <https://furmancenter.org/files/publications/FurmanCenterBIDsBrief.pdf>.

²⁰ Gross, “Business Improvement Districts in New York City’s Low-Income and High-Income Neighborhoods.”

Economic Impact Statement

Office of Legislative Oversight

While the rigor of the above studies increases the OLO analyst's confidence in the economic potential of the Silver Spring BID, it is important to reiterate the unique circumstance regarding its formation. As previously mentioned, the Silver Spring BID would be established within the boundaries of the Silver Spring Urban District, a public entity that performs many of the "clean and safe" services of BIDs and that generates a portion of its revenues from a tax on property owners. The BIDs investigated in the above studies were formed in areas without public entities performing BID-like services. This raises the question of whether the magnitude and/or timing of the Silver Spring BID's impacts would parallel those in areas investigated in the above studies. It is beyond the scope of this analysis to address this question. However, OLO emphasizes the following: Ultimately, for the Silver Spring BID to generate a net positive return on investment (ROI) for stakeholders, the organization must add enough value to outweigh its costs to stakeholders (i.e., BID tax) relative to the baseline set by the Silver Spring Urban District.

Uncertainties

Based on the above studies, OLO anticipates that the Silver Spring BID would generate a net positive ROI for businesses in Silver Spring. However, the magnitude of these impacts depends on the resolution of outstanding questions highlighted below. For information, this discussion draws on conversations the OLO analyst had with stakeholders in the Silver Spring business community who are in favor, neutral, and against the establishment of the BID, as well as the research literature on BIDs.

Urban District: Stakeholders lack clarity on whether the Silver Spring BID would replace the Urban District. There are three concerns related to this uncertainty. The first concern relates to the difference between the Silver Spring BID and Urban District boundaries. If the BID replaces the Urban District, would the business tenants outside the BID boundaries be left without services? The second concern involves the tax implications of replacing the Urban District. Property owners would incur a net zero tax increase if the BID tax replaces the Urban District tax, holding all else equal. However, per Bill 3-21 and state law, the BID tax would not count against the County Charter limit. If the Council were to later increase property taxes, then property owners would incur a net increase in taxes. In this scenario, establishing the Silver Spring BID, in effect, creates an additional cost on property owners (and tenants). Lastly, if the County raises property taxes, the Council may be prevented from increasing the Urban District tax again in the future. This would be problematic if the Council ever decided to close the BID, which would leave Silver Spring without Urban District and BID services.

Governance: In addition to budget sizes and sources of revenue, there is significant variation across BIDs in the composition and voting rights of members, the structure of Boards, and other organizational features. As discussed above, the current proposal for the Downtown Silver Spring BID would restrict membership to property owners, give larger property owners more voting power, and include property owners and business tenants on the Board of Directors. Per state law, the stakeholders of the Silver Spring BID would be "residents, employers, employees, property owners, commercial tenants, consumers, and the general public" within its geographic scope. It is inevitable that (perceived and real) conflicts of interest among and within these stakeholder groups will arise. OLO analysts spoke with some members of the Silver Spring business community who expressed concern that the proposed governance structure of the BID would give undue influence to large property owners who would use the BID to further their interests at the expense of smaller property owners, small businesses, and residents. Indeed, some stakeholders are satisfied with the Urban District and point to its impartiality as an asset. If established through the enactment of Bill 3-21, the way the Silver Spring BID addresses these governance concerns may determine the extent of support and participation (i.e., subcommittee involvement) from the local stakeholders, which could influence how the economic costs and benefits of the BID are distributed among stakeholders.

