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FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 386 (Montgomery County Delegation)
Environment and Transportation

Finance

Montgomery County - Economic Development - Business Improvement Districts
MC 12-17

This bill exempts Montgomery County from the statewide business improvement district law and establishes a separate law solely for Montgomery County and its municipalities. Most of the bill is identical to current law, except (1) the tax base of a district is broadened to include all real property that is not exempt from paying real property taxes, except for specified exclusions for certain residential property; (2) the minimum threshold of property owners necessary to create or expand a district is reduced; (3) notification requirements prior to creation of a district are altered to remove commercial tenants; (4) the board of directors of a district corporation may range in size from five to nine members; and (5) a proposed district that meets a statutory purpose is not required to be authorized.

Fiscal Summary

State Effect: None.

Local Effect: Expenditures for Montgomery County and/or municipalities in the county may increase minimally due to additional public hearings for proposed business improvement districts. Montgomery County local revenues and expenditures are further affected to the extent that the bill alters the number of business improvement districts established or expanded relative to current law, as discussed below. Montgomery County advises that there are currently no such districts in the county.

Small Business Effect: Potential meaningful. Small businesses that are located in, or adjacent to, a business improvement district established or expanded in Montgomery County due to the bill are affected, as discussed below.

Analysis

Bill Summary/Current Law:

General Purpose for Business Improvement Districts

Current Law: The purpose of the law authorizing the creation of business improvement districts is to promote the general welfare of residents, employers, property owners, and others within the districts. A local government may adopt a local law to create a business improvement district.

The Bill: No change for districts in Montgomery County.

Property Subject to Taxation in a Business Improvement District

Current Law: “Nonexempt property” means *nonresidential* real property that is not exempt from paying real property taxes.

The Bill: “Nonexempt property” means *all* real property that is not exempt from paying real property taxes except (1) condominium units and cooperative housing corporation units that exist on or before the date of establishment of a district; (2) homeowners associations; or (3) residential property with fewer than four dwelling units. However, a condominium or a cooperative housing corporation may petition to join a new or expanding business improvement district, subject to specified conditions.

Business Improvement District Formation

Current Law: Documentation necessary to form a district must be sent to the governing body of the county and municipality, if applicable, in which the proposed district is located. The documentation must contain specified information, including (1) a statement expressing the intent to establish a district corporation that is signed by at least 80% of the owners of the total number of nonexempt property parcels within the proposed district and (2) a proposed three-year plan that contains information such as the proposed annual business improvement district tax and the proposed articles of incorporation and district corporation bylaws.

The Bill: The documentation must contain specified information including a statement expressing the intent to establish a district corporation that is signed by (1) owners of at least 51% of the total number of nonexempt property parcels within the proposed district *and* (2) owners of at least 51% interest in the assessed value of nonexempt property within the proposed district.

Notwithstanding any other law, a condominium or cooperative housing corporation that is located in the proposed district may petition to join the district corporation if it is governed by a board, the board votes to join, and the board has a representative member sign the appropriate documents discussed above. For purposes of the 51% ownership thresholds required to establish a district corporation, a condominium or cooperative housing corporation is considered a single parcel, and the decision reached by the board constitutes the vote of the condominium or housing corporation.

The proposed three-year plan requirement is unchanged, except that it no longer needs to include a list of the names and addresses of all commercial tenants within the proposed district.

Current Law: A local governing body is required to hold a public hearing within 45 days of receiving documentation from property owners seeking to establish the district. At least 21 days before the hearing, the local governing body is required to publish notice of the hearing, and the property owners seeking to establish the district must send notice to nonexempt property owners and commercial tenants within the proposed district. Within 10 days after the public hearing, if a local governing body determines that the needs of the district meet *the purposes* set forth in the law, the governing body *must* authorize the district.

The Bill: The notice required to be sent by the property owners seeking to establish the district does not need to be sent to commercial tenants. If Montgomery County or a municipality in the county determines, in the sole discretion of the county or municipality, that the needs of the district meet *a purpose* set forth in the law, the governing body *may* authorize the district.

Expansion of an Established Business Improvement District

Current Law: An established district may expand the geographic area of the district if (1) a petition for inclusion is submitted from at least 80% of the owners of the total number of parcels of nonexempt property in the geographic area proposed for inclusion in the district; (2) the petition is accepted by a majority vote of the board of the district corporation; and (3) the appropriate documents, as applicable, are submitted to, and a hearing is held by, the appropriate local governing body.

The Bill: Requirements to expand an existing district in Montgomery County are unchanged, except that the petition for inclusion must be submitted from (1) owners of at least 51% of the total number of nonexempt property parcels proposed for inclusion within the district and (2) owners of at least 51% interest in the assessed value of nonexempt property proposed for inclusion within the district. Notwithstanding any other law, a condominium or cooperative housing corporation that is located in the proposed expanded

geographic area of the district may petition to join the district corporation under the same conditions and subject to the same requirements as discussed above for district creation.

