Montgomery County Council

Committee: GO
Committee Review: Completed
Staff: Livhu Ndou, Senior Legislative Attorney
Bilal Ali, Legislative Analyst
Purpose: Final action – vote expected

AGENDA ITEM #4A
December 10, 2024
Action

SUBJECTS

Expedited Bill 16-24, Development Impact Tax – Amendments

Lead Sponsor: Council President at the request of the Planning Board

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- The Government Operations & Fiscal Policy (GO) Committee recommended approval of Bill 16-24 with amendments.
- The Council enacted Bill 16-24 by an 11-0 vote on November 12, 2024.
- The County Executive vetoed Bill 16-24 on November 25, 2024.
- Under Charter §208, the Council may override the Executive's disapproval if 7 Councilmembers vote to re-enact the bill within 60 days after the Executive's disapproval.

DESCRIPTION/ISSUE

Bill 16-24 would update the transportation impact tax districts; modify the applicability of development impact tax exemptions for certain uses and in certain locations; and generally amend the law governing transportation and school development impact taxes.

SUMMARY OF KEY DISCUSSION POINTS

- The Planning Board is required to approve and send to the Council a recommended Growth and Infrastructure Policy (GIP) by August 1. The Planning Board submitted their recommended draft 2024-2028 GIP on July 25, 2024.
- The Planning Board transmitted the proposed bill to implement legislative changes consistent with the Planning Board draft of the 2024-2024 GIP.
- Bill 16-24 would update transportation impact tax districts and modify the applicability of development impact tax exemptions for certain uses and in certain locations.
- The Government Operations (GO) Committee held worksessions on Bill 16-24 on October 10, 2024, and October 17, 2024. The Committee generally recommended maintaining school impact taxes but provided several exemptions for transportation impact taxes.
- The Council unanimously enacted Bill 16-24 with amendments. The County Executive vetoed the bill, citing concerns about the fiscal impact.

<u>**This report contains:**</u>

Agenda Item #4A
December 10, 2024
Action

M E M O R A N D U M

December 5, 2024

TO: County Council

FROM: Livhu Ndou, Senior Legislative Attorney
Bilal Ali, Legislative Analyst

SUBJECT: Bill 16-24, Development Impact Taxes – Amendments

PURPOSE: Action – Enactment Over County Executive's Veto

Committee Recommendation:
The GO Committee (3-0) recommended approval of Bill 16-24 with amendments.

Introduction

The Council enacted Bill 16-24 on November 12, 2024, by an 11-0 vote. The County Executive vetoed the bill on November 25, 2024. Under § 208 of the County Charter, not later than 60 days after receiving the Executive's message of disapproval, the Council may, by the affirmative vote of 7 members, enact legislation over the disapproval of the Executive.

In a letter explaining the veto, the Executive noted several policy objections to the bill as enacted, similar to the policy objections included in the Executive's previous memorandum distributed during the legislative process and the objections stated by Executive staff during the Committee worksessions. None of the Executive's objections present a legal bar to re-enacting the bill.

Background

The Planning Board recommends changes to development impact taxes as part of the Growth and Infrastructure Policy (GIP). The GIP provides guidelines for administering Montgomery County's adequate public facility (APF) requirements. Montgomery Planning initiates an update to the GIP every four years, in accordance with Chapter 33A of the County Code. The Planning Board must transmit the GIP to the Council by August 1st, and the Council must adopt the policy by November 15th. The Planning, Housing, and Parks (PHP) Committee reviewed the GIP on September 16, September 23, and October 7, 2024. The Council reviewed the GIP on October 15 and October 22, 2024; and adopted it on November 12, 2024. [1]

Bill 16-24, which amends development impact taxes within Chapter 52 of the County Code, contains the Planning Board's recommended changes to impact taxes.[2] Bill 16-24 would update the transportation impact tax districts; modify the applicability of development impact tax exemptions for certain uses and in certain locations; and generally amend the law governing transportation and school development impact taxes. The Council unanimously enacted Bill 16-24 on November 12, 2024.[3]

Discussion

A public hearing was held on October 1, 2024.[4] Several speakers testified, both in support and opposition. Speakers included County officials, individuals, and developers. The County Executive, via the Office of Management and Budget (OMB), testified regarding concerns about the reduction in revenue proposed by the bill. OMB expressed concerns about the resulting decrease in school funding, as well as concern about the effect on the Capital Improvements Program (CIP). The Council also received written testimony.[5] The majority of the written testimony was in support of Bill 16-24, including support for many of the exemptions recommended by the Planning Board. However, much of the testimony requested amendments that were discussed by the GO Committee and the full Council.

In a letter accompanying the veto, the County Executive explained that his "primary reason for this veto is because Bill 16-24 reduces the revenues brought in by impact taxes, and impact taxes are specifically intended to provide revenue for infrastructure that must accompany development." He acknowledged that, "[w]hile impact taxes may not be the ideal tool for funding transportation and school infrastructure, further reductions to impact tax revenues should not be enacted before an alternative has been identified, discussed and approved."

---

[1] The approved GIP can be found here:
https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/2024/2024-10-30GIPResolution.pdf.

[2] While historically reviewed as part of the GIP because impact taxes and the APF help manage growth, impact taxes are not a part of the County's APF requirement, and the Council is not required to review and make recommendations by November 15th.

[3] The staff report for Action can be found here (11/12/24 Council Session, Item #9F):
https://montgomerycountymd.granicus.com/MetaViewer.php?view_id=169&clip_id=17659&meta_id=186180.

[4] A public hearing on the Growth and Infrastructure Policy was held on September 10, 2024. A recording of the hearing can be found here (9/10/24 Council Session, Item #5):
https://www.montgomerycountymd.gov/COUNCIL/ondemand/index.html. Written testimony on the policy can be found here:
https://www.montgomerycountymd.gov/COUNCIL/OnDemand/testimony/20240910/item5.html.

[5] Written testimony for Bill 16-24 can be found here:
https://www.montgomerycountymd.gov/COUNCIL/OnDemand/testimony/20241001/item5.html.

According to the County Executive, the bill will have a negative revenue impact of $13 million over the next 6 fiscal years. The letter argues that this is the sixth time since 2013 that the Council has cut the development tax revenues available for providing adequate public facilities. The letter also argues that while the Council intended to exempt transportation impact taxes as development incentives, the uses exempted will still create demand for pedestrian infrastructure, transit improvements, and other new multimodal capacity. The letter concludes by arguing that reducing impact taxes reduces the funds available for infrastructure, and that if development does not pay its "fair share" of costs, then either the costs get shifted to residents in the form of taxes, or the infrastructure does not get built, leaving the County with inadequate schools and transportation.

The impact tax is not intended to address adequacy. The GIP provides guidelines for administering Montgomery County's adequate public facility (APF) requirements, which are Local Area Transportation Review (LATR) and mitigation payments for transportation adequacy, and the Annual Schools Test (AST) and Utilization Premium Payments (UPP) for school adequacy. As noted in the staff reports for Bill 16-24:

> The County's APF requirement is a land use regulation and administered as an exaction for infrastructure. APF requirements are minimum standards of infrastructure adequacy, and the GIP provides guidelines for administering those standards. In general, exactions for infrastructure, like constructed infrastructure improvements, must be linked to the development and meet some standard for reasonableness. Montgomery County's APF requirements for schools (i.e., Annual Schools Test and Utilization Premium Payments) and transportation (Local Area Transportation Review) are held to these standards of "nexus" and "proportionality". Impact fees can also be an exaction for infrastructure and must be calculated in a way that abides by nexus and proportionality.
>
> Montgomery County has impact taxes, not impact fees. Thus, impact taxes are not a part of the County's APF requirement. Montgomery County did have impact fees, but in *Eastern Diversified v. Montgomery Cty*., 319 Md. 45, 570 A.2d 850 (1990), the Court found that the calculation of fees and the approach for spending the fee revenue did not meet nexus and proportionality standards.[6] In response, the Council implemented an excise tax, which does not have to be close closely related to the actual cost of providing public facilities to serve new development and does not have to be spent to specifically benefit the properties that are taxed.