Finances: Stakeholders raised several concerns regarding the BID's finances over the next few years to OLO analysts. In the current BID budget, roughly one-third of the financing comes from the Urban District property tax and two-thirds comes from a portion of the parking lot district revenues. The proposed legislation specifies that "[t]he amount of revenue

Economic Impact Statement

Office of Legislative Oversight

from parking fees transferred to the district 313 corporation must not exceed the amount calculated by multiplying: (A) the number of parking spaces in the District by (B) the number of enforcement hours per year by (C) 20 cents.” Some stakeholders are unclear on how this amount compares to the current transfer formula and whether it will continue to generate sufficient revenues. The pandemic has decreased the consumption of parking in Silver Spring, which will lower parking lot revenues in the next few years. Some stakeholders are concerned how this will impact the BID. To address revenue shortages, the BID may cut back on services or attain more funds from members through higher BID taxes or voluntary contributions. These scenarios would have economic impacts on members—more taxes or reduced “clean and safe” services or less marketing and promoting. Finally, stakeholders are unclear whether the Silver Spring BID would be required to purchase new equipment or lease equipment that the Urban District uses.

Relationship with Local Government: Researchers argue that the effectiveness of BIDs in adding value for stakeholders depends significantly on their working relationship with local government officials and professional staff.²¹ Collaborative relationships help ensure that BIDs are accountable to their stakeholders, reach their organizational goals, stabilize BID funding, and contribute to the local government’s economic development strategy. There are several mechanisms used to facilitate collaborative relationships with BIDs—for example, local government representation (voting or non-voting) on the BID Board of Directors, robust performance measures for BIDs, local government approval of BID budgets, and routine formal and/or informal meetings and reports. Bill 3-21 would require the Silver Spring BID to file an annual report with the Executive and Council that includes the financial statement for the previous year, a proposed operating budget for the current fiscal year, proposed revisions to the business plan, and a “narrative statement or chart showing the results of operations in comparison to stated goals and objectives.” The bill would also require the Executive to “review the effectiveness and desirability of continuing the district every 3 years.” Beyond these basic reporting and review requirements, it is unclear what the working relationship between the Silver Spring BID and the County would look like.

Long-Term Impact: BIDs provide collective voice to their members and advocate for policy change. Experience from elsewhere that this can manifest as promoting regulatory changes more friendly to business interests.²² The Silver Spring BID may exert economic impacts through its political advocacy over the long-term. However, it is beyond the scope of this analysis to examine the character and magnitude of this effect. We raise it here as a point of consideration.

VARIABLES

- Property tax rate;
- Future status of the Silver Spring Urban District;
- Financial stability of the Silver Spring BID;
- Magnitude and distribution of Silver Spring BID’s impacts on key indicators;
- Quality of County’s oversight, accountability, and collaboration mechanisms; and
- Degree to which the costs and benefits of the Silver Spring BID are borne by local, as opposed to non-local property owners and business tenants.

²¹ See chapters 9, 12, and 14 in *Business Improvement Districts*.

²² See *Business Improvement Districts* (note 4).

Economic Impact Statement

Office of Legislative Oversight

IMPACTS

WORKFORCE ■ TAXATION POLICY ■ PROPERTY VALUES ■ INCOMES ■ OPERATING COSTS ■ PRIVATE SECTOR CAPITAL INVESTMENT ■ ECONOMIC DEVELOPMENT ■ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organization

OLO anticipates that by establishing the Silver Spring BID, Bill 3-21 would have positive economic benefits for private organizations located in the Silver Spring BID area, with the potential spillover effects for private entities in areas outside the BID boundaries.²³ The private organizations most directly impacted would be the property owners and businesses.

Bill 3-21 would increase costs to property owners by creating a BID tax on top of the Urban District tax. (However, the cost could be mitigated if the Council eliminates the Urban District tax, holding equal the general property tax.) Property owners would pass some portion of the cost onto business tenants in the form of higher rents, thereby increasing their net operating costs. The question is whether the BID's services result in sufficient profits to outweigh these costs relative to the baseline value set by the Urban District.

