

MEMORANDUM

TO: County Council

FROM: ^{MF} Michael Faden, Senior Legislative Attorney
^{GO} Glenn Orlin, Deputy Council Staff Director

SUBJECT: **Public Hearing:** Bill 21-11, Taxes – Transportation Impact Tax - Credits

Bill 21-11, Taxes – Transportation Impact Tax - Credits, sponsored by Councilmembers Floreen and Rice, was introduced on June 21, 2011. A Government Operations and Fiscal Policy Committee worksession will be scheduled at a later date.

Bill 21-11 would implement recommendations 3-6 of the Clarksburg Infrastructure Working Group, submitted to the Council on April 13 (see report excerpts on ©5-6). All recommendations apply to the credits allowable to developers under the transportation impact tax, and most of the recommendations would apply only to the Clarksburg impact tax district.

Councilmember Rice would amend ©2, line 27, to replace any with the Clarksburg, so that impact tax credits could be transferred only to other properties in the Clarksburg impact tax district, rather than County-wide. Councilmember Floreen expressed her intent to consider expanding the availability of impact tax credits for capacity improvements to state roads outside the Clarksburg impact tax district; under this Bill credits for state road improvements would be limited to roads located in or adjacent to Clarksburg (see ©2, lines 15-17).

This Bill does not implement recommendation 7 of the Working Group (see ©6). That recommendation would allow the developer of Clarksburg Town Center to claim impact tax credits that it would have been entitled to if it had not expected the now-terminated Clarksburg Town Center development district to reimburse the cost of certain roads the developer built in the Town Center area. After the Working Group submitted its report, attorneys for the developer, NNP II – Clarksburg, LLC, filed a notice of claim with the County. This notice is required under state law before the developer can sue the County for damages claimed as a result of the County’s cancellation of the development district. Council staff advised, and lead sponsor Councilmember Floreen concurred, that it would be imprudent for the County, through legislation or otherwise, to offer this reimbursement while the potential lawsuit is unresolved.

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Bill No. 21-11
Concerning: Taxes – Transportation
Impact Tax - Credits
Revised: 6-15-11 Draft No. 1A
Introduced: June 21, 2011
Expires: December 21, 2012
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Floreen and Rice

AN ACT to:

- (1) modify the credits which apply to the transportation impact tax;
- (2) allow certain excess credits to be transferred; and
- (3) generally amend County law regarding transportation impact taxes.

By amending

Montgomery County Code
Chapter 52, Taxation
Section 52-55

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

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

Sec. 1. Section 52-55 is amended as follows:

52-55. Credits.

* * *

(b) A property owner must receive a credit for constructing or contributing to an improvement of the type listed in Section 52-58 if the improvement reduces traffic demand or provides additional transportation capacity except (for a development that is located in the Clarksburg impact tax district) an improvement to a County arterial road that does not add traffic capacity but brings the road to current road design standards. However, the Department must not certify a credit for any improvement in the right-of-way of a State road, except a transit or trip reduction program that operates on or relieves traffic on a State road, [or] an improvement to a State road that is included in a memorandum of understanding between the County and either Rockville or Gaithersburg, or (for a development that is located in the Clarksburg impact tax district) an improvement to a State road that is located in or adjacent to the Clarksburg impact tax district.

* * *

(4) Any credit that was certified under this subsection on or after March 1, 2004, expires [6] 20 years after the Department certifies the credit.

* * *

(e) A refund must not be granted when any credit certified under this Section exceeds the applicable tax. However, the owner of a development that is located in the Clarksburg impact tax district may transfer any unusable credit against the development impact tax to another property owner in any impact tax district. The transferee is

28 entitled to the amount of credit transferred to it, up to the amount of
29 unpaid impact tax the transferee owes. The transfer of any credit is not
30 effective until the transferor notifies the Department of Permitting
31 Services of the transfer. The transfer of any credit under this subsection
32 does not extend the expiration date of that credit under subsection (b).

33 * * *

34 *Approved:*

35 _____
Valerie Ervin, President, County Council Date

36 *Approved:*

37 _____
Isiah Leggett, County Executive Date

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

39 _____
Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 21-11

Impact Tax - Amendments

DESCRIPTION: Extends the time period that a developer can use transportation impact tax credits from 6 years to 20 years. For Clarksburg developments only, grants impact tax credits for capacity improvements to State roads. Establishes a credit/exchange system for impact tax credits. For Clarksburg only, allows credits for other types of roads that are not currently eligible for impact tax credits.

PROBLEM: Sufficient financing is not available to build needed transportation improvements in the Clarksburg area.

GOALS AND OBJECTIVES: To allow enhanced use of transportation impact tax credits, among other solutions, to stimulate funding of needed transportation improvements in the Clarksburg area and elsewhere.

COORDINATION: Departments of Finance, Transportation, Permitting Services

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Michael Faden, Senior Legislative Attorney, 240-777-7905

APPLICATION WITHIN MUNICIPALITIES: Applies only to County transportation impact tax.

PENALTIES: Not applicable.