[6] According to the Maryland Department of Legislative Services, "A development impact fee is a regulatory measure designed to fund facilities **specifically required by new development projects in order to mitigate the impact of such development** on infrastructure or public facilities. However, **there must be a reasonable connection between the amount of the impact fee imposed and the actual cost of providing facilities** to the properties assessed. In order to justify the imposition of an impact fee, **a jurisdiction must conduct a study that measures the effects that new development will have on public facilities.** The amount of an impact fee is subject to judicial review. Moreover, **the revenue from the fee must be dedicated to substantially benefit the assessed properties**. Thus, a county cannot collect an impact fee in one geographic area and spend the funds in another area." (emphasis added)

In addition, the Council considered the fiscal impact statement that cited a $13 million negative revenue impact. As noted in the staff reports:

> The Office of Management and Budget (OMB) transmitted a Fiscal Impact Statement on September 30, 2024. OMB estimates that Bill 16-24 as submitted by the Planning Board will have a negative fiscal impact of $28.1 million over the coming six fiscal years (2026-2031) because of reduced impact tax revenues due to changes specified in the bill and increased expenditures associated with other recommended policy changes.
>
> OMB concedes that while the bill does not authorize or require new spending by the County, additional expenditures will likely be necessary to ensure adequate transportation facilities. As summarized by OMB, the bill is expected to increase County expenditures by $6.9 million and to decrease County revenues by $21.2 million over the six-year period by: 1) reducing impact tax revenues as more of the County is shifted to lower impact tax rate zones and by expanding discounts; 2) increasing impact tax credits, further reducing impact tax revenues; 3) increasing expenditures for transit improvement to provide sufficient facilities to geographies designated with more urban policy areas; and 4) reducing infrastructure improvements provided by developers, requiring construction by the County to achieve the same facility levels. The below chart, provided by OMB, summarizes the fiscal impacts:

Fiscal Impact Summary	
<u>Revenues</u>	**<u>6-Year Impact</u>**
Impact Tax revenue change through designation of more of the County in lower impact tax rate zones and expanded tax discounts	$ (19,200,000)
Impact Tax revenue change due to credit for improvements on state roadways	$ (2,000,000)
Total revenue impact	**$ (21,200,000)**
<u>Expenditures</u>	**<u>6-Year Impact</u>**
Construction and operation of Damascus-area transit improvements	$ 3,200,000
Construction of improvements that developers are required to build under current policy	$ 3,700,000
Total expenditure impact	**$ 6,900,000**
Net fiscal impact to County	**$ (28,100,000)**

> The Fiscal Impact Statement does not specify what percent $28.1 million is of the total six-year anticipated capital costs. As shown in the 'Impact Tax Revenue' discussion in this staff report, impact taxes comprised 7.4% of school capital costs in FY24, and 5.3% of transportation capital costs.
>
> It is also unclear whether it is reasonable to attribute an additional $3.7 million in expenditures of constructed improvements developers would otherwise build to the Bill 16-24. If $3.7 million represents the cost of constructed improvements identified through LATR, then the expenditure should not be attributed to impact taxes. There is no policy mechanism by which projects that would otherwise be constructed through LATR are

translated to the Transportation CIP, even if the exemptions were to create a gap in adequate transportation infrastructure.

There are fundamental questions about the purpose and usefulness of a fiscal impact statement in the context of impact taxes. Impact taxes do generate funds in any given fiscal year, meaning OMB and the Department of Finance must attempt to forecast it. According to the theory of impact taxes, however, if there is no growth, there would be no need for impact taxes, which should only support projects that add capacity to accommodate growth. Nonetheless, as this staff packet notes, impact taxes are not precisely tied to the delivery of growth-related infrastructure so for budgeting purposes, it is reasonable to generate a forecast.

Estimates of future impact tax revenue because of Bill 16-24 are based on past development trends. Therefore, if projects pay less in impact taxes because of incentives waiving them, the assumption of future of growth leads to a corresponding reduction in impact tax revenue. However, impact tax collections are driven primarily by the rate of development, and a small change in market conditions and other factors outside the County's control, like a reduction in interest rates, could lead to a disproportionate increase in impact taxes.

Furthermore, the fiscal impact analysis cannot estimate the relationship between impact tax rates, incentives, and the rate of development. It is important to note it is unlikely impact tax incentives have a significant effect on influencing the rate of development beyond other factors in the economy. Yet, the assumption that incentives reduce impact tax revenue because on average, developments are paying less, also implies that if impact tax rates increased by a similar amount, impact tax revenue would increase. A fiscal impact analysis of increasing impact tax rates may have to acknowledge the effect such a policy would have on development trends, which could be a chilling one.

There is precedent for waiving, exempting, or discounting impact taxes to incentivize certain kinds of development, including desirable building types and development in particular locations. In its review of the GIP, the Council largely moved away from exempting LATR requirements as a development incentive. In its review of Bill 16-24, the Committee repeatedly agreed that school impact taxes as conceived and implemented today should not be used as an incentive for housing units intended for families. But the Committee recommended waiving the transportation impact tax because it is not clear that it enables development to pay its "fair share" towards growth-related transportation needs.

Several Councilmembers did echo the County Executive's sentiment that impact taxes may not be the ideal tool for funding transportation and school infrastructure. Therefore, the GO Committee committed to forming a working group to address fundamental questions of how funding school, transportation, and perhaps other infrastructure needs should be done.

Expedited Bill No. 16-24
Concerning: Development Impact Tax – Amendments
Revised: 11/12/2024 Draft No. 4
Introduced: September 10, 2024
Expires: December 7, 2026
Enacted: November 12, 2024
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co. ________

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the request of the Planning Board

AN EXPEDITED ACT to:
(1) update transportation impact tax districts;
(2) modify the applicability of development impact tax exemptions for certain uses and in certain locations; and
(3) generally amend the law governing transportation and school development impact taxes.

By amending
Montgomery County Code
Chapter 52, Taxation
Sections 52-39, 52-41, 52-43, 52-47, 52-49, 52-52, 52-54, 52-55, and 52-59

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

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

Sec. 1. Sections 52-39, 52-41, 52-43, 52-47, 52-49, 52-52, 52-54, 52-55, and 52-59 are amended as follows:

52-39. Definitions.

In this Article the following terms have the following meanings:

* * *

Demolish means to tear down or destroy an entire building or structure, or 67 percent or more of first-story exterior walls of a one-family or two-family dwelling unit. Demolish includes the conversion of an exterior wall into an interior wall. Basement and cellar walls are not considered exterior walls.

* * *

Office-to-residential conversion is when an existing office building is turned into housing through adaptive reuse, renovation, or demolition.

Operating **[[***Expense***]]** expense includes reasonable costs of staffing, advertisement, marketing, building rental, furniture, supplies and materials, bus fuel, and personnel to operate a trip reduction program.

[[*Office-to-residential conversion* is when an existing office building is turned into housing through adaptive reuse, renovation, or demolition.**]]**

* * *

Residential means the use of a building as a dwelling unit.

* * *

(5) *High-rise residential* includes any dwelling unit located in a multifamily residential or mixed-use building that is taller than 4 stories **[[**, and any 1-bedroom garden apartment**]]**.