Based on the studies summarized above, OLO believes that the BID has the potential to add sufficient ROI to stakeholders. The studies reviewed above found that BIDs in New York City increased both commercial property values and independent retail sales by approximately 15 percent and BIDs in Los Angeles decreased crime by 6 to 10 percent. If the Silver Spring BID services affect these outcomes, property owners would likely be able to charge higher rents, thereby increasing their business incomes.

Regarding business tenants in the retail sector, increased retail sales would result in income gains for some independent businesses. (While Sutton's study does not address chain stores, it is plausible they would also see sales gains.) However, these gains would be unevenly distributed to some extent. For this reason, the portion of current businesses that would experience income gains large enough to outweigh the costs from potential rent increases is unclear. Ultimately, OLO analysts anticipate that there would be variation, with some businesses experiencing net gains and others net losses.

The findings from the studies also suggest that the Silver Spring BID has the potential to contribute to economic development gains in Silver Spring, as employment and independent retail sales (and the tax revenues they generate) are common indicators of local economic development.²⁴

The OLO analyst is uncertain whether the economic impacts of the Silver Spring BID in and of itself would be sufficiently large in magnitude to meaningfully increase the competitiveness of Silver Spring relative to its intra- and inter-County peers. While the County has lagged its peers in the District and Northern Virginia in using formal BIDs (see **Table 1** above), the Silver Spring BID in and of itself would need to generate substantial ROI for stakeholders relative to the baseline set by the Urban District to significantly impact competitiveness.

Residents

If enacted, Bill 3-21 would impact County residents. Residents who own properties and retail businesses within the Silver Spring BID area would bear the costs and benefits. Owners of properties would likely benefit from higher rents and property values while incurring the cost of the BID tax, whereas retail business owners would likely benefit from increased

²³ For the Council's priority indicators, see Montgomery County Council, Bill 10-19 Legislative Branch – Economic Impact Statements – Amendments, Enacted on July 30, 2019, Montgomery County, Maryland, 3.

²⁴ Sutton, "Are BIDs Good For Business?"

Economic Impact Statement

Office of Legislative Oversight

sales while paying higher rents. Some portion of these costs and benefits would be borne by non-local property and business owners.

Individuals in the workforce would benefit from the potential for employment gains. Because most residents work within the County, it is likely that residents would benefit significantly from the employment gains.²⁵

Households within the Silver Spring BID area may be impacted as well. There are approximately 7,700 households within this area, with 90 percent in renter-occupied housing units.²⁶ To reiterate, Ellen et al found that BIDs did not impact residential property values in New York City. However, other (less rigorous) studies claim that BIDs have resulted in increased residential property values.²⁷ If residential property values increase, homeowners may experience economic benefits while renters could experience higher rents.

In summary, OLO anticipates that the Silver Spring BID would result in positive net economic impacts on businesses and residents in Silver Spring. However, it is likely that stakeholders would not share equally in these benefits.

QUESTIONS FOR CONSIDERATION

Due to time constraints and apparent limitations with the research literature on BIDs, the OLO analyst was unable to investigate two questions related to economic impacts of the Silver Spring BID: How would the BID likely impact non-retail businesses? And, how does the pandemic factor into the costs and benefits (and their distribution) of establishing the BID? For insight into these questions, OLO would recommend further engagement with members of the business community across industries in Silver Spring.

WORKS CITED

At-Large Councilmember Hans Riemer and Council President Tom Hucker to Montgomery County Council. Memorandum. December 7, 2020. "Silver Spring Business Improvement District (BID)."

Brooks, Leah. "Volunteering to be Taxed: Business improvement districts and the extra-governmental provision of public safety." *Journal of Public Economics* 92, no. 1-2 (2008): 388-406.

Business Improvement Districts: Research, Theories, and Controversies. Ed. Göktuğ Morçöl, Lorlene Hoyt, Jack W. Meek, and Ulf Zimmerman (New York: CRC Press, 2008).

Drummer, Robert H. to Montgomery County Council. Memorandum. January 7, 2021. "Bill 3-21, Special Taxing Area Laws – Silver Spring Business Improvement District – Established."

