

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 523
Ways and Means

(Delegate Barve, *et al.*)

Budget and Taxation

Municipal Corporations - Building Excise Tax

This bill authorizes municipalities to impose a building excise tax on any building construction within its jurisdiction. The tax rate must relate to the development or growth-related infrastructure needs in the municipality. The municipality may provide for tax credits against and exemptions from the building excise tax. Before a municipality imposes an excise tax, it has to hold a public hearing, and it is prohibited from imposing an excise tax if it already imposes an impact fee.

The bill takes effect July 1, 2007.

Fiscal Summary

State Effect: None.

Local Effect: Municipal revenues could increase by a significant amount depending on the number of municipalities that impose a building excise tax and the amount of the tax. Local expenditures would not be affected.

Small Business Effect: Meaningful.

Analysis

Current Law: Under the Maryland Constitution, a municipality must have the express authorization of the General Assembly before it can impose any type of new tax or fee. In an opinion from 2004, the Maryland Attorney General concluded that a municipality could impose an impact fee as a valid regulatory measure. However, to constitute a valid regulatory fee, the municipality would need to show a reasonable connection between the

new development and infrastructure as well as a reasonable connection between use of the resulting revenue and benefit to the property assessed. Pursuant to this legislation, these conditions would not have to be met since the legislation authorizes the imposition of a building excise tax instead of an impact fee. The following is a brief summary of the differences between an impact fee and a building excise tax.

An impact fee involves a more complex process that requires a 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 study that measures the impact that the new development will have on various public services. In addition, there must be a nexus between the impact of the new development and the fee amount; there also 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 development excise tax is a more straightforward approach in financing capital projects resulting from new development. A jurisdiction can set the tax amount at any reasonable level, and there does not have to be a geographic nexus between where the fee is collected and where it is spent. The excise tax can be imposed on activities and in amounts authorized by the General Assembly.

Background: County governments in Maryland must obtain explicit authority from the General Assembly before imposing a development impact fee or excise tax. One exception to this restriction applies to code home rule counties, which have already received authority from the General Assembly to impose such charges. Sixteen counties currently impose either a development impact fee or excise tax which generated approximately \$127.3 million in revenues in fiscal 2006. The primary services funded by these charges include public school construction, transportation, public safety, parks and recreation, and water/sewer utilities. **Appendix 1** shows the counties that impose either a development impact fee or excise tax and the revenues generated by such charges. The rate per dwelling shown in the exhibit is for single-family detached dwellings; the rates may vary for other types of housing units.

Structure of Local Governments in Maryland

Counties are the primary unit of local government in Maryland, responsible for most basic services such as police, fire, local corrections, sanitation, local highways, health, and parks and recreation. In addition, counties are responsible for funding public schools, libraries, local community colleges, local correctional facilities, local health departments, and the circuit courts. Compared to counties, municipalities in Maryland provide a more limited array of public services. Public works and public safety are the two largest functions of municipal governments, comprising 63% of municipal

expenditures in fiscal 2004. In addition, municipalities do not fund local school systems and community colleges, which account for over 50% of local government expenditures. Municipalities account for only 4% of total local government expenditures. In five counties, municipal governments account for over 15% of local government expenditures.

There are 156 municipalities in Maryland. Based on July 2005 population estimates, approximately 15% of the State's residents live within municipalities (excluding Baltimore City). On the Eastern Shore and in Western Maryland, nine counties have over 30% of their residents living in municipalities. Municipalities in Maryland are relatively small, with 60%, or 94 municipalities, having fewer than 2,500 residents and 5% or 8 municipalities, having more than 25,000 residents. Frederick (Frederick County) with 57,900 residents is Maryland's largest municipality, followed by Gaithersburg (Montgomery County) with 57,700 residents, and Rockville (Montgomery County) with 57,400 residents. Port Tobacco (Charles County) is the smallest with 18 residents.