Sidewalk **[[***Connector***]]** *connector* means a sidewalk that provides a direct link or connection to a major activity center.

Stacked flats are dwelling units constructed in a stack of **[[**two**]]** 2 or more dwelling units, where each dwelling unit is located either above or below an adjacent unit within a single building that is 4 stories or less.

Use and occupancy permit means a use and occupancy permit issued by the Department of Permitting Services under Chapter 8.

[*Sidewalk Connector* means a sidewalk that provides a direct link or connection to a major activity center.**]**

* * *

52-41. Imposition and applicability of development impact taxes.

* * *

(c) The following impact tax districts are established:

(1) *White Flint:* The part of the **[**White Flint**]** North Bethesda Metro Station Policy Area included in the White Flint Special Taxing District in Section 68C-2;

(2) *Red Policy Areas:* Bethesda CBD, Chevy Chase Lake, Forest Glen, Friendship Heights, Great Seneca Life Science Center, Grosvenor, Glenmont,**[**,**]** Lyttonsville, Medical Center, North Bethesda Metro Station, Purple Line East, Rock Spring, Rockville Town Center, Shady Grove, Silver Spring CBD, Takoma, Twinbrook, Wheaton CBD, White Oak Downtown, and Woodside Metro Station Policy Areas;

(3) *Orange Policy Areas:* Aspen Hill, Bethesda/Chevy Chase, Burtonsville Crossroads, Clarksburg East, Clarksburg Town Center, Derwood, Fairland/Briggs Chaney, Gaithersburg City, Germantown East, Germantown Town Center, Germantown West, Great Seneca Communities, Kensington/Wheaton, North Bethesda, **[**R&D Village,**]** Olney Town Center, Rockville City,

and Silver Spring/Takoma Park[, White Flint, except the portion that is included in the White Flint Special Taxing District in Section 68C-2, and White Oak] Policy Areas;

(4) *Yellow Policy Areas:* [Aspen Hill,] Clarksburg West, Cloverly, Damascus [Fairland/Colesville], Colesville [Germantown East, Germantown West], Montgomery Village/Airpark, North Potomac, Olney, and Potomac Policy Areas; and

(5) *Green Policy Areas:* [Damascus,] Rural East[,] and Rural West Policy Areas.

* * *

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

* * *

(6) except for a development located in the City of Rockville, any development located in a Qualified Opportunity Zone certified by the United States Treasury Department[[,]] or in an area previously designated as an Opportunity Zone, including a development located in the following census tracts as defined by their 2010 Census Boundaries: Silver Spring – 25.00, 26.01; Takoma Park – 17.03, 20.00, 23.01; White Oak – 15.05, 15.09, 14.21; Wheaton – 38.00; Rockville – 9.04; Gaithersburg – 7.24, 7.23, 7.13, 8.13; and Germantown – 8.30;

(7) a house built by high school students under a program operated by the Montgomery County Board of Education; [or]

(8) a farm tenant dwelling[.];

(9) a bioscience facility;

(10) a multifamily dwelling unit with 3 or more bedrooms in a multifamily structure; [[or]]

[[(11) an office-to-residential conversion when the building is adaptively reused or renovated for multifamily housing.]]

[[(12)]](11) any single-family attached or detached dwelling units with a gross floor area of 1,800 square feet or less, or a gross floor area of 2,200 square feet or less including an attached garage; or [[.]]

(12) any development that is within one-half mile of a Metro station, within a Parking Lot District, and that provides no onsite parking.

* * *

(h) The development impact tax does not apply to:

* * *

(4) office-to-residential conversions when the building is adaptively reused or renovated for multi-family housing; and

(5) the conversion of office to multi-family, single-family detached, or single-family attached housing when demolition is involved.

* * *

52-43. Calculation of development impact tax.

* * *

(f) A 1-bedroom garden apartment must be calculated using the high-rise residential rate if the preliminary plan was approved before January 1, 2025.

* * *

52-47. Credits

* * *

(b) Except as provided in subsection (l), a property owner must receive a credit for constructing or contributing to an improvement of the type listed in Section 52-50, including the cost of an improvement in a

Unified Mobility Program or the White Oak Local Area Transportation Improvement Program, if the improvement reduces traffic demand or provides additional transportation capacity and to the extent the cost of the improvement exceeds the property owner's fee under a Unified Mobility Program or the White Oak Local Area Transportation Improvement Program.

* * *

(4) Any credit that was certified under this subsection on or after March 1, 2004, and before December 31, 2015, expires 6 years after the Department certifies the credit. Any credit that was certified under this subsection on or after January 1, 2016, expires 12 years after the Department certifies the credit, except that any credit certified between January 1, 2016, and January 1, 2022, in the amount of at least $3 million expires 16 years after the Department certifies the credit.

* * *

(l) The Department must not certify a credit for**[**:**]**

[(1)**]** the cost of a project in a Unified Mobility Program or the White Oak Local Area Transportation Improvement Program or the White Oak Local Area Transportation Improvement Program up to the property owner's fee under a Unified Mobility Program or the White Oak Local Area Transportation Improvement Program.**[**; or**]**

[(2) any improvement in the right-of-way of a State road, except:**]**

[(A) a transit program that operates on or relieves traffic on a State road or an improvement to a State road that is included in a memorandum of understanding between the County and either Rockville or Gaithersburg; or]

[(B) the cost of an improvement in a Unified Mobility Program or the White Oak Local Area Transportation Improvement Program to the extent it exceeds the property owner's fee under a Unified Mobility Program or the White Oak Local Area Transportation Improvement Program.]

* * *

52-49. Tax rates.

* * *

(h) Except for a development located in the City of Rockville, any development located in a Desired Growth and Investment Area, as defined in the 2020-2024 Growth and Infrastructure Policy (Subdivision Staging Policy), that has an accepted preliminary plan application, or equivalent plan acceptance in the City of Gaithersburg, before January 1, 2025, must pay the tax at:

(1) 60[%] percent of the otherwise applicable rate if located in an Orange Policy Area; or

(2) 68[%] percent of the otherwise applicable rate if located in a Yellow Policy Area.

[[(i) Any single-family [[detached residential or detached single-family]] attached or detached dwelling [[units]] unit with a gross floor area of 1,800 square feet or less must pay the tax at 50 percent of the otherwise applicable rate.]]

[[(j) Office-to-residential conversions when demolition is involved in the conversion of office to multifamily or single-family attached housing must pay the tax at 50 percent of the otherwise applicable rate.]]

[[(k)]](i) Stacked flats must pay the multifamily low-rise applicable rate.

* * *

52-52. Definitions.

In this Article all terms defined in Section 52-39 have the same meanings, and the following terms have the following meanings:

* * *

High-rise unit means any dwelling unit located in a multifamily residential or mixed-use building that is taller than 4 stories. **[**, and any 1-bedroom garden apartment.**]**

Low-rise unit means any dwelling unit located in a multifamily residential or mixed-use building that is 4 stories or less.

* * *

52-54. Imposition and applicability of tax.

* * *

(d) The tax under this Article must not be imposed on:

* * *

(6) except for a development located in the City of Rockville, any development located in a Qualified Opportunity Zone certified by the United States Treasury Department**[[**,**]]** or in an area previously designated as an Opportunity Zone, including a development located in the following census tracts as defined by their 2010 Census Boundaries: Silver Spring – 25.00, 26.01; Takoma Park – 17.03, 20.00, 23.01; White Oak – 15.05, 15.09, 14.21; Wheaton – 38.00; Rockville – 9.04; Gaithersburg – 7.24, 7.23, 7.13, 8.13; and Germantown – 8.30; **[**or**]** or

(7) a house built by high school students under a program operated by the Montgomery County Board of Education.**[[**.**]][[**; or**]]**

[[(8) a multifamily dwelling unit with 3 or more bedrooms in a multifamily structure; or**]]**

[[(9)**]]** **[[**(8) an office-to-residential conversion when the building is adaptively reused or renovated for multifamily housing**[[**;**]]**.**]]**

* * *

52-55. Tax rates.

