

**M E M O R A N D U M**

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 8-11, Taxation – Excise Tax – Disposable Carryout Bags

Bill 8-11, Taxation – Excise Tax – Disposable Carryout Bags, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on March 15, 2011. A public hearing is tentatively scheduled for March 31 at 7:30 p.m.

Bill 8-11 would:

- impose an excise tax on certain carryout bags provided to customers at certain retail establishments;
- require certain retail establishments to collect the carryout bag tax and remit the tax to the County;
- provide for a certain fee to compensate certain retail establishments for collecting the carryout bag tax;
- provide for certain exemptions from the carryout bag tax;
- provide for certain imposition of an estimated carryout bag tax under certain circumstances;
- provide for the imposition of interest and penalties for failure to collect and remit the carryout bag tax; and
- generally amend County law to provide for an excise tax on certain bags.

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Bill No. 8-11  
Concerning: Taxation – Excise Tax –  
Disposable Carryout Bags  
Revised: 3-10-11 Draft No. 1  
Introduced: March 15, 2011  
Expires: September 15, 2012  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the Request of the County Executive

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**AN ACT** to:

- (1) impose an excise tax on certain carryout bags provided to customers at certain retail establishments;
- (2) require certain retail establishments to collect the carryout bag tax and remit the tax to the County;
- (3) authorize payment of a fee to compensate certain retail establishments for collecting the carryout bag tax;
- (4) allow certain exemptions from the carryout bag tax;
- (5) authorize imposition of an estimated carryout bag tax under certain circumstances;
- (6) authorize the imposition of interest and penalties for failure to collect and remit the carryout bag tax; and
- (7) generally amend County law to provide for an excise tax on certain bags.

By adding

Montgomery County Code  
Chapter 52, Taxation  
Article XIV, Carryout Bag Tax  
Sections 52-101, 52-102, 52-103, 52-104, 52-105, 52-106, and 52-107

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<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. Article XIV is added to Chapter 52 as follows:**

2                           **Article XIV. Carryout Bag Tax.**

3           **52-101. Definitions.**

4           In this Article, the following terms have the following meanings:

5           **Director** means the **Director** of the Department of Finance.

6           **Carryout bag** means a paper or plastic bag provided by a **retail**  
 7           **establishment** to a customer at the point of sale, pickup, or delivery to carry  
 8           purchased items. **Carryout bag** does not include:

- 9           (1) a bag provided by a pharmacist that contains a prescription drug;  
 10          (2) any newspaper bag or bag intended for initial use as a garbage, pet  
 11             waste, or yard waste bag;  
 12          (3) a bag provided at the point of sale at a stand at a seasonal event, such as  
 13             a farmers market; or  
 14          (4) a paper bag that a **restaurant** gives a customer to take prepared food or  
 15             drink from the **restaurant**.

16          **Restaurant** means any lunchroom, cafe, or other establishment located in a  
 17          permanent building for the accommodation of the public, equipped with a  
 18          kitchen containing facilities and utensils for preparing and serving meals to the  
 19          public, and outfitted with a public dining area. A **restaurant** does not include  
 20          any area of a supermarket, department store, or other **retail establishment**  
 21          beyond the kitchen and public dining area.

22          **Retail establishment** means any person engaged in the retail sale of goods.

23          **Retail establishment** includes any supermarket, convenience store, shop,  
 24          service station, or restaurant, and any other sales outlet where a customer can  
 25          buy goods.

26          **52-102. Tax imposed.**

- 27          (a) A tax in the amount of 5 cents is levied and imposed on each customer

28 for each **carryout bag** that a **retail establishment** provides to the  
 29 customer.

30 (b) Each **retail establishment** that provides a **carryout bag** to a customer  
 31 must collect the amount of the tax imposed under subsection (a) when  
 32 the customer makes any payment for goods in person, through the  
 33 Internet, by telephone, by facsimile, or by any other means. The **retail**  
 34 **establishment** must hold the taxes required to be collected under this  
 35 Section in trust for the County until remitted as required under Section  
 36 52-103.

37 (c) Each **retail establishment** may retain 1 cent from each 5-cent tax that  
 38 the **retail establishment** collects to cover the administrative expense of  
 39 collecting and remitting the tax to the County.

