

Expedited Bill No. 29-10  
Concerning: Taxes – Excise Tax –  
Carbon Dioxide Emissions  
Revised: 5-18-10 Draft No. 5  
Introduced: April 27, 2010  
Enacted: May 19, 2010  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmembers Berliner, Leventhal, Elrich, Andrews and Trachtenberg

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**AN EXPEDITED ACT to:**

- (1) establish a reliable funding source for greenhouse gas reduction programs in the form of an excise tax on major emitters of carbon dioxide;
- (2) set the rate of the tax and authorize the County Council to increase or decrease the rate each year by resolution;
- (3) define certain terms, and authorize the County Executive to issue certain regulations;
- (4) provide for collection of the tax and payment of interest and penalties, set the effective date of the tax, and apply certain provisions of law to this tax;
- (5) require part of the revenue from this tax to be used for certain greenhouse gas reduction programs; and
- (6) generally amend the County laws governing excise taxation.

By adding

Montgomery County Code  
Chapter 52, Taxation  
Article XIII, Excise Tax on Major Emitters of Carbon Dioxide  
Sections 52-95 through 52-99

<b>Boldface</b>	<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. Chapter 52 is amended by adding Article XIII, Excise Tax on**  
2 **Major Emitters of Carbon Dioxide:**

3           **Article XIII. Excise Tax on Major Emitters of Carbon Dioxide.**

4 **52-95. Findings.**

5           The County Council finds that:

6           (a) In December, 2009 the US Environmental Protection Agency found that  
7           greenhouse gases in the atmosphere endanger both the public health and  
8           the environment for current and future generations.

9           (b) Montgomery County has embraced an 80% reduction in greenhouse gas  
10           emissions by 2050 and has begun to engage in programmatic efforts to  
11           reduce these emissions. These efforts constitute a significant  
12           investment by the County and its constituents and cover both stationary  
13           sources (County owned and otherwise) and mobile sources.

14           (c) It is appropriate that the largest emitters of carbon dioxide in the County  
15           contribute to paying for these greenhouse gas reduction programs.

16 **52-96. Tax levied; rates.**

17           (a) Any major emitter of carbon dioxide, as defined in subsection (b), must  
18           file a tax return and pay an excise tax each year on the privilege of  
19           emitting carbon dioxide into the County airshed.

20           (b) A major emitter of carbon dioxide is any person who owns or operates  
21           any stationary source of carbon dioxide located in the County that emits  
22           more than 1 million tons of carbon dioxide in any calendar year.

23           (c) The rate of the tax established under subsection (a) is \$5 per ton of  
24           carbon dioxide emitted.

25           (d) The County Council by resolution, after a public hearing advertised  
26           under Section 52-17(c), may increase or decrease the rate set in  
27           subsection (c).

- 28 (e) As used in this Article:
- 29 (1) Ton, when applies to carbon dioxide in gaseous form, means the
- 30 amount of gas in cubic feet which is the equivalent of 2000
- 31 pounds on a molecular weight basis.
- 32 (2) Director means the Director of Finance.
- 33 (3) Person includes any individual, business, corporation,
- 34 association, firm, partnership, group of individuals acting as a
- 35 unit, trustee, receiver, assignee, or personal representative.
- 36 (f) By regulations issued under method (2) that are consistent with this
- 37 Article, the County Executive may further specify the administration of
- 38 this tax. These regulations must identify the source of verifiable and
- 39 measurable emissions data, which must be a federal or state air pollution
- 40 control agency, on which the Director must base the amount of tax due

41 **52-97. Credit.**

- 42 (a) The Director must allow a credit against any tax due in an amount that
- 43 reflects the proportionate reduction in carbon dioxide emitted from
- 44 any source in the County if that reduction is attributable to any County
- 45 greenhouse gas reduction program funded by revenue from this tax
- 46 that is allocated under Section 52-100, compared to the amount of
- 47 carbon dioxide emitted in the previous calendar year by each major
- 48 emitter of carbon dioxide.
- 49 (b) The Executive by regulation must further define which reductions in
- 50 emissions are considered in calculating this credit and how those
- 51 reductions are measured.

52 **[[52-97]] 52-98. Due date.**

53 (a) The tax levied under Section 52-96 is due and payable for each month  
 54 on the last day of the next month. Each person subject to this tax must  
 55 file a report each month on a form supplied by the Director.

56 (b) The Director may establish an alternative payment system. If an  
 57 alternative payment system is established, the Director must require a  
 58 pro-rated payment for any taxable period that ends before the system  
 59 takes effect.

60 **[[52-98]] 52-99. Collection; interest and penalties; violation; lien.**

61 (a) If any person does not pay the Director the tax due under Section 52-96,  
 62 that person is liable for:

63 (1) interest on the unpaid tax at the rate of one percent per month for  
 64 each month or part of a month after the tax is due; and

65 (2) a penalty of 5 percent of the amount of the tax per month or part  
 66 of a month after the tax is due, not to exceed 25 percent of the  
 67 tax.

68 The Director must collect any interest and penalty as part of the tax.

69 (b) If any person does not file a report or pay the tax when due, the Director  
 70 must obtain information on which to calculate the tax due and may  
 71 estimate the tax due based on the previous month's tax or any other  
 72 reasonable basis. As soon as the Director obtains sufficient information  
 73 on which to calculate any tax due, the Director must assess the tax and  
 74 penalties against the person. The Director must notify the person of the  
 75 total amount of the tax, interest, and penalties by mail sent to the  
 76 person's last known address. This notice is prima facie evidence of the  
 77 tax due; entitles the County to judgment for the amount of the tax,  
 78 penalty, and interest listed in the notice; and gives the taxpayer the  
 79 burden of proving that the tax has been paid or any other sufficient

80 defense to the action. The total amount due must be paid within 10 days  
81 after the date of the notice.

82 (c) Every person liable for any tax under Section 52-96 must preserve for 3  
83 years suitable records necessary to determine the amount of the tax.  
84 The Director may inspect and audit the records at any reasonable time.

85 (d) Any failure to pay the tax when due under Section 52-97, and any  
86 violation of Section 52-97 or this Section, is a Class A violation. Each  
87 violation is a separate offense. A conviction under this subsection does  
88 not relieve any person from paying the tax.

89 (e) Section 52-18D applies to this tax.

90 **[[52-99]] 52-100. Allocation of Revenue.**

91 Of the revenue from the tax levied under Section 52-96, 50% must be reserved  
92 for and allocated in the annual operating budget to funding for County greenhouse  
93 gas reduction programs, including mass transit.

94 **Sec. 2. Expedited Effective Date.**

95 The Council declares that this Act is necessary for the immediate protection of  
96 the public interest. This Act takes effect on the date when it becomes law.

97 **Sec. 3. Revenue Allocation Suspended.**

98 Notwithstanding County Code Section 52-100, as enacted by Section 1 of this  
99 Act, the revenue received from the tax levied under County Code Section 52-96 in  
100 the first full fiscal year the tax collected must be held in a special reserve account.

101 *Approved:*

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*Nancy Floreen*

*5/21/10*

Nancy Floreen, President, County Council

Date

104 *Approved:*

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106

Isiah Leggett, County Executive

Date

107 *This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council

Date