* * *

(d)**[**(d)**]** The Director of Finance, after advertising and holding a public hearing as required by Section 52-17(c), must adjust the tax rates set in or under this Section effective on July 1 of each odd-numbered year in accordance with the update to the Growth and Infrastructure Policy using the latest student generation rates and average Montgomery County Public School construction costs. The Director must calculate the adjustment to the nearest multiple of one dollar. The Director must publish in the County Register the amount of this adjustment not later than May 1 of each odd-numbered year.

* * *

[[(3) *Calculation of impact tax rates.* The tax rates must reflect the County's cost to construct a student seat, reducing the rates by a factor equivalent to the portion of funding for capacity-adding projects in the adopted school CIP attributed to State Aid.**]]**

* * *

(f) **[**A three-bedroom multi-family dwelling unit located in an Infill Impact Area must pay the tax at 40% of the otherwise applicable rate.**]** **[[**Any single-family **[[**detached residential or detached single-family**]]** attached or detached dwelling **[[**units**]]** unit with a gross floor area of 1,800 square feet or less must pay the tax at 50 percent of the otherwise applicable rate.]] A 3-bedroom multi-family dwelling unit located in an Infill Impact Area must pay the tax at 40 percent of the otherwise applicable rate.

[[(g) An office-to-residential conversion when demolition is involved in the conversion of office to multifamily or single-family attached housing must pay the tax at 50 percent of the otherwise applicable rate.]]

[[(h)]](g) Stacked flats must pay the multifamily low-rise applicable rate.

[[(i)]](h) A 1-bedroom garden apartment must be calculated using the high-rise residential rate if the preliminary plan was approved before January 1, 2025.

* * *

52-59. Utilization Premium Payment.

* * *

(c) The Director of Finance, after advertising and holding a public hearing, must adjust the rates set in or under this Section effective on July 1 of each odd-numbered year in accordance with the update to the [Subdivision Staging] Growth and Infrastructure Policy using the latest student generation rates and school construction cost data. The Director must calculate the adjustment to the nearest multiple of one dollar. The Director must publish the amount of this adjustment not later than May 1 of each odd-numbered year.

* * *

(e) The Department of Finance must retain funds collected under this Section in an account to be appropriated for:

(1) any public school improvement that adds capacity designed to alleviate overutilization in the school service area from which the funds were collected; or

(2) for capital projects adding capacity at any school adjacent to the school for which the funds were collected. Adjacent schools must be determined using the Planning Board's Annual School Utilization Report.

* * *

Sec. 2. [[Transition]] Expedited Effective Date. The Council declares that this legislation is necessary for the immediate protection of the public interest. The amendments made in Section 1 take effect on January 1, 2025, and must apply to any application for a building permit filed on or after January 1, 2025.

Approved:

November 12, 2024

Andrew Friedson, President, County Council Date

Approved:

Marc Elrich, County Executive Date

This is a correct copy of Council action.

Sara R. Tenenbaum, Clerk of the Council Date

OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

November 25, 2024

TO: Andrew Friedson, President
Montgomery County Council

FROM: Marc Elrich, County Executive

SUBJECT: Veto of Bill 16-24, Development Impact Tax - Amendments

My primary reason for this veto is because Bill 16-24 reduces the revenues brought in by impact taxes, and impact taxes are specifically intended to provide revenue for infrastructure that must accompany development. While it is the Growth and Infrastructure Policy (GIP) that lays out the policy for raising the revenue, it is Bill 16-24 that implements the actual impact taxes that raise the revenue. Both the GIP and impact taxes stem from the Adequate Public Facilities ordinance, which as Montgomery Planning's website explains is the "foundation" to providing adequate infrastructure to support growth (Growth and Infrastructure Policy - Montgomery Planning).

The bill is expected to have a negative revenue impact of $13 million over the next six fiscal years. This will be compounded by a reduction in school impact tax estimates for the FY26-30 Capital Improvement program after a decrease in FY24 collections to levels not seen since FY09 and the Great Recession. In FY14, the County collected $60.8 million in school and transportation impact taxes, compared to FY24 collections totaling $15.6 million, a reduction of $45 million or 74.4%.

I have expressed multiple times that we should implement alternative methods to impact taxes for raising revenues for infrastructure. While impact taxes may not be the ideal tool for funding transportation and school infrastructure, further reductions to impact tax revenues should not be enacted before an alternative has been identified, discussed and approved.

This bill represents the continued reduction of impact tax revenues supporting critical transportation and school improvement projects. While some of the reductions were stated to spur creation of affordable housing, there is no clear impact tax rates spurs the creation of affordable housing, MPDUs, and 3+bedroom units that this bill is intended to promote. I appreciate that the Council improved the version recommended by the Planning Board, which would have cut revenues even more, but this is the sixth time since 2013 that the Council has cut the development tax revenues available for providing adequate public facilities.

The County's Capital Improvements Program (CIP) is constrained by spending affordability guidelines for General Obligation bonds and declining Recordation and Impact Tax revenues due in part to impact tax adjustments approved in the last Growth and Infrastructure Policy update.

These reductions substantially hamper our ability to make critical community investments in school capacity projects and transportation improvements. In FY25, the following are some of the projects that had funding reduced, eliminated, or deferred due to lack of CIP resources:

- Bradley Boulevard Improvements
- Forest Glen Passageway
- Goldsboro Road Sidewalk and Bikeway
- Tuckerman Lane Sidewalk
- Paint Branch High School Addition
- Mill Creek Towne Elementary School Addition
- James Hubert Blake High School Addition

The bill uses transportation impact taxes as development incentives and disregards the need for those taxes to provide adequate public facilities. Trip generation data, shared by Planning at the GO Committee work sessions, demonstrate that the exempted development types have equal or greater transportation impacts as non-exempted development types.

The bill includes numerous exemptions from the transportation impact tax for developments types that have known and significant transportation needs; the rationale is that transportation impact tax has no basis in capital needs. However, residents of 3+ bedroom units, MPDU, and office-to-residential building conversions will still create demand for pedestrian infrastructure, transit improvements, and other new multimodal capacity.

The exemption from impact taxes for developments without parking is especially inadvisable as developments near Metrorail already have reductions in impact taxes and exemptions from motor-vehicle-related mitigations. Impact taxes in these areas are especially needed to fund pedestrian improvements, BRT, and other transit projects.

Reducing impact taxes reduces the funds available for infrastructure, and if development does not pay their fair share of costs, then one of two things happen:

- The costs get shifted to residents in the form of taxes, or
- The infrastructure simply doesn't get built and it leaves us with inadequate schools and transportation.

Neither of these choices are better than maintaining impact tax revenues until we have a satisfactory replacement.

I would urge you to leave the impact taxes where they are now and not reduce revenues, and let's work together to produce an alternative revenue source that can replace impact taxes.