Ellen, Ingrid Gould, Amy Ellen Schwartz, Ioan Voicu, Leah Brooks, and Lorlene Hoyt. "The Impact of Business Improvement Districts on Property Values: Evidence from New York City [with Comments]." *Brookings-Wharton Papers on Urban Affairs* (2007): 1-39.

Ellen, Ingrid Gould, Amy Ellen Schwartz, and Ioan Voicu. "The Benefits of Business Improvement Districts: Evidence from New York City." *Furman Center for Real Estate & Urban Policy*. July 2007.

²⁵ Montgomery County Planning Department, *Montgomery County Trends: A Look at People, Housing and Jobs Since 1990*, 78.

²⁶ Data provided by Montgomery County Planning analysts.

²⁷ See review of literature in Ellen et al, "The Impact of Business Improvement Districts on Property Values."

Economic Impact Statement

Office of Legislative Oversight

Gross, Jill Simone. "Business Improvement Districts in New York City's Low-Income and High-Income Neighborhoods." *Economic Development Quarterly* 19, no. 2 (May 2005): 174-189.

Howard, Craig and Stephanie Bryant. Case Studies of Local Business and Community Districts. Office of Legislative Oversight. Report No. 2015-7. February 24, 2015.

Hoyt, Lorlene and Devika Gopal-Agge. "The Business Improvement District Model: A Balanced Review of Contemporary Debates." *Geography Compass* 1, no. 4 (2007): 946-958.

McCartney, Robert. "Prince George's overtakes Montgomery as top job creator in Maryland suburbs." *Washington Post*. January 20, 2020.

Montgomery County Council. Bill 10-19, Legislative Branch – Economic Impact Statements – Amendments. Enacted on July 30, 2019. Montgomery County, Maryland.

Montgomery County Council. Bill 3-21, Special Taxing Area Laws – Silver Spring Business Improvement District – Established. Introduced on January 12, 2021. Montgomery County, Maryland.

Schere, Dan. "Montgomery County Lost Brick-and-Mortar Businesses Last Year." *Bethesda Magazine*. July 10, 2019.

Sutton, Stacey. "Are BIDs Good for Business? The Impact of BIDs on Neighborhood Retailers in New York City." *Journal of Planning Education and Research* 34, no. 3 (2014): 309-324.

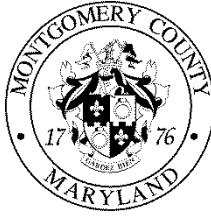
Ziebarth, Dan. "Business Improvement Districts and Contemporary Local Governance." *State and Local Government Review*. October 2020.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.



OFFICE OF THE COUNTY ATTORNEY

Marc Elrich
County Executive


Marc P. Hansen
County Attorney

MEMORANDUM

TO: Ken Hartman, Director
Bethesda Chevy Chase Regional Services Center

Reemberto Rodriguez, Director
Silver Spring Regional Services Center

Mike Coveyou, Director
Department of Finance

FROM: Edward B. Lattner, Chief 
Division of Government Operations

DATE: January 25, 2021

RE: **Bill 03-21, Special Taxing Area Laws - Silver Spring Business Improvement District - Established**

Bill 3-21 will establish a business improvement district (BID) in Silver Spring in accordance with State law. While overall the Bill is legally valid, you should be aware of the following:

- the BID corporation formed under State law and this Bill will most likely be subject to the State's Open Meetings and Public Information Acts;
- the officers, directors, members, and (any) employees of the BID corporation will not be subject to the County's ethics law; and
- the BID corporation will not be a "local government" under the Local Government Tort Claims Act and, therefore, will not enjoy the Act's caps on liability.

Finally, we have some suggestions to improve the Bill's clarity.