2. Do not establish a special taxing district for the Clarksburg Town Center (2-9-0).

Those opposing a special tax district for AH/CV oppose a special tax for CTC for the same reasons. Many of those supporting the special tax for AH/CV did so only because of the prospect of the higher private infrastructure charge; but there is no such prospect for CTC, so they do not support a special tax here. A small minority believe that a special tax for CTC is equitable considering the expectations raised over the years by the then-pending development district, and since the revenue from a special taxing district is the only way that the rest of CTC—and especially its retail core—can be re-started.

3. Extend the time period that a developer can use impact tax credits from 6 years to 20 years (11-0-0). Currently the law requires that any credit be applied within 6 years after DOT has certified it. The Group unanimously believes that the 6-year use-it-or-lose-it provision should be extended to 20 years, which is the expiration period for WSSC's System Development Charge credits. The current rule unfairly penalizes larger developments that have an extended buildout period. The developers will feel more assured to build their required road improvements sooner if they know their credits will not expire so quickly.

4. For Clarksburg developments only, grant impact tax credits for capacity improvements to State roads (8-2-1). The impact tax law allows credits for capacity-adding improvements to County roads, but not to State roads such as MD 27, MD 121, and MD 355. The majority of the Group would allow State road improvements to be credited, since they add capacity just as County road improvements do, and all such capacity benefits county travelers. This would also result in more State road improvements being built. A concern of those opposed is that this would further deplete impact tax revenue for building new transportation facilities.

5. Establish a credit/exchange system for impact tax credits. The impact tax law does not allow credits earned from transportation projects built by a development to be used against anything but the impact tax payments to be made by the development itself. Allowing Clarksburg developments to sell any excess credits to other Clarksburg developments would recoup some of its costs; allowing them to sell excess to other developments elsewhere in the County would broaden the opportunity for cost savings.

A small majority (6-4-1) would allow Clarksburg developers to sell their excess credits to any willing buyer in the County. It is a matter of fairness: if a developer is spending more on roads than his impact taxes would be, then he should be able to recoup some of the difference by selling the excess credits. The larger the universe of potential buyers, the more likely the developers will be able to benefit from their excess credits, which would reduce the special district tax (see Recommendation #1).

The minority point out that impact tax revenue would be depleted countywide, meaning less funds for future improvements. A more restrictive version of this concept—limiting the sale of excess credits to other developments in Clarksburg—enjoys much broader support (10-1-0). While there would be fewer “buyers” of excess credits, the lost impact tax revenue would be limited to Clarksburg, and so only Clarksburg's future transportation revenue would be affected.

6. For Clarksburg only, designate other types of roads for impact tax credits that are not eligible currently (8-3-0). Currently, the law defines the type of projects that are eligible for impact tax credits as those County roadway or intersection improvements that add capacity. This excludes projects that improve an existing road by bringing it up to current standards. In Clarksburg, for example, some roads—such as Skylark Road and Snowden Farm Parkway (between Clarksburg and Stringtown Roads)—were upgraded from a rural byway to suburban standards, even without adding travel lanes.

A majority of the Group feels that these roads have been made safer and, although through lanes were not added, their capacities have also increased by straightening them and providing wider lanes. The minority point out that these types of improvements have always been required of developers of new subdivisions, and they have never been creditable against the impact tax. They are also concerned about providing a different credit standard for Clarksburg.

7. Grant CTC a credit equal to the nearly \$2 million in transportation impact taxes it has paid (11-0-0). CTC's point is that if it knew there would be no development district, it would have applied for credit for the capacity-adding roads it built. The Group unanimously agrees that this would be a just resolution of the matter.

8. Forgive the \$1.6 million that would have been paid by the CTC Development District for its share of the construction of Stringtown Road from I-270 to MD 355 (8-1-2). The General Fund advanced the \$1.6 million to allow the project to be completed several years ago. Most of the Group agrees that without a development district, this obligation should be forgiven.

D. Future Steps

Should the Council concur with the Group's proposals, it would enact a bill amending the Development Impact Tax law to incorporate the recommended provisions. Furthermore, once there is a determination as to the monetary benefit of these provisions to Arora Hills and Clarksburg Village, a special taxing district should be established that would, over time, collect the balance of \$25 million for these two developments.

As for Clarksburg Town Center, the nearly \$2 million of credits the Group believes it is owed will also require a special provision in the Development Impact Tax Law. The \$1.6 million obligation toward the cost of Stringtown Road Extended can be forgiven administratively by the Department of Finance, if the County Executive approves.

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The Working Group acknowledges the support of County staff, including: Glenn Orlin, Michael Faden, and Susan Mabie, Council staff; Sue Richards, Office of Legislative Oversight; John Carter, Ron Cashion, Steve Carey, and Christopher McGovern, M-NCPPC; Michael Coveyou, Department of Finance; and Bob Simpson, Department of Transportation.

The Group particularly expresses its gratitude to Nate Betnun and Kojo Asiedu of Stone & Youngberg, who performed the analysis of several special taxing district options *pro bono*.