

**Department of Legislative Services**  
Maryland General Assembly  
2004 Session

**FISCAL AND POLICY NOTE**

House Bill 1445

(Howard County Delegation)

Environmental Matters

Budget and Taxation

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**Howard County - Public School Facilities Surcharge**  
**Ho. Co. 7-04**

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This bill requires the Howard County Council to impose a school facilities surcharge on residential new construction. The surcharge equals \$1.00 per square foot of occupiable area in fiscal 2005. The surcharge does not apply to new residential construction sold for less than \$200,000. The surcharge and exemption in future years are adjusted for inflation. Payment of the school facilities surcharge does not eliminate any authority to apply any test concerning the adequacy of school facilities under the county's adequate public school facility ordinance. The Howard County Executive must prepare an annual report on the school facilities surcharge by August 31 of each year that includes a detailed description of how fees were expended; and the amount of fees collected. The report must be submitted to the county council and the legislative delegations.

The bill takes effect July 1, 2004.

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**Fiscal Summary**

**State Effect:** None.

**Local Effect:** Howard County revenues could increase by approximately \$4.9 million annually beginning in FY 2005. Expenditures are not directly affected.

**Small Business Effect:** Minimal.

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## Analysis

**Current Law:** Howard County is not authorized to impose a school facilities surcharge; however, the county may impose a building excise tax for transportation purposes.

**Background:** Chapter 285 of 1992 authorized Howard County to impose a building excise tax for transportation purposes. The rate is \$0.80 per square foot for residential construction and \$0.40 per square foot for nonresidential construction. The building excise tax generates approximately \$6 million in revenue annually.

### *Impact Fees and Excise Taxes in Maryland*

In 1990, the Maryland Court of Appeals held that counties must obtain explicit authority from the General Assembly before imposing impact fees. The General Assembly has granted code home rule counties the authority to impose development impact fees and development excise taxes. The General Assembly has not passed a uniform authorization applying to the other counties; therefore, these counties need specific statutory authorization before imposing an impact fee.

Twelve counties currently impose either an impact fee or excise tax. Two other counties (Garrett and Wicomico) are also authorized to impose impact fees; however, they have not imposed any fees at this time. Talbot County is in the process of imposing a building excise tax. The primary services funded with the impact fees or excise taxes include public school construction, transportation, parks and recreation, and solid waste. Eleven of the counties with impact fees or excise taxes can use the revenues for public school purposes. In Howard County, the revenues can only be used for transportation purposes.

**Appendix 1** provides a list of the counties that currently impose either an impact fee or an excise tax. The revenue estimates were provided by the Maryland Association of Counties except for Howard County which was projected by the Department of Legislative Services.

### *Difference between Impact Fees and Building Excise Taxes*

An impact fee involves a more complex process and requires the jurisdiction to justify the fee amount in relation to the potential impact that the new development would have on the jurisdiction. Before imposing an impact fee, a jurisdiction must conduct a fair share study that measures the impact of the new development. There must be a nexus between the impact and the amount of the fee, and there must be a geographic nexus between where the fee is collected and where the funds are spent. A jurisdiction cannot collect the impact fee in one part of the county and spend the funds elsewhere.

A building excise tax is a more straightforward approach in financing capital projects resulting from new development. There does not have to be a geographic nexus between where the fee is collected and where it is spent. The tax is imposed on activities and in amounts authorized by the General Assembly.

**Local Fiscal Effect:** Howard County revenues could increase by approximately \$4.9 million annually due to the implementation of the public school facilities surcharge on residential new construction. The county intends to use this revenue to cover the debt service on school construction bonds. **Exhibit 1** shows the potential revenue increase from each type of housing unit. This estimate is based on the following assumptions:

- 1,290 new housing units constructed in the county each year, according to Howard County;
- 5.8% of new housing units will be valued at below \$200,000 and will be exempt from the surcharge;
- 1,215 new housing units will be assessed the surcharge; and
- average square footage per housing unit is 5,266 for single-family detached units; 2,900 for single-family attached units; and 1,316 for condominiums.

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**Exhibit 1**  
**Potential Revenue Increase from the Public Schools Facilities Surcharge**

<u>Housing Type</u>	<u>New Housing Units</u>	<u>Square Footage Per Housing Unit</u>	<u>Additional Revenues</u>
Single-family Detached	704	5,266	\$3,707,264
Single-family Attached	324	2,900	939,600
Condominiums	<u>187</u>	1,316	<u>246,092</u>
<b>Total</b>	<b>1,215</b>		<b>\$4,892,956</b>

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*County Demographic Information*

Howard County, with a population of 247,842 residents as of the 2000 Census, has experienced significant growth in recent years. Between 1990 and 2000, the county realized a 32.3% increase in its population, the third highest growth rate in the State. Projections by the U.S. Census Bureau indicate that the county's population has increased by 5.0% between 2000 and 2002. According to statistics from the Maryland Department of Planning, the number of new housing units authorized for construction in Howard County has ranged from 1,200 to 2,100 annually over the last five years as shown in **Exhibit 2**.

