

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1349 (Delegate V. Clagett) (By Request)
Environmental Matters

Housing - Local Laws - Developers' Fees to Support Affordable Housing

This bill authorizes certain local jurisdictions to impose fees on developers for the purpose of constructing affordable housing units.

Fiscal Summary

State Effect: None.

Local Effect: Local government revenues could increase to the extent that counties and municipalities impose fees on developers for the purpose of constructing affordable housing.

Small Business Effect: Meaningful.

Analysis

Current Law: Local jurisdictions with land use and zoning authority may enact ordinances or laws that impose inclusionary zoning and award density bonuses to create affordable housing units and impose restrictions on the use, cost, and resale of housing units that are created under the inclusionary zoning and density bonuses provisions.

Article 66B specifies provisions of law relating to local land use and zoning. Local jurisdictions with authority under Article 66B include code counties, commission counties, and municipalities not within the jurisdiction of the Maryland-National Capital Park and Planning Commission (M-NCPPC). The limited application of authority under Article 66B for charter counties and Baltimore City extends to inclusionary zoning.

Background: Ensuring that Maryland families and individuals have access to affordable housing is a continual concern of State and local officials. Governor Ehrlich, through an executive order, established the Governor's Commission on Housing Policy in March 2003. The commission is required to make recommendations for expanding home ownership, ensuring adequate supply of workforce housing, addressing the housing needs of seniors and individuals with disabilities, and enhancing community revitalization activities to create sustainable communities. At the request of the commission, a report on homeownership affordability indices for repeat and first-time homebuyers was prepared to measure the ability of a typical family to qualify for a mortgage loan on a typical home. A typical family is defined as one earning the median household income, and a typical home is defined as the median priced existing single-family home. The affordability indices were developed for both repeat and first-time homebuyers.

Housing Affordability Index

The housing affordability index is defined as the ratio of median household income to the required income to qualify for a loan on a median priced existing single-family home. As shown in **Appendix 1**, the statewide index of affordability is 122 for August 2003. This implies that a Maryland family earning the median income has about 122% of the income required to qualify for a loan to purchase a median-priced home with the prevailing mortgage interest rate and a 20% down payment. In other words, the family can qualify to purchase a home that is 22% more expensive than the median-priced home. By comparison, the national index is 133, which implies that a family can qualify to purchase a home that is 33% more expensive than the median-home price. Based on this index, housing in Maryland is less affordable than the nation as a whole.

Across Maryland, Allegany and Somerset counties had the most affordable housing, which is attributable to their median home prices being among the lowest in Maryland. Garrett, Talbot, and Worcester counties had the least affordable housing, which is primarily due to the high housing costs in those jurisdictions in relation to household income. Due to their designation as a vacation destination, home prices have risen considerably in these counties as vacation homes are being purchased by individuals across Maryland and in neighboring states.

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 and development excise taxes. The General Assembly has not passed a uniform authorization applying to the other counties; therefore, some 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 County which was 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 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	7,000 to 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 authorized 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 construction is taxed at \$0.40/sq. ft., with the first 500 sq. ft. at \$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 and limited exceptions. The surcharge increased 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.

Small Business Effect: Imposing additional fees on developers could negatively impact small businesses including architectural, engineering, construction, and service firms throughout Maryland. As of calendar 2002, there were 17,000 construction firms in Maryland employing 165,725 individuals. Construction workers earned a total of \$6.8 billion in wages, which averages \$800 per week per worker. The construction industry accounts for approximately 7% of total employment in Maryland. In addition, there are 5,750 licensed architects and 13,500 professional engineers in Maryland.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County, Prince George's County, Garrett County, Dorchester County, Baltimore County, Anne Arundel County, Department of Legislative Services

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Appendix 1
Housing Prices and Affordability Indices for Repeat Homebuyers in Maryland
August 2003

<u>Jurisdiction</u>	<u>Median Home Prices</u>				<u>Housing Affordability Indices</u>			
	<u>Current Month</u>		<u>Percent Change from Last Year</u>	<u>Percent Change from Last Month</u>	<u>Current Month</u>		<u>Percent Change from Last Year</u>	<u>Percent Change from Last Month</u>
	<u>Repeat Buyers</u>	<u>First Time Buyers</u>			<u>Repeat Buyers</u>	<u>First Time Buyers</u>		
Allegany County	\$66,900	\$56,865	5.4%	-3.7%	220	149	-2.3%	-2.5%
Anne Arundel County	238,950	203,108	25.8%	4.5%	137	93	-16.3%	-10.0%
Baltimore County	166,500	141,525	19.1%	6.8%	144	98	-13.7%	-12.2%
Baltimore City	78,050	66,343	7.7%	-8.2%	166	113	-6.7%	2.0%
Calvert County	245,000	208,250	29.6%	8.9%	144	98	-18.6%	-13.7%
Caroline County	132,500	112,625	9.5%	-1.1%	135	92	-6.8%	-5.2%
Carroll County	239,450	203,533	13.9%	-0.8%	129	88	-8.2%	-5.3%
Cecil County	165,000	140,250	22.3%	-0.2%	157	107	-14.4%	-5.9%
Charles County	200,000	170,000	13.1%	-3.4%	154	105	-8.4%	-2.9%
Dorchester County	143,213	121,731	44.7%	25.6%	116	79	-28.7%	-25.3%
Frederick County	219,400	186,490	18.6%	3.0%	140	95	-11.8%	-8.8%
Garrett County	273,000	232,050	16.8%	30.0%	53	36	-13.4%	-27.9%
Harford County	180,000	153,000	17.0%	3.0%	160	109	-11.0%	-8.8%
Howard County	265,000	225,250	16.3%	-3.6%	146	99	-9.8%	-2.5%
Kent County	133,000	113,050	-11.3%	-14.7%	130	88	13.6%	9.9%
Montgomery County	315,000	267,750	17.1%	0.0%	112	76	-11.6%	-6.2%
Prince George's County	190,000	161,500	17.3%	1.7%	142	96	-11.9%	-7.7%
Queen Anne's County	292,900	248,965	29.3%	18.6%	99	67	-19.6%	-20.8%
St. Mary's County	193,201	164,221	13.7%	1.7%	133	90	-8.5%	-7.7%
Somerset County	62,000	52,700	3.3%	-29.5%	232	158	0.0%	33.2%
Talbot County	255,000	216,750	41.7%	15.9%	78	53	-28.0%	-19.1%
Washington County	159,500	135,575	19.0%	6.3%	118	80	-14.3%	-11.8%
Wicomico County	120,000	102,000	6.2%	-20.0%	151	103	-3.6%	17.2%
Worcester County	<u>205,000</u>	174,250	<u>0.0%</u>	<u>-17.3%</u>	<u>95</u>	<u>64</u>	<u>3.1%</u>	<u>13.5%</u>
Maryland	\$212,816	\$180,894	17.8%	0.6%	122	83	-12.1%	-6.7%

Source: Department of Housing and Community Development, Office of Research

