

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 1148
Ways and Means

(Delegate Eckardt)

Budget and Taxation

Code Home Rule Counties - Development Excise Taxes

This bill increases, from \$750 to \$2,000, the maximum development excise tax that can be imposed to finance public school facilities or improvements in code home rule counties.

The bill takes effect July 1, 2003 and terminates June 30, 2004.

Fiscal Summary

State Effect: None.

Local Effect: Caroline County revenues could increase by \$72,500 in FY 2004 only. This estimate assumes that individuals would not postpone the purchase of subdivision lots until FY 2005 when the increased taxing authority sunsets. Local revenues in the other five code home rule counties would not be affected. Expenditures would not be affected.

Small Business Effect: Minimal.

Analysis

Current Law: A code home rule county may impose a maximum \$750 development excise tax per lot when a subdivision lot is initially sold or transferred for the purpose of financing school construction projects and a maximum \$750 development excise tax per lot for financing agricultural land preservation. This limitation does not apply to a code home rule county that has been granted specific statutory authorization to impose either

an impact fee or development excise tax. Six counties operate under the code home rule form of government: Allegany, Caroline, Charles, Kent, Queen Anne's, and Worcester.

Background: 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 under Article 25B, Section 13D and development excise taxes under Article 25B, Sections 13F and 13G. 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.

Currently, 14 counties are granted the authority to impose impact fees or development excise taxes. **Exhibit 1** shows the counties that currently impose an impact fee or development excise tax, the year the fee or tax was authorized, and the revenues collected from the fee or tax in fiscal 2003. Garrett, Washington, and Wicomico counties are also authorized to impose impact fees; however, the counties have not imposed any fees at this time.

Exhibit 1
Impact Fees/Building Excise Taxes on New Construction

<u>County</u>	<u>Year Enacted</u>	<u>Rate Per Dwelling</u>	<u>FY 2003 Revenues</u>
Anne Arundel	Ch. 350 of 1986	\$4,069	\$9,000,000
Calvert ¹	Ch. 232 of 2001	3,950	3,000,000
Caroline ²	Ch. 565 of 1993	850 to 1,500	60,000
Carroll ³	Ch. 108 of 1987	4,744	6,671,000
Charles ⁴	Ch. 642 of 1973	5,000	5,702,673
Frederick ⁵	Ch. 468 of 1990	7,144	9,631,680
Howard ⁶	Ch. 285 of 1992	\$0.80/sq. ft.	5,294,217
Montgomery ⁷	Ch. 808 of 1963 Ch. 707 of 1990	2,100	2,500,000
Prince George's	Ch. 597 of 1990	5,000	11,000,000
Queen Anne's ⁸	Ch. 410 of 1988	4,329	2,510,000
St. Mary's	Ch. 814 of 1974	4,500	<u>2,600,000</u>
Total			\$57,969,570

Notes:

¹Calvert County imposed an impact fee prior to 2001 (Chapter 326 of 1987). Chapter 232 of 2001 established a building excise tax. The current tax is \$3,000 for schools, \$600 for recreation, and \$350 for solid waste.

²The current tax in Caroline County is \$750 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.

³The current fee in Carroll County is \$4,197 for schools and \$547 for parks.

⁴Chapter 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.

⁵Chapter 690 of 2001 authorized the Frederick County Commissioners to impose a building excise tax in lieu of the impact fee.

⁶Howard 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.

⁷Montgomery County also imposes several regional impact fees: \$2,492 in Germantown, \$2,753 in Clarksburg, and \$1,727 in eastern Montgomery County.

⁸Queen 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.

Development Impact Fees and Excise Taxes in Code Home Rule Counties

Code home rule counties have the authority to impose either a development impact fee under Article 25B, Section 13D or a development excise tax under Article 25B, Sections 13F and 13G. The counties cannot impose both an impact fee and an excise tax. The development impact fee does not have a maximum cap; however, the development excise tax is limited to \$750 per lot for school construction and \$750 per lot for agricultural land preservation.

Three code home rule counties (Caroline, Charles, and Queen Anne's) impose either a development excise tax or impact fee on new construction. Allegany, Kent, and Worcester counties do not impose such taxes or fees.

Caroline County is the only code home rule county that imposes a development excise tax pursuant to Article 25B, Section 13F. Charles County imposes a school construction excise tax pursuant to Article 66B, Section 14.05 and Queen Anne's County imposes a school impact fee pursuant to Chapter 410 of 1988 and Article 25, Section 13D.

Local Fiscal Effect: Caroline County could increase its maximum development excise tax for school construction by \$1,250 per lot in fiscal 2004 only. The maximum development excise tax for agricultural land preservation is not affected.

Caroline County collected \$43,500 in development excise taxes for school construction in fiscal 2003. This represents the maximum \$750 charge on 58 subdivision lots. If the maximum tax was increased to \$2,000, and assuming the same number of lots, Caroline County would be able to collect an additional \$72,500. However, increasing the maximum development excise tax for only one year may encourage individuals to postpone the purchase of subdivision lots until fiscal 2005 when the increased taxing authority sunsets. This would reduce or eliminate any revenue gain anticipated from this bill. **Exhibit 2** shows the potential increase in revenues from increasing the maximum development excise tax.

**Exhibit 2
Potential Revenue Increase**

	<u>Current Law</u>	<u>HB 1148</u>	<u>Difference</u>
Maximum Tax	\$750	\$2,000	\$1,250
Subdivision Lots	58	58	58
Revenues	\$43,500	\$116,000	\$72,500

Additional Comments: Caroline County will be conducting a feasibility study on whether to implement a development impact fee instead of the current development excise tax. A benefit of imposing an impact fee is that the amount charged by the county is not limited by statute. However, a potential disadvantage is that 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. A development excise tax is a more straightforward approach in financing capital projects resulting from new development.

Caroline County officials requested that the current limitation on the development excise tax be repealed or increased to \$5,000 per lot. Pursuant to this legislation, the limitation is only increased to \$2,000 per lot for fiscal 2004 only.

Additional Information

Prior Introductions: HB 839, introduced at the 1998 session, repealed the \$750 per lot cap on development excise taxes in code home rule counties. The bill received a favorable report from the House Ways and Means Committee and was adopted by the House. The bill received an unfavorable report by the Senate Budget and Taxation Committee.

Cross File: None.

Information Source(s): Allegany County, Queen Anne's County, Kent County, Caroline County, Worcester County, Charles County, Department of Legislative Services

Fiscal Note History: First Reader - March 17, 2003
ncs/jr

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