Fiscal Impact Statement

Office of Management and Budget

Bill 16-24 Development Impact Tax - Amendments

Bill Summary

Bill 16-24 would amend transportation impact tax district designations and the impact tax rates that apply in these districts. The bill would also modify the applicability of development impact tax exemptions for certain uses and locations. This Bill is part of the Planning Board's recommended changes to the Growth and Infrastructure Policy (GIP).
Specifically, the bill:

- Updates transportation impact tax districts to expand red, orange, and yellow transportation policy areas in the county. Policy area colors govern impact tax rates among other transportation policies.
- Replaces the current school impact tax discount for multi-family units with three bedrooms in Infill areas with a countywide impact tax exemption for multi-family residential units with three or more bedrooms for school and transportation impact taxes.
- Introduces a 50 percent transportation and school impact tax discount for single-family attached and detached units that are 1,800 square feet or smaller.
- Reduces school impact tax rates to exclude the State funded portion of the cost to construct a student seat.
- Exempts office-to-residential conversions from transportation and school impact taxes when the building is adaptively reused or renovated for multi-family housing and offers a 50 percent discount for office-to-residential conversions when demolition is required.
- Maintains stacked flat units in the multifamily low-rise impact tax rate category.
- Extends the existing impact tax exemption for bioscience facility.
- Introduces impact tax credits for improvements on State roads.

In addition, although not included in Bill 16-24, the Planning Board's recommended updates to the GIP change Local Area Transportation Review (LATR) requirements for transportation mode adequacy testing and proportionality guides which, if implemented, would exempt eligible development projects from constructing off-site transportation improvements, thus shifting the costs of these improvements to the County. Finally, although not included in the bill as drafted, the Planning Board also recommends permitting the use of funds from Utilization Premium Payments (UPP) in adjacent schools in their updates to the GIP.

Fiscal Impact Summary

The Growth and Infrastructure Policy changes submitted by the Planning Board are anticipated to have a negative fiscal impact of $28.1 million over the coming six fiscal years (2026-2031) as displayed below. This impact is the result of reduced impact tax revenues due to changes specified in the bill and increased expenditures associated with other recommended policy changes. While the bill does not authorize or require new spending by the County, additional expenditures will likely be necessary to ensure adequate transportation facilities as provided for in the current GIP. Meanwhile, expenditures for both transportation and schools are likely to be reduced overall as a result of impact tax revenue decreases proposed in the bill.

The bill is expected to increase County expenditures by $6.9 million and to decrease County revenues by $21.2 million over the six-year period by:

- Reducing impact tax revenues as more of the County is shifted to lower impact tax rate zones and by expanding discounts;
- Increasing impact tax credits further reducing impact tax revenues;
- Increasing expenditures for transit improvement to provide sufficient facilities to geographies designated with more urban policy areas; and
- Reducing infrastructure improvements provided by developers, requiring construction by the County to

achieve the same facility levels.

Fiscal Impact Summary	
Revenues	**6-Year Impact**
Impact Tax revenue change through designation of more of the County in lower impact tax rate zones and expanded tax discounts	$ (19,200,000)
Impact Tax revenue change due to credit for improvements on state roadways	$ (2,000,000)
Total revenue impact	**$ (21,200,000)**
Expenditures	**6-Year Impact**
Construction and operation of Damascus-area transit improvements	$ 3,200,000
Construction of improvements that developers are required to build under current policy	$ 3,700,000
Total expenditure impact	**$ 6,900,000**
Net fiscal impact to County	**$ (28,100,000)**

Fiscal Impact Analysis

Impact Tax Revenues

The bill is anticipated to reduce school impact tax revenues by approximately $4.6 million from FY2026 to FY2031, a reduction of approximately $800,000 per year. The policy is anticipated to reduce transportation impact taxes by $14.6 million in the same time period, a reduction of approximately $2.4 million per year.

The 2024-2028 Growth and Infrastructure Policy contains numerous individual sub-policies, only a number of which affect impact tax revenues. The Department of Finance analyzed the sub-policies listed in the following table to determine how future impact tax revenues may change.

Policy Number	Recommendation
2.1	Modify the School Impact Area boundaries so that they align with the proposed Transportation Policy Area boundaries, and classify each area into Infill, Turnover, or Greenfield based on an updated analysis of their latest growth context and potential.
3.1a	Update [transportation] policy areas to support the county's goals.
4.3	Introduce a 50% transportation and school impact tax discount to single-family attached and detached units that are 1,800 square feet or smaller.
4.5	Replace the current school impact tax discount for multi-family units with three or more bedrooms in Infill areas with a countywide impact tax exemption for both transportation and school impact taxes. The exemption will apply to multi-family residential units with three or more bedrooms in multi-family structures.

Due to the volatility of land development as well as the intricacy of the impact tax rate system in Montgomery County, impact tax revenues are highly variable and difficult to predict. Realized impact tax revenues are highly dependent on the amount of development that occurs, the specific type of development, and where that development is located. The future development of any property is influenced by numerous factors that are impossible to predict, such as cost of materials, interest rates, and market rents. As a result of the difficulty of accurately forecasting future development, the Department of Finance used past developments that paid an impact tax to the Department of Permitting Services as a proxy for where future development will occur, and at what intensity and use. The Department of Finance utilized 10 years of development as this period covers multiple economic cycles, generating a reliable proxy for the amount of development that may occur in good economic times as well as during recessions.

The Department of Permitting Services provided a database of all projects paying impact taxes in fiscal years 2014 to 2023. The result was a database of approximately 8,200 development projects containing 21,650 market rate residential units and almost 6.9 million square feet of commercial space located across Montgomery County.

The Department of Finance added data from multiple sources for each project in the database:

- Current and proposed impact tax transportation and school zones from the Department of Planning;
- Current property details (i.e. use, building square footage, etc.) from the Department of Planning

- Units and 3-bedroom units for each multifamily property from CoStar, a commercial real estate data service; and
- Moderately-priced-dwelling-units (MPDUs) from the Department of Housing and Community Affairs;

The Department of Finance compiled the data provided into a unified database and then calculated the fees each individual development project would have paid under the current transportation and school impact tax rate structure, and the fees that would be required under the system proposed by the 2024-2028 Growth and Infrastructure Policy. The Department of Finance compared the results and calculated the annual average expected change in revenues, as well as the six fiscal year change from 2026 to 2031.

The analysis incorporates various assumptions, notably that future development use, intensity, and location will reflect the development trend from FY2014 to FY2023. In addition, the analysis does not incorporate future change to impact tax rates. Impact tax rates are revised biennially based on transportation construction cost inflation, school construction cost inflation, and changes to student generation rates.

In addition to estimating the overall change to impact tax revenues, the Department of Finance calculated the estimated change to impact tax revenues resulting from each of the sub-policies analyzed, shown in tables 1 and 2 below. The total for each sub-policy does not sum to the total anticipated change in impact tax revenues because the sub-policies are applied simultaneously and properties may be subject to multiple sub-policies. The amount for each sub-policy reflects the summation of the revenue change associated with each property subject to the sub-policy in question. For example, the total for sub-policy 3.1a is the change in revenues for all properties that would have been in a different transportation impact tax zone and includes any discounts due to sub-policy 4.3 and sub-policy 4.5.