Appendix 2 shows the number of municipal residents in each county. **Appendix 3** shows local government expenditures in fiscal 2004 for counties and municipalities. County expenditures include the local school systems, library boards, health departments, and local community colleges.

Local Fiscal Effect: Municipal revenues could increase by a significant amount depending on the number of municipalities that impose a building excise tax and the tax rate established by the municipal governing body. In fiscal 2006, county governments collected \$127.3 million in building excise taxes/impact fees. This represents approximately \$35 per county resident in the 16 counties with building excise taxes/impact fees. If the amount of building excise tax revenues collected by municipalities total \$35 per municipal resident, municipal revenues could increase by \$29.1 million annually. In any event, the impact of the bill is likely to vary by municipality.

Any municipal building excise tax imposed will be in addition to the amount of taxes/fees collected by the county governments. Some municipalities already receive a portion of revenues collected by county governments. For example, in Washington County, municipalities with an adequate public facilities ordinance must remit to the county only the portion of the building excise tax relating to public schools and libraries and they can retain the remainder for municipal projects.

Small Business Effect: Enabling municipalities to impose a building excise tax in addition to the county building excise tax could significantly affect the cost of housing in Maryland, which is already unaffordable for many families. Current development impact fees/building excise taxes in Maryland for a single-family detached residential unit

ranges from \$3,671 in Dorchester County to \$19,361 in Prince George's County. Of the 16 counties with development impact fees/building excise taxes, 6 have rates exceeding \$10,000 per residential dwelling units.

The construction industry in Maryland employed approximately 183,000 individuals in calendar 2005, resulting in \$8.4 billion in wages and \$883 in average weekly wages per worker. The construction industry accounts for 8.9% of total private-sector employment and 9.6% of private-sector wages.

Additional Information

Prior Introductions: HB 1260 and SB 854, both similar bills, were introduced during the 2006 session. HB 1260 passed the House, and was assigned to the Senate Budget and Taxation Committee. SB 854 was heard in the Senate Budget and Taxation Committee. However, no further action was taken on either bill.

Cross File: SB 591 (Senator Madaleno) – Montgomery County.

Information Source(s): Maryland Municipal League; Maryland Department of Planning; Department of Labor, Licensing and Regulation; City of Laurel; Department of Legislative Services

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Appendix 1
Maryland Counties with Development Impact Fees and Excise Taxes

<u>County</u>	<u>Type</u>	<u>FY 2007 Rate Per Dwelling¹</u>	<u>FY 2006 Revenues</u>
Anne Arundel	Impact Fee	\$4,781	\$11,127,876
Calvert	Excise Tax	12,950	5,302,300
Caroline ²	Excise Tax	5,000	966,402
Carroll	Impact Fee	6,836	3,436,236
Charles ³	Excise Tax	10,859	1,346,948
Dorchester ⁴	Excise Tax	3,671	1,265,851
Frederick ⁵	Both	11,595	15,064,080
Harford	Impact Fee	7,442	3,400,200
Howard ⁶	Excise Tax	See note	13,605,188
Montgomery ⁷	Excise Tax	14,283	13,212,000
Prince George's ⁸	Excise Tax	19,361	43,102,486
Queen Anne's	Impact Fee	6,606	2,474,740
St. Mary's	Impact Fee	4,500	3,789,525
Talbot ⁹	Impact Fee	5,347	1,378,430
Washington	Excise Tax	13,000	7,745,961
Wicomico ¹⁰	Impact Fee	5,231	<u>96,000</u>
Total			\$127,314,223

¹ Rates listed are generally those applicable to single-family detached dwellings.

² A \$750 development excise tax for agricultural land preservation is also imposed on single-family residential lots created by subdivision in a "rural district."

³ Revenue reflects any amount received through their excise tax payment system in fiscal 2006.

⁴ A slightly higher rate applies outside of the Cambridge and Hurlock areas.