40 (d) A **retail establishment** must indicate on the customer's transaction  
 41 receipt the number of **carryout bags** that the **retail establishment**  
 42 provided to the customer and the total amount of tax levied under this  
 43 Section.

44 **52-103. Remittance.**

45 (a) Except as provided in subsection (b), on or before the 25th day of each  
 46 month, each **retail establishment** must remit the full amount of the tax  
 47 collected for all **carryout bags** provided to a customer during the  
 48 previous month, less the amount retained under Section 52-102 (c).

49 (b) A **retail establishment** is only required to remit the taxes to the  
 50 **Director** when the cumulative taxes collected under Section 52-102(a)  
 51 since the previous remittance, if any, exceed \$100.

52 (c) Each remittance must be accompanied by a report of all transactions  
 53 that involve bags subject to the tax. The report must be on a form  
 54 supplied by the **Director** and must contain the number of bags supplied

55 or provided to customers, the amount of tax required by this Section to  
 56 be collected and any other information the **Director** requires to assure  
 57 that the proper tax has been remitted to the County.

58 (d) (1) If the **retail establishment** does not file a required report by the  
 59 deadline established under subsection (a), the **Director** may  
 60 estimate the amount of tax due. The **Director** may base the  
 61 estimate on a reasonable projection of bags supplied or provided  
 62 and may consider taxes reported by other **retail establishments**.

63 (2) The **Director** may send a notice of the estimated tax due,  
 64 including interest and penalty, to the **retail establishment's** last  
 65 known address. The **retail establishment** must pay the estimated  
 66 tax, including any interest and penalty assessed by the **Director**,  
 67 within 10 days after the notice is sent.

68 (e) Each **retail establishment** must preserve for 3 years all records  
 69 necessary to determine the amount of the tax due under this Section.

70 (f) The **Director** may inspect any records required to be kept under this  
 71 Section at any reasonable time.

72 (g) The **Director** must deposit all taxes remitted under this Section into the  
 73 stormwater management fund created under Section 19-35, after  
 74 deducting the cost of administering this Article.

75 **52-104. Interest and penalties.**

76 (a) If a **retail establishment** does not remit to the **Director** any tax owed  
 77 under Section 52-103 when due, the **retail establishment** is liable for:

78 (1) interest on the collections at the rate of one percent per month for  
 79 each month or part of a month after the remittance is due; and

80 (2) a penalty of 5 percent of the amount of the collections per month  
 81 or part of a month after the remittance is due, up to 25 percent of

82                    the tax collected.

83            (b) The **Director** must collect any interest and penalty as part of the  
84                    remittance due.

85 **52-105. Prohibited conduct.**

86            A **retail establishment** must not:

87            (a) neglect or refuse to collect or remit the tax levied under this Article;

88            (b) file an incomplete, false, or fraudulent report to the **Director**;

89            (c) neglect or refuse to keep complete and accurate records; or

90            (d) refuse to allow the **Director** to inspect and audit the **retail**  
91                    **establishment's** records.

92 **52-106. Regulations.**

93            The **County Executive** may adopt regulations under method (2) to implement  
94                    this Article.

95 **52-107. Enforcement.**

96            Any violation of this Article is a Class A civil violation. Each violation is a  
97                    separate offense. A conviction under this Section does not relieve a **retail**  
98                    **establishment** from paying a remittance owed to the County.

99 **Sec. 2. Effective Date.**

100            This Act takes effect on January 1, 2012.

101 *Approved:*

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103

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Valerie Ervin, President, County Council

Date

104 *Approved:*

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106

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Isiah Leggett, County Executive

Date

# LEGISLATIVE REQUEST REPORT

Bill 8-11

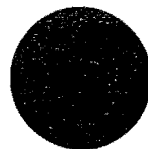
## Taxation – Excise Tax – Disposable Carryout Bags