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**Exhibit 2**  
**New Housing Units Authorized for Construction in Howard County**

<u>CY 1999</u>	<u>CY 2000</u>	<u>CY 2001</u>	<u>CY 2002</u>	<u>CY 2003</u>
2,065	1,641	1,212	1,576	1,543

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**Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Howard County, Department of Legislative Services

**Fiscal Note History:** First Reader - March 19, 2004  
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**Appendix 1**  
**Impact Fees/Building Excise Taxes on New Construction**  
**Fiscal 2004**

<u>County</u>	<u>Year Enacted</u>	<u>Rate Per Dwelling</u>	<u>FY 2004 Revenues</u>
Anne Arundel <sup>1</sup>	Ch. 350 of 1986	\$4,361	\$8,950,000
Calvert <sup>2</sup>	Ch. 232 of 2001	12,950	3,505,000
Caroline <sup>3</sup>	Ch. 474 of 2003	850 to 1,500	132,000
Carroll <sup>4</sup>	Ch. 108 of 1987	6,836	4,453,600
Charles <sup>5</sup>	Ch. 586 of 2002	9,700	10,263,000
Frederick <sup>6</sup>	Ch. 468 of 1990 Ch. 690 of 2001	9,616	8,959,700
Howard <sup>7</sup>	Ch. 285 of 1992	\$0.80/sq. ft.	6,000,000
Montgomery <sup>8</sup>	Ch. 808 of 1963 Ch. 707 of 1990	Various Rates	17,100,000
Prince George's <sup>9</sup>	Ch. 597 of 1990 Ch. 431 of 2003	12,000	18,000,000
Queen Anne's <sup>10</sup>	Ch. 410 of 1988	4,329	2,189,400
St. Mary's <sup>11</sup>	Ch. 814 of 1974	4,500	3,000,000
Talbot <sup>12</sup>	Ch. 48 of 2003	2,000	0
Washington <sup>13</sup>	Ch. 468 of 2003	\$0.50/sq. ft.	<u>696,000</u>
<b>Total</b>			<b>\$83,248,700</b>

<sup>1</sup>Anne Arundel County can use the impact fee revenues for public school construction, transportation, and public safety.

<sup>2</sup>Calvert County imposed an impact fee prior to 2001. Chapter 232 of 2001 established a building excise tax. The current tax is \$7,800 for schools, \$1,300 for recreation, \$3,500 for roads, and \$350 for solid waste.

<sup>3</sup>The current tax in Caroline County is \$2,000 for schools and \$100 to \$750 for agricultural land preservation. In addition, Article 25B, Section 13D enables the county to impose a development impact fee. Chapter 474 of 2003 set the maximum school excise tax at \$2,000 in fiscal 2004 only. The amount will be lowered to \$750 after fiscal 2004.

<sup>4</sup>The current fee in Carroll County is \$6,303 for schools and \$533 for parks.

<sup>5</sup>Chapter 586 of 2002 repealed the \$5,000 school construction impact fee in Charles County and established a new school construction excise tax. The tax may not exceed \$9,700 for a single-family detached home, \$9,200 for a town house, and \$7,000 for a multifamily housing unit.

<sup>6</sup>Chapter 468 of 1990 authorizes the Frederick County Commissioners to impose impact fees for the capital costs of additional or expanded public works. Chapter 690 of 2001 authorized the Frederick County Commissioners to impose a building excise tax for public road facilities. The county is authorized to impose impact fees for school construction and library development.

<sup>7</sup>Howard County imposes a building excise tax in lieu of an impact fee. The rate is \$0.80 per sq. ft. for residential construction; nonresidential is taxed at \$0.40/sq. ft.; first 500 sq. ft. is \$400. The county collects approximately \$6 million annually. The excise tax is for roadways.

<sup>8</sup>Montgomery County imposes several regional impact fees. The transportation fee for single-family detached housing is \$2,750 for Metro Station, \$8,250 for Clarksburg, and \$5,500 for the General district. The countywide school impact fee is \$8,000 for a single-family detached unit, \$6,000 for a single-family attached unit, \$4,000 for multifamily units, and \$1,600 for high-rise residential.

<sup>9</sup>Chapter 431 of 2003 increased the surcharge in Prince George's County to \$12,000 per dwelling beginning in fiscal 2004 with the rate adjusted for inflation beginning in fiscal 2005. The surcharge increases to \$7,000 per dwelling for buildings located between Interstate 495 and the District of Columbia and for buildings included within a basic plan or conceptual site plan that abuts an existing or planned mass transit rail station site operated by the Washington Metropolitan Area Transit Authority.

<sup>10</sup>Queen Anne's County received authority to impose an impact fee in 1988, prior to the county becoming a code home rule county. In addition, Article 25B, Section 13D enables the county to impose a development impact fee. The impact fee is for public schools and emergency services.

<sup>11</sup>In St. Mary's County the impact fee can be used for educational, water, sewerage, road, sanitation, or similar facilities.

<sup>12</sup>Talbot County is authorized to impose a maximum \$2,000 building excise tax for the purpose of financing capital costs relating to bridges, streets and roads, parks and recreational facilities, schools, and storm drainage facilities. The fiscal note to HB 701 of the 2003 session which established the building excise tax estimated annual revenues of \$644,000 assuming the county council imposes the maximum tax. The county plans to implement the excise tax in fiscal 2005.

<sup>13</sup> In Washington County, the excise tax can be used for school construction, public safety, public infrastructure, and debt reduction.