

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1162
Ways and Means

(Delegates Eckardt and Walkup)

Budget and Taxation

Code Home Rule Counties - Development Excise Taxes - Maximum Amount Per Lot

This bill increases, from \$2,000 to \$5,000, the maximum development excise tax that can be imposed to finance public school facilities or improvements by a code home rule county on the Eastern Shore. The bill also repeals the termination date for Chapter 474 of 2003.

The bill takes effect June 1, 2004.

Fiscal Summary

State Effect: None.

Local Effect: Caroline County revenues could increase by \$165,000 annually beginning in FY 2005. 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 development excise tax per lot when a subdivision lot is initially sold or transferred for the purpose of financing school construction projects. The maximum tax per lot is set at \$2,000 in fiscal 2004 and \$750 for each year thereafter. In addition, a code home rule county may impose a maximum \$750 development excise tax per lot for financing agricultural land preservation. These

limitations do 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: Chapter 474 of 2003 increased, 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 for fiscal 2004 only. After fiscal 2004, the maximum excise tax returns to \$750 per lot.

School Excise Tax Study in Caroline County

Caroline County retained the services of Tischler & Associates, Inc. to analyze potential excise tax funding for school construction. The study concluded that the county should increase the school development excise tax to \$3,736 for new single-family detached homes and \$2,603 for all other residential developments.

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.

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 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.

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.

Exhibit 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 and Talbot counties which were projected by the Department of Legislative Services.

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 (school construction) and 13G (agricultural land preservation). 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 \$2,000 per lot for school construction in fiscal 2004 and \$750 per lot thereafter; 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 Article 25B, Section 13D. According to a February 25, 2004 letter from the Attorney General's Office, the provisions in this bill would not affect the taxing authority granted to Charles County under Article 66B.

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

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

²Calvert 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.

³The 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.

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

⁵Chapter 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.

⁶Chapter 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.

⁷Howard 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.

⁸Montgomery 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.

⁹Chapter 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.

¹⁰Queen 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.

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

¹²Talbot 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.

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

Local Fiscal Effect: Caroline County could increase its maximum development excise tax for school construction by \$3,000 per lot beginning on June 1, 2004. The maximum development excise tax for schools would increase from \$2,000 per lot to \$5,000 per lot. The maximum development excise tax for agricultural land preservation is not affected. In fiscal 2001 through 2003, Caroline County collected approximately \$43,500 in development excise taxes for school construction. This represented the maximum \$750 charge on 58 subdivision lots. In fiscal 2004, the county is expected to collect \$110,000 which represents the maximum \$2,000 charge on 55 subdivision lots.

If the maximum tax was increased to \$5,000, and assuming the same number of lots, Caroline County would be able to collect \$275,000 in development excise taxes for school construction annually. This represents a \$165,000 increase over the amount that will be collected in fiscal 2004. **Exhibit 2** shows the potential annual increase in revenues from increasing the maximum development excise tax. Under current law, the maximum \$2,000 excise tax in fiscal 2004 will revert back to \$750 in fiscal 2005, due to the sunset provision in Chapter 474 of 2003. **Exhibit 3** shows the potential revenues impact if the sunset provision is not repealed or extended beyond June 30, 2004.

Exhibit 2
Potential Revenue Increase in Fiscal 2005 – Compared to Prior Year Collections

	<u>FY 2004</u>	<u>SB 663</u>	<u>Difference</u>
Maximum Tax	\$2,000	\$5,000	\$3,000
Subdivision Lots	55	55	55
Revenues	\$110,000	\$275,000	\$165,000

Exhibit 3
Potential Revenue Loss if Sunset Provision is Not Repealed or Extended

	<u>FY 2004 Rate</u>	<u>Current Law</u>	<u>Difference</u>
Maximum Tax	\$2,000	\$750	-\$1,250
Subdivision Lots	55	55	55
Revenues	\$110,000	\$41,250	-\$68,750

Additional Information

Prior Introductions: None.

Cross File: SB 663 (Senator Colburn) – Budget and Taxation.

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

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