Table 1. Estimated Revenue Changes for Planning Board's Recommendations on School Elements and on the Code

Items	Average Annual Change	6-year Change
Total Projected Change on Schools Impact Tax Revenues	**-$800,000**	**-$4,600,000**
Policy 2.1: Modify the School Impact Area boundaries so that they align with the proposed Transportation Policy Area boundaries, and classify each area into Infill, Turnover, or Greenfield based on an updated analysis of their latest growth context and potential.	-$300,000	-$1,600,000
Policy 4.3: Introduce a 50% transportation and school impact tax discount to single-family attached and detached units that are 1,800 square feet or smaller.	-$340,000	-$2,030,000
Policy 4.5 / Code Section 52-55 (f): Replace the current school impact tax discount for multi-family units with three or more bedrooms in Infill areas with a countywide impact tax exemption for both transportation and school impact taxes. The exemption will apply to multi-family residential units with three or more bedrooms in multi-family structures.	-$200,000	-$1,400,000

Table 2. Estimated Revenue Changes for Planning Board's Recommendations on Transportation Elements and on the Code

Items	Average Annual Change	6-year Change
Total Transportation Impact Tax Revenues	**-$2,400,000**	**-$14,600,000**
Policy 3.1a: Update [transportation] policy areas to support the county's goal	-$2,200,000	-$13,200,000
Policy 4.3: Introduce a 50% transportation and school impact tax discount to single-family attached and detached units that are 1,800 square feet or smaller.	-$150,000	-$930,000
Policy 4.5: Replace the current school impact tax discount for multi-family units with three or more bedrooms in Infill areas with a countywide impact tax exemption for both transportation and school impact taxes. The exemption will apply to multi-family residential units with three or more bedrooms in multi-family structures.	-$500,000	-$3,200,000

Illustrative Example: Glenmont Forest Redevelopment

Due to the complexity of factors that influence the decision to develop a property, the location, use, and intensity of any future development is not predictable. For this reason, the methodology employed by the Department of Finance used past actual developments in Montgomery County that paid an impact tax as a proxy for the future development the county will experience. If future development trends differ from the past it would result in a change to anticipated future impact taxes. The Glenmont Forest Apartment redevelopment proposal exemplifies how such a change in development trends or the build-out of large projects can affect the range of impact tax revenue realized.

The project at 2386 Glenmont Circle adjacent to the Glenmont Metro station proposes to replace 486 low-rise market-rate multifamily apartments with 2,276 new units of low-rise and high-rise units and 5,000 square feet of retail. The 2024-2028 Growth and Infrastructure Policy proposes to change this property from the turnover school impact tax zone to the infill zone, and from the orange transportation policy zone to the red zone. The 2024-2028 Growth and Infrastructure Policy would result in a decrease of $9.9 million in school impact taxes and $3.7 million in transportation impact taxes compared to the current impact tax rates, if the development is built out as planned.
This estimate assumes the following:

- Based on the proportional square footage proposed of each low-rise and high-rise building, the 2,276 units will comprise 601 low-rise units and 1,675 high-rise units;
- 15% of the proposed units will be dedicated MPDUs;
- The developer receives a credit for the existing 486 low-rise units and only pays impact taxes on the remaining 29 net-new low-rise market rate units;
- 2.70% percent of the new market rate units are 3-bedroom (the average number of market rate units built in the past 10 years that were 3-bedroom

Development of the Glenmont Forest project is in the very early phases of the approval process, and thus the potential impacts identified above are dependent upon the stated assumptions which may not hold for the actual development. However, this example is provided to illuminate potential fiscal impacts as the analysis is otherwise based solely on historical development data.

Impact Tax Credits
Revenue changes associated with Impact Tax credits for improvements along State roadways are expected total $2.0 million over the six-year period as estimated by the Department of Transportation based on the number of projects constructed under the current and previous GIPs, that could have been eligible were this allowance in place. This is likely a low estimate, as more infrastructure may have been constructed along State roadways if improvements were creditable. While there may be expenditure increases for future maintenance on improvements to State roads (currently the subject of ongoing State legislative discussion), the impact is difficult to estimate and not assumed in this analysis.

Transportation System Enhancements
Shifting policy areas from lower-growth to higher-growth categories as proposed by the bill results in an estimated expenditure increase of $3.2 million over the six-year period. This estimate represents the cost estimated by the Department of Transportation of providing sufficient transportation facilities to meet the guidelines as a result of changing Damascus from a "green" to a "yellow" policy area. While this new transit infrastructure may not be required initially, the cost estimate illustrates the impact of altering policy district designations. There would be additional and significant expenditures to enhance transit services in new Orange and Red Policy areas, if enacted. However, due to the proposed changes in definitions of the policy areas, these expenses would be difficult to estimate at this time.

Transportation Facility Construction
While not included in the bill, expenditures are expected to increase $3.7 million over the six-year period to support infrastructure development costs that may be shifted from private developers to the County as a result of modifying transportation adequacy mode testing and LATR exemptions proposed by the planning board in the 2024-2030 GIP update.

	For policy recommendations that would modify transportation mode (e.g. automobile, pedestrian, bike) adequacy testing, expenditure changes reflect the estimated net cost of infrastructure needs that would have been identified by these tests and built by developers or paid for through mitigation payments under the current guidelines. Note that in some cases changes to testing would require developments to construct additional improvements as compared to the current policy, but the net change results in added expenditures for the county. This is likely a low estimate, as the calculation is based on a limited number of developments approved within the changing policy areas over the past three years. Development may increase, and Complete Streets guidelines, Pedestrian Rights of Way Accessibility Guidelines, and other new policies may increase the amount of existing infrastructure that does not meet standards. For policy recommendations that would expand LATR exemptions, expenditure changes reflect the estimated cost of infrastructure that would have been built by developers or paid for through mitigation payments under the current guidelines. Infrastructure cost estimates were developed based on the average annual value of transportation needs identified under the current and previous GIPs. Expenditures include both the capital expenditures needed to construct improvements, plus expenditures for operation and maintenance.
Staff Impact	The Department of Permitting Services estimates that approximately 160 hours of staff time will be needed to implement proposed changes to impact taxes. This additional workload can be absorbed by existing staff.
Actuarial Analysis	The bill is not expected to impact retiree pension or group insurance costs.
Information Technology Impact	The bill is not expected to impact the County Information Technology (IT) or Enterprise Resource Planning (ERP) systems.
Other Information	
Later actions that may impact revenue or expenditures if future spending is projected	The bill does not authorize future spending.
Ranges of revenue or expenditures that are uncertain or difficult to project	All projections of revenues and expenditures are based on growth data that may be prone to change, especially as the intent of this GIP update is explicitly to result in more growth. Impact tax revenues are difficult to forecast: Future development may not reflect the trends from FY2014 to FY2023 in location, type of use, and intensity of development. In addition, Future inflation to transportation construction costs, school construction costs, and changes to student generation rates are unknown and cannot be foreseen. Changes to these factors may change the impact tax rates, which could in turn impact future impact tax revenues. While some sub-policies in the bill and the 2024-2028 Growth and Infrastructure Policy relate to impact tax revenues, they are either recommendations to continue existing practices or there is insufficient data to evaluate their effect. Accordingly, the Department of Finance did not evaluate the sub-policies shown in the table below.

Policy #	Code Section	Recommendation	Reason not Evaluated
2.2		Adjust the seat deficit thresholds of each UPP tier to align with MCPS's CIP guidelines for classroom additions and maintain the existing utilization rate thresholds.	UPP collections since introduction have been too minimal to noticeably affect the impact tax revenue forecast.
2.3		Allow funds collected as UPPs to be used for capital projects adding capacity at schools adjacent to the school for which the funds were collected, as outlined in the School Utilization Report.	No impact on future County revenues.
2.4	52-55	Keep stacked flats in the multi-family low-rise category for the purposes of both student generation rates and impact taxes.	Policy does not reflect a change to current practice.
2.5		Monitor the countywide early childhood program projections through the School Utilization Report. When the enrollment is projected to be more universal, include the projections in the elementary school SGR calculations.	No impact determined at this time.
4.1	52-55	Modify the calculation of the standard school impact tax rates to exclude the State funded portion of the per student cost of school construction. Do this by adjusting the rates to account for the portion of funding for school capacity projects in the adopted 6-year CIP attributed to state aid.	It is not possible to forecast the future school construction costs, student generation rates, and level of state contribution required to evaluate the impact of this recommendation on the County's funding costs and impact taxes.
4.2		Continue the use of the cap and carryover system as adopted through Bill 25-23E. Its implementation is relatively new and will help soften any anticipated upward adjustments.	Policy does not reflect a change to current practice.
4.4		Remove the Desired Growth and Investment Areas discount and rely on other policies to advance corridor-focused compact growth and housing. This will simplify the number of boundaries used in conjunction with the policy. Include legacy language for projects with an accepted preliminary plan application, or equivalent plan acceptance in the City of Gaithersburg, before January 1, 2025.	Removal of the DGIA discount is consistent with existing practices.
4.6		Exempt office-to-residential conversions from transportation and school impact taxes when the building is adaptively reused or renovated for multi-family housing. Offer a 50% transportation and school impact tax discount for office-to-residential conversions when demolition is involved in the conversion of office-to-residential to multi-family or single-family attached housing	It is not possible to predict which office buildings may convert to residential use, where converted properties would be located, and when this conversion may occur.
4.7		Continue exempting bioscience projects from transportation impact tax and add the exemption to the county code.	Policy does not reflect a change to current impact tax practices.
4.9		Add legacy language to allow approved projects in Opportunity zones that have not received building permits to receive the impact tax exemption.	Policy does not reflect a change to current impact tax practices.