The Authorizing State Law and the Bill

In 2017, the General Assembly enacted a law, codified at Md. Code Ann., Econ. Dev. (ED) §§ 12-601 to 12-612, authorizing Montgomery County to create one or more business improvement districts (BID) by local law. The express legislative purposes of BIDs are to

“promote the general welfare of the residents, employer, employees, property owners, commercial tenants, consumers, and the general public within the geographic area of the [BID].” ED § 12-602(2). Bill 3-21 follows this blueprint and creates a BID in Silver Spring. According to the Bill’s sponsors, the BID is intended to supplement, and not replace, the existing urban district created in Chapter 68A of the Montgomery County Code. The BID is managed and operated by a district corporation.

Save for the power to appoint the district corporation’s officers and directors, the State law (and therefore the Bill) give the County a great deal of authority over the district corporation. The County, “in the sole discretion of the governing body,” may authorize the creation of a BID upon application from a group of certain private property owners in the district. ED § 12-609(d). That application must include:

- a statement of intent to establish a district corporation signed by a majority of certain property owners in the district;
- the boundaries of the proposed district; and
- the proposed district corporation’s
 - name and address;¹
 - the names of proposed initial members of the board of directors;
 - proposed articles of incorporation and bylaws; and
 - proposed three-year business plan.

ED §§ 12-604, 12-608. The district corporation must operate and exercise its powers solely to accomplish one or more of express legislative purposes of a BID. ED § 12-607(b). The net earnings of the district corporation may benefit only the district corporation. ED § 12-606.

The State law, ED § 12-605, (and the Bill) set for the basic operations of the district corporation’s board and its reporting responsibilities to the County.

- the board of directors must consist of at least five, but no more than nine, members, appointed by members of the district;
- the board must elect a chair and other officers from among its members;²
- a majority of the voting members of the board is a quorum;
- the board must exercise its powers by resolution, which requires an affirmative vote of a majority of its voting members;
- board members may not be compensated, but must be reimbursed for expenses; and
- the board must file an annual report with the County that includes:
 - a financial statement for the preceding year;
 - a proposed operating budget for the current fiscal year

¹ The district corporation is called the Downtown Silver Spring Business Improvement District, Inc.

² The Bill details three classes of board members serving staggered terms and a nominating committee for future annual elections.

- any proposed revisions to the business plan; and
- a narrative statement or chart showing the results of operations in comparison to stated goals and objectives.

The BID may receive money from the State, the County, other governmental units, or nonprofit organizations. It may also charge fees for its services and have employees and consultants. ED § 12-607.

The County, not the district corporation, is empowered to impose a BID tax to fund the operation of the district. The district corporation board may recommend a tax rate, subject to the County's approval. The County collects the tax in the same manner as real property taxes are collected; the district corporation must reimburse the County for the costs incurred in collecting the tax. ED § 12-610.

The continued existence of the BID, and the district corporation, is subject to the continuing approval of the County, which must review the effectiveness and desirability of the district every three years. If the County does not approve the continuing existence of the BID, the district ceases existence as directed by the County and the district corporation must continue "only as long as necessary to terminate operation in a reasonable manner." ED § 12-612.

Applicability of the Open Meetings Act and the Public Information Act

Open Meetings Act

The OMA applies to a "public body" when it "meets" to engage in certain defined "functions." Critical to the analysis is the whether the district corporation is a "public body," which is defined as an entity that consists of at least two individuals as is created by, among other things, a state or county law or executive order. GP § 3-101(h)(1).³

As noted in the Attorney General's OMA Manual, "the courts have sometimes deemed private entities to be 'public bodies' by virtue of considerations such as the government's control over the particular entity's existence, governance, and functions." OMA Manual 1-1 (9th ed. June 2017).