- DESCRIPTION:** This bill would establish an excise tax to be levied on carryout bags that retail establishments provide to customers. The tax is set at 5 cents for each carryout bag that a retail establishment provides to a customer, of which 1 cent may be retained by the retailer to cover administrative costs. Revenues would be deposited into the Water Quality Protection Fund created under County Code Chapter 19 and used for watershed protection activities, including litter prevention and removal.
- PROBLEM:** Disposable carryout bags handed out by retail businesses are among the top items found in the litter and trash stream in County neighborhoods and rivers. Litter is a public health nuisance, degrades property values, pollutes the Anacostia and Potomac Rivers, and drives up taxpayer-funded cleanup costs. The County is bound to meet a regulatory limit on trash and litter established in the Anacostia River Total Maximum Daily Load (TMDL) under the Clean Water Act. The County is also a signatory to the Potomac River Watershed Trash Treaty, committing the County to a regional effort to achieve a Trash Free Potomac by 2013. Both the Anacostia TMDL and the Trash Treaty are included as regulatory requirements in the County's 3<sup>rd</sup> Municipal Separate Storm Sewer (MS4) Stormwater Permit. Funds are needed to address these problems.
- GOALS AND OBJECTIVES:** To create a tax to help fund the County's stormwater management program to support the goals of a cleaner environment, cleaner streams and rivers in the County. Effectively transfer the burden of litter cleanup costs from tax payer to consumers, while offering consumers a choice to avoid disposable bags and bag charges by bringing their own bags.
- COORDINATION:** Department of Environmental Protection, Department of Finance
- FISCAL IMPACT:** See Fiscal and Economic Impact Statement
- ECONOMIC IMPACT:** See Fiscal and Economic Impact Statement
- EVALUATION:** To be requested.
- EXPERIENCE ELSEWHERE:** The District of Columbia has a similar law (Anacostia River Clean Up and Protection Act of 2010).
- SOURCE OF INFORMATION:** Ansu John, Division of Environmental Policy and Compliance, Department of Environmental Protection (240-777-7786).
- APPLICATION WITHIN MUNICIPALITIES:** Revenue measures apply in all municipalities in the County.
- PENALTIES:** Class A civil

Bill



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OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

March 7, 2011

RECEIVED  
MONTGOMERY COUNTY  
10:00 AM

2011 MAR -8 PM 3:07

TO: Valerie Ervin, President  
Montgomery County Council

FROM: Isiah Leggett  
County Executive

SUBJECT: Legislation to create a Carryout Bag Tax

I am submitting for Council introduction a bill that establishes a 5-cent excise tax on carryout bags provided by retailers to customers on or after January 1, 2012. I am also submitting a Legislative Request Report and Fiscal Impact Statement for the bill. I am grateful that seven Councilmembers, including yourself and Councilmembers Andrews, Berliner, Elrich, Navarro, Reimer, and Rice have agreed to co-sponsor this bill.

Disposable bags handed out by retail businesses are among the top items persistently found in the litter and trash stream in County neighborhoods and rivers. Litter is a public health nuisance, degrades property values, pollutes the Anacostia and Potomac Rivers (our source of drinking water), and drives up taxpayer-funded cleanup costs.

The aim of the bill is to effectively transfer the burden of publicly-funded litter cleanup to consumers, while offering the consumer a choice to avoid disposable carryout bags and the bag tax by using their own bags. Tax revenues would be deposited in the County's Water Quality Protection Fund to be used for watershed protection activities including litter prevention and removal.

This bill will assist the County in funding compliance with both the Anacostia River Total Maximum Daily Load (TMDL) for trash and litter and the Potomac River Watershed Trash Treaty, under which the County agreed to participate in a regional effort to achieve a Trash Free Potomac by 2013. The Anacostia TMDL and the Trash Treaty are both included as regulatory requirements in the County's Municipal Separate Storm Sewer System (MS4) Permit.



Valerie Ervin, President  
Montgomery County Council  
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I look forward to working with the Council as it considers this legislation. For questions about this bill, please contact Bob Hoyt, Director, Department of Environmental Protection at 240-777-7700.

Attachments

c: Bob Hoyt, DEP Director  
Jennifer Barrett, Finance Director  
Marc Hansen, County Attorney



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett  
County Executive

Joseph F. Beach  
Director

MEMORANDUM

March 4, 2011

TO: Valerie Ervin, President, County Council  
FROM: Joseph F. Beach, Director  
SUBJECT: Council Bill XX-11, Taxation – Carryout Bag Tax

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

**LEGISLATION SUMMARY**

Bill XX-11 would impose an excise tax of 5 cents on all carryout bags (with the exceptions described below) provided to customers in retail establishments, and would require that those retail establishments collect the tax and remit it to the County, less 1 cent per bag that the retailer may retain to offset the administrative cost of collecting the tax. “Carryout bags” are defined as paper or plastic bags provided by the retailer and used to carry purchases from the premises. Several types of bags are excluded from the tax: bags provided by a pharmacist containing prescription drugs; newspaper bags; bags used for garbage, pet waste, or yard waste disposal; bags provided by a restaurant for taking away prepared food or drink; and bags provided at the point of sale at a stand for a farmers market or other seasonal event.