⁵ Roads tax ranges from \$0.10/sq. ft. to \$0.25/sq. ft.

⁶ Roads tax is \$0.80/sq. ft. School surcharge is \$1.07/sq. ft.

⁷ Excise tax represents \$5,819 for transportation and \$8,464 for schools. The school excise tax is increased by \$1 for each square foot between 4,500 and 8,500 gross square feet. Different transportation rates apply in the Metro Station and Clarksburg areas.

⁸ Excise tax represents \$13,151 for school facilities and \$6,210 for public safety. A lower school facilities rate (\$7,671) applies inside the beltway and a lower public safety rate (\$2,070) applies inside the "developed tier" as defined in the 2002 Prince George's County Approved General Plan.

⁹ A lower rate (\$4,620) applies to "in-town" development.

¹⁰ Approximate revenue figures. Impact fee was in effect for less than one month at the end of fiscal 2006.

Source: Department of Legislative Services

Appendix 2
Residents Residing in Municipalities
July 2005

County	County Population	Municipal Population	% of County Population
Allegany	73,639	33,054	44.9%
Anne Arundel	510,878	36,411	7.1%
Baltimore City	635,815	0	0.0%
Baltimore	786,113	0	0.0%
Calvert	87,925	5,345	6.1%
Caroline	31,822	10,426	32.8%
Carroll	168,541	43,171	25.6%
Cecil	97,796	25,909	26.5%
Charles	138,822	12,102	8.7%
Dorchester	31,401	14,445	46.0%
Frederick	220,701	87,695	39.7%
Garrett	29,909	6,640	22.2%
Harford	239,259	36,203	15.1%
Howard	269,457	0	0.0%
Kent	19,899	8,389	42.2%
Montgomery	927,583	153,140	16.5%
Prince George's	846,123	225,735	26.7%
Queen Anne's	45,612	4,563	10.0%
St. Mary's	96,518	2,075	2.1%
Somerset	25,845	5,608	21.7%
Talbot	35,683	16,530	46.3%
Washington	141,895	50,951	35.9%
Wicomico	90,402	36,688	40.6%
Worcester	48,750	16,992	34.9%
Statewide	5,600,388	832,072	14.9%

Source: Maryland Department of Planning

Appendix 3
Local Government Expenditures
Fiscal 2004
(\$ in Millions)

County	County	Municipal	Total	Percent Municipal
Allegany	\$202.6	\$13.4	\$216.0	6.2%
Anne Arundel	1,477.3	56.5	1,533.8	3.7%
Baltimore City	2,810.9	0.0	2,810.9	0.0%
Baltimore	2,209.6	0.0	2,209.6	0.0%
Calvert	286.2	8.5	294.7	2.9%
Caroline	84.0	11.1	95.1	11.7%
Carroll	449.9	38.1	488.0	7.8%
Cecil	231.1	20.2	251.2	8.0%
Charles	469.8	13.5	483.3	2.8%
Dorchester	95.1	18.1	113.1	16.0%
Frederick	650.2	90.3	740.6	12.2%
Garrett	101.5	5.8	107.2	5.4%
Harford	675.3	37.7	712.9	5.3%
Howard	1,035.0	0.0	1,035.0	0.0%
Kent	57.2	6.5	63.7	10.1%
Montgomery	3,995.6	154.0	4,149.6	3.7%
Prince George's	2,683.2	103.5	2,786.7	3.7%
Queen Anne's	149.4	1.4	150.8	0.9%
St. Mary's	269.4	1.9	271.4	0.7%
Somerset	64.1	4.6	68.7	6.7%
Talbot	85.8	59.1	144.9	40.8%
Washington	310.0	78.7	388.7	20.3%
Wicomico	232.8	43.3	276.0	15.7%
Worcester	168.7	94.5	263.2	35.9%
Statewide	\$18,794.6	\$860.6	\$19,655.2	4.4%

Source: Department of Legislative Services