For transportation specifically, if reduced costs for developing affordable housing, 3+ bedroom units, and daycares encourage additional development of these uses, or if additional applicants apply for credits along State roads, then actual cost impacts due to these exemptions and credits will be higher. Similarly, for schools, if cost reductions for these uses result in additional development, enrollment may increase without sufficient impact tax revenue to support capacity projects resulting in additional relocatable expenditures.

For transportation, change to proportionality would shift the assignment of costs between private & public uses. Costs are based on actual costs from developments under the 2020-2024 GIP. Infrastructure not built as part of a new development will carry a higher cost if it is done at a later time as part of a second construction mobilization. There will also be user impacts during that interim timespan where users do not benefit from infrastructure that may have otherwise been built. Finally, changes to the County Code regarding "types of

	creditable infrastructure" could potentially further decrease impact tax revenue. In addition, Planning Board Recommendation 3.11b would exempt development projects that meet the definition of a Mixed-Income Housing Community in Section 3.3.4a of the zoning code from the requirement to complete an LATR study. Due to the lack of historical data on these types of developments, it was not possible to determine a fiscal impact this recommendation. For schools, currently school impact tax rates are based on the average school construction cost and by the latest student generation rate generated by the size and type of residential development. However, the Planning Board recommends discounting these rates by the percentage of the MCPS CIP capacity-adding projects funded with State aid. Though it is difficult to project the magnitude of revenue lost due limitations in forecasting the future cost of school construction, student generation rates, and level of state aid contribution, it is expected that revenues will decrease as a result of Planning's recommendation.
Contributors	Todd Fawley-King, Department of Finance Dennis Hetman, Department of Finance Rachel Silberman, Office of Management and Budget Veronica Jaua, Office of Management and Budget Gary Nalven, Office of Management and Budget Haley Peckett, Department of Transportation Andrew Bossi, Department of Transportation Rebecca Torma, Department of Transportation Barbara Suter, Department of Permitting Services

Economic Impact Statement

Montgomery County, Maryland

Bill 16-24 Development Impact Tax – Amendments

SUMMARY

Based on available information and limited timeframe, the Office of Legislative Oversight (OLO) cannot estimate the impact of Bill 16-24 on the Council's priority economic indicators. An analysis of the Bill would require an understanding of how the Growth and Infrastructure Policy (GIP) would be impacted by the proposed changes, and the subsequent economic impacts to private organizations, residents, and overall economic conditions in the County, which is beyond the scope of this Economic Impact Statement. The GIP is similar to a master plan; thus, the analysis would fall under the purview of Montgomery Planning. However, OLO staff could complete an economic assessment for Bill 16-24 in approximately three to four months if the Council chooses to add it to OLO's work program.

BACKGROUND AND PURPOSE OF BILL 16-24

Every four years, the Montgomery County Planning Board must produce a recommended Growth and Infrastructure Policy (GIP).[1] The GIP ensures that Montgomery County's public infrastructure—such as schools, transportation, and water & sewer services—can support new development in the County.[2] The GIP is responsible for:

- creating a process for analyzing the impact of new developments on public infrastructure;
- setting standards for determining if infrastructure is adequate to support new development; and
- establishing how to identify inadequate infrastructure, how inadequacies should be addressed, and the time frame for when improvements should take place.[3]

The Planning Board submitted their recommended draft of the 2024-2028 GIP on July 25, 2024.[4] After receiving comments and recommendations on the draft from the County Executive and County Board of Education, the Council must hold a public hearing and then decide whether to adopt the policy by November 15th, 2024.[5] (If the Council does not adopt the new GIP, the previously adopted policy remains in effect.)[6]

---

[1] Montgomery County Code, "Sec. 33A-15. Growth and Infrastructure Policy."
[2] Montgomery County Planning Department, "Growth and Infrastructure Policy Explainer."
[3] Ibid.
[4] Montgomery County Council, "Introduction Staff Report for Bill 16-24," September 10, 2024.
[5] Sec. 33A-15. Growth and Infrastructure Policy.
[6] Ibid.

The Planning Board submitted Bill 16-24 to the Council. The purpose of the Bill is "to implement legislative changes consistent with the Planning Board draft of the 2024-2028 GIP. "[7] It would do so by updating transportation impact tax districts, modifying development impact tax exemptions for certain uses and in certain locations, and adjusting how the County calculates development impact taxes.[8]

On behalf of the Planning Board, the Council introduced Bill 16-24 on September 10, 2024.

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess the impacts of Bill 16-24 on County-based private organizations and residents in terms of the Council's priority economic indicators and whether the Bill would likely result in a net positive or negative impact on overall economic conditions in the County.[9]

Due to the complexity of the proposed changes, Bill 16-24 would require a detailed investigation of the impacts of each proposed change to the tax districts, development impact tax exemptions, and laws governing the transportation and school development impact taxes.[10] The Bill's proposed changes would directly impact the policy tools of the Growth and Infrastructure Policy and it is not possible to evaluate the changes in the timeframe given for this statement. In the past, Planning Staff have solicited stakeholder input along with data to evaluate policy recommendations, including development taxes and changes to tax districts.[11] This investigation is beyond the scope of this Economic Impact Statement. OLO staff could complete an economic assessment for Bill 16-24 in approximately three to four months if the Council chooses to add it to OLO's work program.

VARIABLES

Not applicable

IMPACTS

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

Not applicable

[7] Montgomery County Council, "Introduction Staff Report for Bill 16-24."
[8] Ibid.
[9] Montgomery County Code, Sec. 2-81B.
[10] Montgomery County Council, Introduction Report for Bill 16-24.
[11] Montgomery Planning, 2024 - 2028 Growth and Infrastructure Policy Working Draft, May 3, 2024.

DISCUSSION ITEMS

Not applicable

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 <u>not</u> represent OLO's endorsement of, or objection to, the Bill under consideration.

CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.

Climate Assessment

Office of Legislative Oversight

Bill 16-24: Development Impact Tax - Amendments

SUMMARY

Based on available information and limited timeframe, the Office of Legislative Oversight cannot estimate the impact of Bill 16-24 on the County's contribution to climate change, nor climate resilience. An analysis of the Bill would require an understanding of how the Growth and Infrastructure Policy (GIP) would be impacted by the proposed changes, and the subsequent environmental impacts, which is beyond the scope of this climate assessment. The GIP is similar to a master plan; thus, the analysis would fall under the purview of Montgomery Planning. However, OLO staff could complete an assessment for Bill 16-24 in approximately three to four months if the Council chooses to add it to OLO's work program.

