

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 836

(Senator Colburn)

Budget and Taxation

Ways and Means

Dorchester County - County Council - Building Excise Tax

This bill authorizes the Dorchester County Council to impose a maximum \$5,000 building excise tax on building construction within the county to finance the capital costs of additional or expanded public works, improvements, and facilities required to accommodate new construction or development. For nonresidential development, the tax rate may not exceed \$1 per square foot or \$5,000 per lot or parcel.

The bill takes effect July 1, 2004.

Fiscal Summary

State Effect: None.

Local Effect: Dorchester County revenues could increase by \$1.3 million to \$2.7 million annually. Expenditures would not be affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: The Dorchester County Council is authorized to impose a maximum \$5,000 building excise tax on building construction within the county. For nonresidential development, the tax rate may not exceed \$1 per square foot or \$5,000 per lot or parcel. The purpose of the tax is to finance the capital costs of additional or expanded public works, improvements, and facilities required to accommodate new construction or development. Eligible capital projects include emergency services, sheriff's offices, and public schools.

The tax rate must relate to the development or growth-related infrastructure needs in the county. The county council may impose different tax rates on different types of building construction. The building excise tax may be imposed throughout the county, including within municipalities. If the building excise tax is imposed within a municipality, the municipality must assist the county in the collection of the tax by either collecting and remitting the tax to the county, or requiring the tax to be paid directly to the county. A municipality that collects the tax and remits the tax to the county may deduct up to a 2% charge for administrative costs.

The county ordinance establishing the building excise tax must specify: (1) the types of building construction subject to the tax; (2) the criteria and formula used to assess the tax; and (3) the tax rates.

Current Law: The Dorchester County Council is not authorized to impose an excise tax or impact fee.

Background: Dorchester County retained the services of Tischler & Associates, Inc. (TA) to analyze potential impact fee and/or excise tax funding to meet the demands generated by new development. TA evaluated fees for three types of public capital improvements: (1) public schools; (2) a public safety communication system; and (3) sheriff’s facilities and equipment. A report was submitted to the county on January 7, 2004. **Exhibit 1** provides the “maximum supportable impact fee” on residential development for Dorchester County as determined by TA. In addition, TA has established a schedule for nonresidential development based on fees per thousand square feet of floor area.

Exhibit 1
Maximum Supportable Impact Fees for Dorchester County

	<u>Schools</u>	<u>Communications</u>	<u>Sheriff</u>	<u>Total</u>
Outside of Cambridge and Hurlock				
Single-family Detached	\$3,555	\$87	\$123	\$3,765
Other Residential	\$2,510	\$72	\$108	\$2,690
Within Cambridge and Hurlock				
Single-family Detached	\$3,555	\$87	\$29	\$3,671
Other Residential	\$2,510	\$72	\$22	\$2,604

Impact Fees and Excise Taxes in Other Jurisdictions

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 2 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.

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.

Exhibit 2
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 also 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: Dorchester County, with a population of 30,674 residents as of the 2000 Census, has experienced minimal growth in recent years. Between 1990 and 2000, the county realized a 1.4% increase in its population, the third lowest growth rate in the State. Projections by the U.S. Census Bureau indicate the county's population declining by 0.7% between 2000 and 2002. According to statistics from the Maryland Department of Planning, the number of new housing units authorized for construction in Dorchester County has increased from 91 in calendar 1999 to 263 in calendar 2003.

Exhibit 3
New Housing Units Authorized for Construction in Dorchester County

<u>CY 1999</u>	<u>CY 2000</u>	<u>CY 2001</u>	<u>CY 2002</u>	<u>CY 2003</u>
91	102	109	166	263

Source: U.S. Department of Commerce; Bureau of the Census
Prepared by the Maryland Department of Planning

According to the *TA Impact Fee/Excise Tax Study*, the majority of growth during the next 10 years in Dorchester County will be in and around Cambridge and the Hurlock area. TA assumes an average of 545 housing units will be built per year over the next 10 years. This projection is significantly higher than the number of new housing units authorized by the county in the last five years.

Assuming the Dorchester County Council imposes the maximum \$5,000 excise tax, county revenues from the residential building excise tax could total between \$1.3 million to \$2.7 million annually, depending upon the number of new housing units in the county. If the county council imposes the building excise tax on nonresidential development, county revenues would increase by a greater amount.

Additional Information

Prior Introductions: None.

Cross File: None designated, although HB 1161 is identical.

Information Source(s): Dorchester County, Maryland Department of Planning, Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2004
ncs/mdr Revised - Senate Third Reader - April 9, 2004

Analysis by: Hiram L. Burch Jr.

Direct Inquiries to:
(410) 946-5510
(301) 970-5510