The Maryland appellate courts have sometimes deemed a privately-incorporated entity to be a "public body" subject to the Act. When doing so, they have looked to various factors, including the degree to which the entity's board is controlled by the government, as when the board members are appointed and subject to termination by a government official, the entity performs a purely public function, and the entity has few private functions. The inquiry is fact-specific. *See, e.g., City of Baltimore Development Corp. v. Carmel Realty Associates*, 395 Md. 299 (2006). The fact that

³ A public body also includes any multimember board or commission appointed by the governor, county executive, or an official who is subject to the policy direction of the governor or county executive, if the entity includes in its membership at least two individuals not employed by the state or county.

a private entity receives or administers government funds is not by itself enough. In 9 OMCB Opinions 203 (2015), for example, the Compliance Board found that the facts that the private entity had applied to provide services to a government agency and that the agency selected it and regulated the provision of the services did not make it a “public body.” *Id.* at 204.

In addressing an entity incorporated by the city attorney, at the mayor’s direction, to operate the city’s zoo, the Court of Special Appeals explained:

A private corporate form alone does not insure that the entity functions as a private corporation. When a private corporation is organized under government control and operated to carry on public business, it is acting, at least, in a quasi-governmental way. When it does, in light of the stated purposes of the statute, it is unreasonable to conclude that such an entity can use the private corporate form as a parasol to avoid the statutorily-imposed sunshine of the Open Meetings Act.

Andy’s Ice Cream v. City of Salisbury, 125 Md. App. 125, 154-55 (1999). The Compliance Board discussed these principles in 7 OMCB Opinions 195 (2011) and 9 OMCB Opinions 246 (2015). A key consideration is whether the privately-incorporated entity is structured in such a way that a governmental entity controls its governance, as when a governmental entity has the power to dissolve it or appoint its board. *See id.* at 252-54 (discussing cases).

OMA Manual 1-6 to 1-7 (9th ed. June 2017).

Although the County does not appoint the members of the district corporation, in all other aspects the state and county law control its existence, governance, and functions. The district corporation is created by state and county law. The state enabling statute defines the district corporation as the BID corporation “formed in accordance with this subtitle.” ED § 12-601(g). The state enabling statute also stipulates that the local law creating the BID must include “that the district corporation is formed under this subtitle.” ED § 12-604(c)(2). The application “to establish a district corporation” must include “a list of the proposed initial board of the proposed district corporation.” ED §§ 12-608(a) and (b)(5). Finally, if the county chooses to terminate the BID, the district corporation “shall continue its existence only as long as necessary to terminate operation in a reasonable manner.” ED § 12-612(b)(2).

State and county law precisely identify the functions of the district corporation and those functions are purely governmental. The district corporation must operate and exercise its powers *solely* to accomplish one or more of express legislative purposes of a BID. ED § 12-607(b). State and county law prescribe the district corporation’s governance structure—election of officers, quorum requirements, compensation, action by resolution, etc. Even its articles of incorporation and bylaws are subject to government approval.

In sum, the district corporation would likely be considered a public body under the OMA. It therefore must comply with the OMA when a quorum of its members meets to engage in a function specified under the OMA.

Public Information Act

Enacted in 1970, the MPIA enables people to have access to government records without unnecessary cost or delay. Md. Code Ann., Gen. Provisions (GP) § 4-1010 to 4-601. It accomplishes this goal by requiring each “custodian” to provide access to “public records” subject to enumerated exceptions.

A public record is the original or any copy of any documentary material (in any form) that is made by a unit or an instrumentality of the State or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business. GP § 4-101(j). The obligation to provide access to a public record lies with the custodian, who is the officer or employee of the State or of a political subdivision who is responsible for keeping a public record, regardless of whether that officer or employee has physical custody and control of the public record, or any other authorized individual who has physical custody and control of a public record.

Maryland court have extended the reach of the MPIA to a number of quasi-public entities like the district corporation.