BACKGROUND AND PURPOSE OF BILL 16-24

Every four years, the Montgomery County Planning Board must produce a recommended Growth and Infrastructure Policy (GIP).[1] The GIP ensures that Montgomery County's public infrastructure—such as schools, transportation, and water & sewer services—can support new development in the County. [2] The GIP is responsible for:

- Creating a process for analyzing the impact of new developments on public infrastructure;
- Setting standards for determining if infrastructure is adequate to support new development; and
- Establishing how to identify inadequate infrastructure, how inadequacies should be addressed, and the time frame for when improvements should take place.[3]

The Planning Board submitted their recommended draft of the 2024-2028 GIP on July 25, 2024.[4] After receiving comments and recommendations on the draft from the County Executive and County Board of Education, the Council must hold a public hearing and then decide whether to adopt the policy by November 15th, 2024.[5] (If the Council does not adopt the new GIP, the previously adopted policy remains in effect.)[6]

The Planning Board submitted Bill 16-24 to the Council. The purpose of the Bill is "to implement legislative changes consistent with the Planning Board draft of the 2024-2028 GIP. "[7] It would do so by updating transportation impact tax districts, modifying development impact tax exemptions for certain uses and in certain locations, and adjusting how the County calculates development impact taxes.[8]

On behalf of the Planning Board, the Council introduced Bill 16-24 on September 10, 2024.

ANTICIPATED IMPACTS

Due to the complexity of the proposed changes, Bill 16-24 would require a detailed investigation of the impacts of each proposed change to the tax districts, development impact tax exemptions, and laws governing the transportation and school development impact taxes.[9] The Bill's proposed changes would directly impact the policy tools of the Growth and Infrastructure Policy and it is not possible to evaluate the changes in the timeframe given for this statement. In the past, Planning Staff have solicited stakeholder input along with data to evaluate policy recommendations, including development taxes and changes to tax districts.[10] This investigation is beyond the scope of this climate assessment. OLO staff could complete an assessment for Bill 16-24 in approximately three to four months if the Council chooses to add it to OLO's work program.

RECOMMENDED AMENDMENTS

The Climate Assessment Act requires OLO to offer recommendations, such as amendments or other measures to mitigate any anticipated negative climate impacts.[11] OLO does not offer recommendations or amendments as the impact of Bill 16-24 cannot be estimated regarding the County's contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

CAVEATS

OLO notes two caveats to this climate assessment. First, predicting the impacts of legislation upon climate change is a challenging analytical endeavor due to data limitations, uncertainty, and the broad, global nature of climate change. 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.

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of legislation on the County's contribution to addressing climate change. These climate assessments will provide the Council with a more thorough understanding of the potential climate impacts and implications of proposed legislation, at the County level. The scope of the Climate Assessments is limited to the County's contribution to addressing climate change, specifically upon the County's contribution to greenhouse gas emissions and how actions suggested by legislation could help improve the County's adaptative capacity to climate change, and therefore, increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed County bills may impact GHG emissions and community resilience.

CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

---

[1] Montgomery County Code, "Sec. 33A-15. Growth and Infrastructure Policy," Accessed September, 26, 2024.
[2] Montgomery County Planning, Growth and Infrastructure Policy - Montgomery Planning, May 3, 2024.
[3] Ibid.
[4] Montgomery County Council, "Introduction Staff Report for Bill 16-24,", September 10, 2024.
[5] Sec. 33A-15. Growth and Infrastructure Policy.
[6] Ibid.
[7] Montgomery County Council, "Introduction Staff Report for Bill 16-24."
[8] Ibid.
[9] Montgomery County Government, Introduction Report for Bill 16-24, Introduced September 10, 2024.
[10] Montgomery Planning, 2024 - 2028 Growth and Infrastructure Policy Working Draft, May 3, 2024.
[11] Bill 3-22, Legislative Branch – Climate Assessments – Required, Montgomery County Council, Effective date October 24, 2022

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 16-24: DEVELOPMENT IMPACT TAX - AMENDMENTS

SUMMARY

Based on available information and limited timeframe, the Office of Legislative Oversight cannot estimate the impact of Bill 16-24 on racial equity and social justice (RESJ). An analysis of the Bill would require an understanding of how the Growth and Infrastructure Policy (GIP) would be impacted by the proposed changes, and the subsequent impacts to racial equity and social justice, which is beyond the scope of this impact statement.

Of note, the GIP is like a master plan in its scope and thus its analysis would fall under the purview of Montgomery Planning. If the Council chooses to add a RESJ impact statement on Bill 16-24 to OLO's work program, OLO staff could complete it in approximately three to four months.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements (RESJIS) is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.[1] Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social inequities that have caused racial and social disparities.[2]

PURPOSE OF BILL 16-24

Every four years, the Montgomery County Planning Board must produce a recommended Growth and Infrastructure Policy (GIP).[3] The GIP ensures that Montgomery County's public infrastructure—such as schools, transportation, and water and sewer services—can support new development in the County.[4] The GIP is responsible for:[5]

- creating a process for analyzing the impact of new developments on public infrastructure;
- setting standards for determining if infrastructure is adequate to support new development; and
- establishing how to identify inadequate infrastructure, how inadequacies should be addressed, and the time frame for when improvements should take place.

The Planning Board submitted their recommended draft of the 2024-2028 GIP on July 25, 2024.[6] After receiving comments and recommendations on the draft from the County Executive and County Board of Education, the Council must hold a public hearing and then decide whether to adopt the policy by November 15, 2024.[7] If the Council does not adopt the new GIP, the previously adopted policy remains in effect.[8]

The Planning Board submitted Bill 16-24 to the Council. The purpose of the Bill is "to implement legislative changes consistent with the Planning Board draft of the 2024-2028 GIP."[9] It would do so by updating transportation impact tax districts, modifying development impact tax exemptions for certain uses and in certain locations, and adjusting how the County calculates development impact taxes.[10]

On behalf of the Planning Board, the Council introduced Bill 16-24 on September 10, 2024.

ANTICIPATED RESJ IMPACTS

Due to the complexity of the proposed changes, Bill 16-24 would require a detailed investigation of the impacts of each proposed change to the tax districts, development impact tax exemptions, and laws governing the transportation and school development impact taxes.[11] The Bill's proposed changes would directly impact the policy tools of the Growth and Infrastructure Policy and it is not possible to evaluate the changes in the timeframe given for this statement. In the past, Planning Staff have solicited stakeholder input along with data to evaluate policy recommendations, including development taxes and changes to tax districts.[12] This investigation is beyond the scope of this impact statement. OLO staff could complete a RESJ impact statement for Bill 16-24 in approximately three to four months if the Council chooses to add it to OLO's work program.

RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.[13] OLO does not offer recommended amendments for Bill 16-24 since the analysis required for this Bill is outside of the scope of this impact statement.

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 impact 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 Janmarie Peña, Performance Management and Data Analyst, drafted this RESJ impact statement.

---

[1] Definition of racial equity and social justice adopted from "Applying a Racial Equity Lens into Federal Nutrition Programs" by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools. https://www.racialequitytools.org/glossary
[2] Ibid.
[3] "Sec. 33A-15. Growth and Infrastructure Policy," Montgomery County Code §
[4] "Growth and Infrastructure Policy Explainer," Montgomery County Planning Department.
[5] Ibid.
[6] Introduction Staff Report for Bill 16-24, Montgomery County Council, Introduced September 10, 2024.
[7] Sec. 33A-15. Growth and Infrastructure Policy
[8] Ibid.
[9] Introduction Staff Report for Bill 16-24.
[10] Ibid.
[11] Ibid.
[12] 2024-2028 Growth and Infrastructure Policy Working Draft, Montgomery County Planning Department, May 3, 2024.
[13] Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council