The 5 cent bag tax is to be levied on each carryout bag the retail establishment provides to the customer (with the exclusions noted above). The taxes collected must be remitted to the County, less the 1 cent per bag retained by the retailer, on a monthly basis when cumulative bag tax collections exceed \$100 per month. For lower collection rates, remittances are not required until the cumulative tax collected since the last remittance exceeds \$100.

Bill XX-11 also specifies requirements for customer receipts provided by the retailer when the bag tax is assessed and for recordkeeping by the retail establishment, as well as interest and penalties if the tax is not remitted as required. Any violation of this bill would be punishable as a Class A civil violation.

**FISCAL AND ECONOMIC SUMMARY**

**Fiscal Impact**

Revenues: The number of carryout bags currently used in Montgomery County in one year is estimated to be 82,950,000. This figure was derived using figures from the District of Columbia’s

Office of the Director

bag tax program and adjusting them for the number of retail establishments in Montgomery County. The District's first year bag tax collections of \$2.1 million translate into 52,500,000 bags (@ 5 cents per bag). Using figures from the U.S. Bureau of the Census, the ratio of the 2009 population of Montgomery County to that of the District is 1.62, and the ratio of retail trade establishments in Montgomery County to the number of such establishments in the District is 1.57. It was assumed that a comparable factor (1.58) represents the ratio of carryout bags used in the County in a year to the number used in the District. Multiplying the District's 52,500,000 bags by 1.58 yields an estimate of 82,950,000 for the number of carryout bags currently used per year in Montgomery County.

The attached spreadsheet shows how bag tax revenues have been estimated; assuming that the number of bags needed is 82,950,000. It is conservatively assumed that consumers will reduce their use of retailer-provided carryout bags by 50% during FY12, when the bag tax takes effect (the District found that bag usage fell by 80% during the first year). The remaining 50% of the bags will be provided by the retailer and will be taxed at 5 cents per bag, with the retailer allowed to retain 1 cent per bag for administrative costs. It is assumed that initially 15% of the potential bag tax revenue would be lost due to startup and collection issues, leaving the County with revenue of about \$562,000 for the 6 months of FY12 that the tax will apply.

In subsequent years, consumers are expected to increasingly avoid the need for carryout bags, resulting in the bag reduction percentage growing from 50% in FY12 to 60% in FY13 and reaching 85% in FY17. Likewise, the percentage of revenue lost to startup and collection factors is expected to fall from 15% in FY12 to 12% by FY17.

The net result is that revenue to the County from the bag tax is expected to rise to nearly \$1.08 million in FY13 (the first full year of the tax) and to fall steadily in subsequent years to about \$423,000 by FY17 as consumers use fewer and fewer non-reusable carryout bags.

Costs: The cost to the County to implement and administer the bag tax includes the development and maintenance of a web site for collecting the tax, publicity and education to be provided before and after implementation of the tax (including making free reusable bags available to seniors and others), and the addition of a position in the Department of Finance to administer the tax and the associated website. These costs are estimated to total \$354,000 in FY12 (which includes development of the web site) and \$236,200 in FY13 (the first full year of the tax), with somewhat lower amounts in the succeeding years (see the attached spreadsheet).

Net Fiscal Impact: In FY12, when the bag tax will only be in effect for 6 months and a number of large one-time startup costs will be incurred (e.g. for web site design and implementation), the net revenue produced by the tax is estimated at \$207,640. In FY13 (the first full year of the tax), projected net revenue from the tax will be \$842,150. Net revenue is projected to decline in each succeeding year as consumers use fewer and fewer non-reusable carryout bags, reaching \$216,845 in FY17. All revenue from the bag tax is to be deposited into the Water Quality Protection Fund, where it will be used to support the County's many programs and initiatives to improve water quality in the County's lakes, streams, and rivers.