The PIA also applies to any unit or instrumentality of the State or of a political subdivision. GP § 4-101(j); *see, e.g., Moberly v. Herboldsheimer*, 276 Md. 211 (1975) (Memorial Hospital of Cumberland is subject to the PIA as an instrumentality of the City of Cumberland). Even agencies that receive no public funds but are created by statute may be subject to the PIA. For example, the Court of Appeals, overruling a lower court, held that one such agency, the former Maryland Insurance Guaranty Association, was subject to the PIA. *A.S. Abell Publishing Co. v. Mezzanote*, 297 Md. 26 (1983). The Court considered whether the entity served a public purpose, was subject to a significant degree of control by the government, and was immune from tort liability. *See also* 86 Opinions of the Attorney General 94 (2001) (proposed citizen police review board, established by municipal ordinance, funded and staffed by municipality, and performing public function would be unit or instrumentality of municipal government for purposes of PIA); Letter of Assistant Attorney General Kathryn M. Rowe to Delegate Alfred C. Carr (June 2, 2009) (Citizen Advisory Board on Traffic Issues is an instrumentality of Montgomery County).

A nonprofit entity incorporated under the State’s general corporation law may also be considered a unit or instrumentality of a political subdivision for purposes of the PIA, if there is a sufficient nexus linking the entity to the local government. *See*

Baltimore Development Corp. v. Carmel Realty Associates, 395 Md. 299 (2006) (nonprofit corporation formed to plan and implement long range development strategies in city was subject to substantial control by city and thus was instrumentality of city subject to PIA); *Andy's Ice Cream, Inc. v. City of Salisbury*, 125 Md. App. 125, *cert. denied*, 353 Md. 473 (1999) (Salisbury Zoo Commission subject to PIA, given the Mayor and City Council's role in the appointment of Commission members, authority over budget and by-laws, and power to dissolve Commission); Letter of Assistant Attorney General Kathryn M. Rowe to Delegate Kevin Kelly (Aug. 3, 2006) (volunteer fire department is not a unit of government subject to the PIA); Letter of Assistant Attorney General Robert N. McDonald to Senator Joan Carter Conway (Oct. 4, 2007) (status of various organizations under the PIA).

In rare instances, the General Assembly has exempted an instrumentality of the State from coverage under the Public Information Act. *Napata v. University of Maryland Medical System Corp.*, 417 Md. 724 (2011) (UMMS not subject to the PIA because its enabling law provides that it "is not subject to any provisions of law affecting only governmental or public entities").

MPIA Manual 1-3 to 1-4 (15th ed. Nov. 2020).⁴

For the same reasons that the district corporation is likely subject to the OMA, its publicly derived existence, governance, and functions make it subject to the MPIA.

Applicability of the County's Ethics Law

It does not appear that the County's ethics law will apply to the district corporation's officers, directors or employees. With two exceptions,⁵ the County's ethics law applies exclusively to its "public employees." Under Montgomery Cnty. Code § 19A-4(m), a public employee means:

- (1) the County Executive and each member of the County Council;
- (2) any person employed by a County agency, including the director of the agency;
- (3) any person appointed by the County Executive or County Council to a board, commission, committee, task force, or similar body, whether or not:

⁴ "Although the Manual may not rise to the dignity of a formal opinion by the Attorney General, it is nonetheless a useful, although not binding, resource for courts." *Action Comm. for Transit, Inc. v. Town of Chevy Chase*, 229 Md. App. 540, 557 n.20 (2016).

⁵ There are two provisions of the ethics law that apply to all persons. First, "a person must not use an official County or agency title or insignia in connection with any private enterprise. Montgomery Cty. Code § 19A-14(b). Second, a person "must not influence or attempt to influence a public employee to violate" the ethics law. § 19A-14(f).

- (A) the person is compensated for serving on the body; or
- (B) the body is permanent or temporary;
- (4) any member of the Revenue Authority, the Housing Opportunities Commission, or the Board of License Commissioners; and
- (5) any other person providing services without compensation to a County agency if that person:
 - (A) exercises any responsibility for government-funded programs, procurement, or contract administration for an agency; or
 - (B) has access to confidential information of an agency that relates to government-funded programs, procurement, or contract administration.

