

MEMORANDUM

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Expedited Bill 24-11, Taxes – Excise Tax – Carbon Dioxide Emissions - Repeal

Expedited Bill 24-11, Taxes – Excise Tax – Carbon Dioxide Emissions - Repeal, sponsored by Councilmember Berliner, is scheduled to be introduced on June 28, 2011. A public hearing is tentatively scheduled for July 19 at 1:30 p.m.

Bill 24-11 would repeal the excise tax on major emitters of carbon dioxide and require the Director of Finance to return taxes collected under it.

| <u>This packet contains</u> | <u>Circle</u> |
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Expedited Bill No. 24-11
Concerning: Taxes -- Excise Tax --
Carbon Dioxide Emissions - Repeal
Revised: 6/28/2011 Draft No. 1
Introduced: June 28, 2011
Expires: December 28, 2012
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. , Laws of Mont. Co. _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Berliner

AN EXPEDITED ACT to:

- (1) repeal the excise tax on major emitters of carbon dioxide;
- (2) require the Director of Finance to return certain taxes collected; and
- (3) generally amend the County laws governing excise taxation.

By repealing

Montgomery County Code
Chapter 52, Taxation
Article XIII, Excise Tax on Major Emitters of Carbon Dioxide
Sections 52-95 through 52-100

2010 Laws of Montgomery County Chapter 20

By adding

2011 Laws of Montgomery County

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

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

1 **Sec. 1. Article XIII of Chapter 52 is repealed as follows:**

2 **[Article XIII. Excise Tax on Major Emitters of Carbon Dioxide.]**

3 **[52-95. Findings.]**

4 [The County Council finds that:

- 5 (a) In December, 2009 the US Environmental Protection Agency found that
6 greenhouse gases in the atmosphere endanger both the public health and
7 the environment for current and future generations.
- 8 (b) Montgomery County has embraced an 80% reduction in greenhouse gas
9 emissions by 2050 and has begun to engage in programmatic efforts to
10 reduce these emissions. These efforts constitute a significant
11 investment by the County and its constituents and cover both stationary
12 sources (County owned and otherwise) and mobile sources.
- 13 (c) It is appropriate that the largest emitters of carbon dioxide in the County
14 contribute to paying for these greenhouse gas reduction programs.]

15 **[52-96. Tax levied; rates.]**

- 16 [(a) Any major emitter of carbon dioxide, as defined in subsection (b), must
17 file a tax return and pay an excise tax each year on the privilege of
18 emitting carbon dioxide into the County airshed.
- 19 (b) A major emitter of carbon dioxide is any person who owns or operates
20 any stationary source of carbon dioxide located in the County that emits
21 more than 1 million tons of carbon dioxide in any calendar year.
- 22 (c) The rate of the tax established under subsection (a) is \$5 per ton of
23 carbon dioxide emitted.
- 24 (d) The County Council by resolution, after a public hearing advertised
25 under Section 52-17(c), may increase or decrease the rate set in
26 subsection (c).
- 27 (e) As used in this Article:

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

40 **[52-97. Credit.]**

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

51 **[52-98. Due date.]**

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

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

59 **[52-99. Collection; interest and penalties; violation; lien.]**

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

- 62 (1) interest on the unpaid tax at the rate of one percent per month for
 63 each month or part of a month after the tax is due; and
 64 (2) a penalty of 5 percent of the amount of the tax per month or part
 65 of a month after the tax is due, not to exceed 25 percent of the
 66 tax.

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

68 (b) If any person does not file a report or pay the tax when due, the Director
 69 must obtain information on which to calculate the tax due and may
 70 estimate the tax due based on the previous month's tax or any other
 71 reasonable basis. As soon as the Director obtains sufficient information
 72 on which to calculate any tax due, the Director must assess the tax and
 73 penalties against the person. The Director must notify the person of the
 74 total amount of the tax, interest, and penalties by mail sent to the
 75 person's last known address. This notice is prima facie evidence of the
 76 tax due; entitles the County to judgment for the amount of the tax,
 77 penalty, and interest listed in the notice; and gives the taxpayer the
 78 burden of proving that the tax has been paid or any other sufficient
 79 defense to the action. The total amount due must be paid within 10 days
 80 after the date of the notice.

- 81 (c) Every person liable for any tax under Section 52-96 must preserve for 3
 82 years suitable records necessary to determine the amount of the tax.
 83 The Director may inspect and audit the records at any reasonable time.
- 84 (d) Any failure to pay the tax when due under Section 52-97, and any
 85 violation of Section 52-97 or this Section, is a Class A violation. Each
 86 violation is a separate offense. A conviction under this subsection does
 87 not relieve any person from paying the tax.
- 88 (e) Section 52-18D applies to this tax.]

89 **[52-100. Allocation of Revenue.]**

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

93 **Sec. 2. Section 3 of Chapter 20 of the 2010 Laws of Montgomery County**
 94 **is repealed as follows:**

95 **[Sec. 3. Revenue Allocation Suspended.**

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

99 **Sec. 3. Expedited Effective Date.**

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

102 **Sec. 4. Return of Tax Collected.**

103 The Director of Finance must return all taxes collected under former Chapter
 104 52, Article XIII, Excise Tax on Major Emitters of Carbon Dioxide, repealed by
 105 Section 1 of this Act, to each taxpayer, along with interest at the rate of return
 106 realized by the County while the County held the funds.

LEGISLATIVE REQUEST REPORT

Expedited Bill 24-11

Taxes - Excise Tax – Carbon Dioxide Emissions - Repeal

DESCRIPTION: Bill 24-11 would repeal the excise tax on major emitters of carbon dioxide and require the Director of Finance to return taxes collected under Chapter 52, Article XIII, Excise Tax on Major Emitters of Carbon Dioxide.

PROBLEM: The imposition of the County's Carbon Dioxide Emissions Tax is no longer feasible under *Genon Mid-Atlantic v. Montgomery County*, No. 10-1882, US Court of Appeals (4th Cir), June 20, 2011.

GOALS AND OBJECTIVES: To repeal the excise tax on major emitters of carbon dioxide.

COORDINATION: Finance Department

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: Tax applies County-wide.

PENALTIES: Not applicable.