**Economic Impact**

Bill XX-11 establishes a carryout bag tax of 5 cents for each carryout bag that a retail establishment provides to a customer, 1 cent of which may be retained by the retailer to cover administrative costs. This tax is based on the customer's economic activity, i.e., retail purchases of goods, and the cost of the tax is borne by the customer, not by County taxpayers. The economic cost to the consumer is contingent on the consumer's choice to use reusable bags or other means to carry purchases from the point of sale, rather than non-reusable plastic or paper bags. Retailers may incur operating costs to reprogram their checkout stations, train employees, upgrade their accounting systems, perform necessary recordkeeping, and send their tax collections to the County, some or all of which would be offset by the 1 cent out of the 5 cent tax per bag retained by the retailer.

Plastic bags are a persistent and consistently-found item in the litter stream, and in 2009 County agencies spent approximately \$3.3 million on litter prevention and removal programs. The goal of imposing this tax is to defray the costs of cleanup and to encourage the use of environmentally friendly options. This bill will shift the cost of cleanup from County taxpayers to the retail customers using such bags.

The following persons contributed to and concurred with this analysis: John Greiner, Office of Management and Budget; Ansu John and Bob Hoyt, Department of Environmental Protection; Robert Hagedoorn and David Platt, Department of Finance.

JFB:jg

- c: Kathleen Boucher, Assistant Chief Administrative Officer
- Lisa Austin, Offices of the County Executive
- Bob Hoyt, Director, Department of Environmental Protection
- Ansu John, Department of Environmental Protection
- Jennifer Barrett, Director, Department of Finance
- Robert Hagedoorn, Department of Finance
- David Platt, Department of Finance
- Marc Hansen, County Attorney, County Attorney's Office
- Walter Wilson, County Attorney's Office
- John Greiner, Office of Management and Budget
- John Cuff, Office of Management and Budget

**ESTIMATED FISCAL IMPACT OF THE BAG TAX**

	FY12	FY13	FY14	FY15	FY16	FY17
<b>REVENUE</b>						
Number of Bags	82,950,000	82,950,000	82,950,000	82,950,000	82,950,000	82,950,000
Bag Reduction Based on Consumer Behavior	50%	60%	70%	75%	80%	85%
Bags Subject to Tax	41,475,000	33,180,000	24,885,000	20,737,500.00	16,590,000.00	12,442,500.00
Projected Gross Bag Revenues @ \$0.05 per Bag	\$2,073,750	\$1,659,000	\$1,244,250	\$1,036,875	\$829,500	\$622,125
Less Retailer Share of Revenue @ \$0.01 per Bag	(\$414,750)	(\$331,800)	(\$248,850)	(\$207,375)	(\$165,900)	(\$124,425)
Less Revenue Lost to Startup and Collection Factors	(\$311,063)	(\$248,850)	(\$161,753)	(\$134,794)	(\$99,540)	(\$74,655)
Montgomery County Share of Revenue	\$1,347,938	\$1,078,350	\$833,648	\$694,706	\$564,060	\$423,045
<b>GROSS PROJECTED COUNTY REVENUE*</b>	<b>\$561,641</b>	<b>\$1,078,350</b>	<b>\$833,648</b>	<b>\$694,706</b>	<b>\$564,060</b>	<b>\$423,045</b>
<b>COSTS</b>						
Publicity/Bag Distribution/Education	\$120,000	\$100,000	\$95,000	\$80,000	\$70,000	\$70,000
Administrative Costs, Finance: Online Tax System	\$190,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000
Administrative Costs, Finance: OSC for Administrative Support**	\$40,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000
Administrative Costs, Finance: Operating Expenses for OSC***	\$4,000	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200
<b>TOTAL COST</b>	<b>\$354,000</b>	<b>\$236,200</b>	<b>\$231,200</b>	<b>\$216,200</b>	<b>\$206,200</b>	<b>\$206,200</b>
<b>Net Fiscal Impact</b>	<b>\$207,641</b>	<b>\$842,150</b>	<b>\$602,448</b>	<b>\$478,506</b>	<b>\$357,860</b>	<b>\$216,845</b>

\*Five months in FY12, full year for FY13-17.

\*\*Half a year in FY12.

\*\*\*Operating expenses include computer, telephone, etc.