Under Montgomery Cnty. Code § 19A-4(a) an agency or county agency means:

- (1) any department, principal office, or office of the executive or legislative branch of County government;
- (2) any board, commission, committee, task force, or similar body appointed by the County Executive or County Council;
- (3) the Revenue Authority, the Housing Opportunities Commission, and the Board of License Commissioners;
- (4) each independent fire department or rescue squad that receives funds from the County or uses property owned by the County; and
- (5) any other public body if the Commission finds that:
 - (A) the public body is subject to the County's legislative authority to enact an ethics law; and
 - (B) the policies articulated in section 19A-2 would be significantly furthered by the application of this Chapter to the public body.

The district corporation is not a County agency under the ethics law and the County does not appoint its officers or directors. However, the Ethics Commission could determine to apply the ethics law to the district corporation's members, employees, and volunteers under Montgomery Cnty. Code § 4(a)(5).

Alternatively, the County Council could amend the Bill to require the district corporation to include in its bylaws provisions prohibiting self-dealing and participating in matters that present a conflict of interest. The Council included such provisions in the laws establishing several other quasi-public entities: Economic Development Corporation, Montgomery Cnty. Code § 15A-3(e); local management board, Montgomery Cnty. Code § 2-121(c)(1); workforce development organization, § 15A-10(d); green bank, § 18A-47(d); and the urban district corporation, § 68A-10(g)(2). Some of these laws also made explicit the entities obligation to comply with the OMA and MPIA.

The Local Government Tort Claims Act

The Local Government Tort Claims Act (LGTCa), Md. Code Ann., Cts. & Jud. Proc.

(CJ) §§ 5-301 to 5-304 outlines the duty of local governments to defend and indemnify their employees for tortious acts committed without malice in the scope of employment. More importantly, the LGTCA also caps damages that may be recovered in such an action.

While the LGTCA's definition of "local government" is quite expansive, it identifies some 29 different entities as local governments, that definition does not include a BID. The definition of a local government includes a special tax district, CJ § 5-301(d)(13),⁶ and a commercial district management authority. CJ § 5-301(d)(20).⁷ But a BID corporation is neither of these.

This does not preclude the possibility that the BID corporation might enjoy governmental immunity, or its employees public official or even qualified immunity. But it will not be protected by the liability caps under the LGTCA. The Bill does require the corporation to obtain insurance for its activities.

Bill Language

1. ED § 12-610(b)(3) provides that the BID tax "may not count against a county or municipal corporation tax cap." At the time this law was written, County Charter § 305 provided a cap on total revenue produced by the ad valorem taxes on real property. This past November, the voters approved a Charter amendment replacing the cap on total *revenue* with a cap based upon the ad valorem *weighted tax rate* on real property. However, lines 302-04 of the Bill still refer to the Charter cap on tax revenue. That language should be amended to state:

The tax imposed under this subsection must not count against the limits on the ad valorem weighted tax rate on real property [[tax revenue]] in Section 305 of the County Charter.

2. There appears to be a typo in lines 310-12.

eb1

cc: Dale Tibbitts, Special Assistant to the County Executive
Robert H. Drummer, Senior Legislative Attorney
Marc P. Hansen, County Attorney
Tagg Hutchinson, Associate County Attorney
Tammy J. Seymour, OCA

21-000235

⁶ The Express Powers Act, Md. Code Ann., Local Gov't (LG) § 10-314, empowers the County to create a special tax district for any purpose listed in the Express Powers Act. The County's authority to create a BID arises under (ED) §§ 12-601 to 12-612, not the Express Powers Act. Special tax districts include urban districts (Montgomery Cnty. Code Ch. 68A) and parking lot districts (Montgomery Cnty. Code Ch. 60).

⁷ Bethesda Urban Partnership, Inc. is such an entity, created under another section of the Express Powers Act. LG § 10-315.