District Corporation Board and Powers

Current Law: District corporations are governed by a five-member board of directors, which is appointed by members of the district according to procedures specified in the local law establishing the district. The board is required to file an annual report with the applicable local governing body that includes (1) a financial statement for the prior year; (2) a proposed operating budget; (3) information showing the goals and results of operations; and (4) any proposed business plan revisions.

Except as limited by any articles of incorporation, a district corporation may (1) receive money from its incorporating local government, the State, or nonprofit organizations; (2) charge fees for its services; (3) employ individuals and hire consultants; and (4) use the services of other governmental units.

The Bill: The board of directors must have at least five members but no more than nine members. Conforming changes are made to allow for boards of different sizes; board actions require a majority vote, as is the case under current law.

Local Government Authority and Requirements

Current Law: Subject to a public hearing, local governing bodies are authorized to adopt a local law creating a district. If a district is adopted, local governing bodies are required every three years to review the effectiveness and desirability of continuing the district. In addition, if requested by owners of nonexempt property with the district, local governing bodies are required to develop policies and procedures for evaluating the desirability of continuing the district. If the local governing body does not approve the continued existence of the district, the district will cease to exist as directed by the local governing body but will continue its existence only as long as necessary to terminate operations in a reasonable manner.

The Bill: No change for districts in Montgomery County, except that the definition of nonexempt property is changed under the bill.

Background: Chapter 461 of 2010 authorized a county or municipality to establish business improvement districts, subject to specified conditions, as discussed above.

Business improvement districts have traditionally been established by groups of local businesses and property owners. The goal of a business improvement district is to attract customers, clients, and shoppers to the district by implementing coordinated improvements

and shared marketing efforts within the district. For example, the Downtown Partnership oversees the Downtown Management Authority (DMA), which is Baltimore’s oldest and largest business improvement district. Programs include uniformed operations teams of guides, clean sweep ambassadors (pick up litter), and park stewards. The district encompasses 106 blocks. Commercial property owners in DMA fund the services through an annual surcharge of approximately \$0.21 per \$100 of assessed property value. For comparison, Baltimore City’s real property tax rate is \$2.25 per \$100 of assessed value.

A 2015 [report](#) by the Montgomery County Office of Legislative Oversight surveyed several large jurisdictions and compiled a variety of data related to business improvement districts. The percent and type of support necessary to create a business improvement district is shown below in **Exhibit 1**. According to the report, some cities, including Philadelphia and Pittsburgh, do not require a petition of support to establish a business improvement district – instead, there is an objection period when opposition must collect signatures opposing the formation of the district.

Exhibit 1
Percent and Type of Support Necessary to Establish Business Improvement District
Selected Jurisdictions – 2015

Jurisdiction	Petition Percentages
New York, NY	51% of assessed value; and 51% of property owners
Arlington, VA	50% of property owners; and 50% of assessed square footage
Washington, DC <i>Central Business District</i>	51% of assessed value; and 25% of property owners
Washington, DC <i>(Outside Central Business District)</i>	51% of commercial tenants; 51% of individual property owners; and 51% of assessed value
Denver, CO	50% of assessed value; and 50% of acreage
Chicago, IL	20% of taxpayers responsible for paying the assessment
Boston, MA	60% of property owners representing 51% of the assessed value
San Francisco, CA	30% of property owners who pay the assessment
Los Angeles, CA	15% of business owners; or 50% of property owners

Source: Montgomery County Office of Legislative Oversight; Department of Legislative Services

Local Fiscal Effect: Under the bill, Montgomery County or a municipality in the county must hold a public hearing on a proposed business improvement district if the local jurisdiction receives, in addition to other documentation, a statement signed by owners of at least 51% interest in the assessed value of nonempty property and the owners of at least 51% of the total number of parcels of nonexempt property in the proposed district. This is a lower threshold than under current law, and, as such, local government expenditures for Montgomery County and/or municipalities in the county may increase minimally due to additional public hearings.

Under the bill, if the local governing body in Montgomery County determines that the needs of the district meet *a* purpose of the business improvement district law, the local governing body *may* adopt a local law approving the district.

The effect on the number of business improvement districts ultimately established or expanded under the bill is unclear. The added flexibility provided to Montgomery County and its municipalities to authorize – or not authorize – a proposed district may increase or decrease the number of districts ultimately approved under the bill, relative to current law.

Therefore, revenues and expenditures of Montgomery County and its municipalities are affected to the extent that the bill increases or decreases the number of business improvement districts established or expanded relative to current law. The amount cannot be reliably estimated at this time. Any additional costs for business improvement district administration is recoverable through taxes on the assessable base of all nonexempt real property in the district, as authorized under the bill.

Small Business Effect: Currently, there are no business improvement districts in Montgomery County. Small businesses are affected, potentially significantly, to the extent that they are included in business improvement districts established or expanded under the bill, relative to current law. These businesses benefit from the services provided by the district, but they also pay additional taxes for those services. In addition, small businesses included in business improvement districts may benefit from the broadened tax base under the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Commerce; Montgomery County; Downtown Baltimore Partnership; Department of Legislative Services

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