

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 854
Budget and Taxation

(Senator Forehand)

Municipal Corporations - Building Excise Tax

This bill authorizes municipalities to impose a building excise tax on any building construction within its jurisdiction. The tax rate must relate to the development or growth-related infrastructure needs in the municipality. The municipality may provide for tax credits against and exemptions from the building excise tax.

The bill takes effect July 1, 2006.

Fiscal Summary

State Effect: None.

Local Effect: Municipal revenues could increase by a significant amount depending on the number of municipalities that impose a building excise tax and the tax amount. Local expenditures would not be affected.

Small Business Effect: Meaningful.

Analysis

Current Law: Under the Maryland Constitution, a municipality must have the express authorization of the General Assembly before it can impose any type of new tax or fee. In an opinion from 2004, the Maryland Attorney General concluded that a municipality could impose an impact fee as a valid regulatory measure. However, to constitute a valid regulatory fee, the municipality would need to show a reasonable connection between the new development and infrastructure as well as a reasonable connection between use of

the resulting revenue and benefit to the property assessed. Pursuant to this legislation, these conditions would not have to be met since the legislation authorizes the imposition of a building excise tax instead of an impact fee. The following is a brief summary of the differences between an impact fee and a building excise tax.

An impact fee involves a more complex process that requires a 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 study that measures the impact that the new development will have on various public services. In addition, there must be a nexus between the impact of the new development and the fee amount; there also 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 development excise tax is a more straightforward approach in financing capital projects resulting from new development. A jurisdiction can set the tax amount at any reasonable level, and there does not have to be a geographic nexus between where the fee is collected and where it is spent. The excise tax can be imposed on activities and in amounts authorized by the General Assembly.

Background: County governments in Maryland must obtain explicit authority from the General Assembly before imposing a development impact fee or excise tax. One exception to this restriction applies to code home rule counties, which have already received authority from the General Assembly to impose such charges. Fifteen counties currently impose either a development impact fee or excise tax which generated approximately \$101.4 million in revenues in fiscal 2005. The primary services funded by these charges include public school construction, transportation, parks and recreation, and water/sewer utilities. **Appendix 1** shows the counties that impose either a development impact fee or excise tax and the revenues generated by such charges. The rate per dwelling shown in the exhibit is for single-family detached dwellings; the rates may vary for other types of housing units.

Structure of Local Governments in Maryland

Counties are the primary unit of local government in Maryland, responsible for most basic services such as police, fire, local corrections, sanitation, local highways, health, and parks and recreation. In addition, counties are responsible for funding public schools, libraries, local community colleges, and the circuit courts. Compared to counties, municipalities in Maryland provide a more limited array of public services. Public works and public safety are the two largest functions of municipal governments, comprising 63% of municipal expenditures in fiscal 2004. In addition, municipalities do

not fund local school systems and community colleges, which account for over 50% of local government expenditures. Municipalities account for only 4% of total local government expenditures. In five counties, municipal governments account for over 15% of local government expenditures.

There are 156 municipalities in Maryland. Based on July 2004 population estimates, approximately 15% of the State's residents live within municipalities (excluding Baltimore City). On the Eastern Shore and in Western Maryland, nine counties have over 30% of their residents living in municipalities. Municipalities in Maryland are relatively small, with 60%, or 94 municipalities, having fewer than 2,500 residents and 5%, or 8 municipalities, having more than 25,000 residents. Gaithersburg (Montgomery County) with 58,100 residents is Maryland's largest municipality, followed by Rockville (Montgomery County) with 57,100 residents and Frederick (Frederick County) with 57,000 residents. Port Tobacco (Charles County) is the smallest with 18 residents.

Appendix 2 shows the number of municipal residents in each county. **Appendix 3** shows local government expenditures in fiscal 2004 for counties and municipalities. County expenditures include the local school systems, library boards, health departments, and local community colleges.

Local Fiscal Effect: Municipal revenues could increase by a significant amount depending on the number of municipalities that impose a building excise tax and the tax rate established by the municipal governing body. In fiscal 2005, county governments collected approximately \$101.4 million in building excise taxes/impact fees. This represents approximately \$30 per county resident in the 15 counties with building excise taxes/impact fees. If the amount of building excise tax revenues collected by municipalities total \$30 per municipal resident, municipal revenues could increase by \$25 million annually.

Any municipal building excise tax imposed will be in addition to the amount of taxes/fees collected by the county governments. Some municipalities already receive a portion of revenues collected by county governments. For example, in Washington County, municipalities with an adequate public facilities ordinance must remit to the county only the portion of the building excise tax relating to public schools and libraries and they can retain the remainder for municipal projects.

Small Business Effect: Enabling municipalities to impose a building excise tax in addition to the county building excise tax could significantly affect the cost of housing in Maryland, which is already unaffordable for many families. Current development impact fees/building excise taxes in Maryland for a single-family detached residential unit ranges from \$3,671 in Dorchester County to \$16,250 in some parts of Montgomery

County. Of the 15 counties with development impact fees/building excise taxes, 6 have rates exceeding \$10,000 per residential dwelling units.

The construction industry in Maryland employed approximately 176,000 individuals in calendar 2004, resulting in \$7.7 billion in wages and \$847 in average weekly wages per worker. The construction industry accounts for 8.7% of total private sector employment and 9.4% of private sector wages.

Additional Information

Prior Introductions: None.

Cross File: HB 1260 (Delegate Barve, *et al.*) – Ways and Means.

Information Source(s): Maryland Municipal League; Maryland Department of Planning; Department of Labor, Licensing and Regulation; Department of Legislative Services

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ncs/hlb

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Appendix 1
Maryland Counties with Development Impact Fees and Excise Taxes

<u>County</u>	<u>Legislative Reference</u>	<u>FY 2006 Rate Per Dwelling</u>	<u>FY 2005 Estimated Revenues</u>
Anne Arundel	Ch. 350 of 1986	\$4,617	\$10,508,900
Calvert	Ch. 232 of 2001	\$12,950	\$6,021,600
Caroline	Ch. 538 of 2004	\$4,486	\$398,300
Carroll	Ch. 108 of 1987	\$6,836	\$3,403,200
Charles	Ch. 586 of 2002	\$10,247	\$1,181,500
Dorchester	Ch. 401 of 2004	\$3,671	\$846,200
Frederick	Ch. 468 of 1990 Ch. 690 of 2001	\$10,487 \$0.10 - \$0.25/sq.ft	\$14,600,700
Harford	Ch. 389 of 2004	\$6,000	n/a
Howard	Ch. 285 of 1992 Ch. 420 of 2004	\$0.80/sq.ft. (Roads) \$1.03/sq.ft. (Schools)	\$12,807,800
Montgomery	Ch. 808 of 1963 Ch. 707 of 1990	\$8,000 (Schools) \$8,250 (Roads)	\$16,166,100
Prince George's	Ch. 597 of 1990 Ch. 431 of 2003 Ch. 594 of 2005	\$12,706	\$26,233,300
Queen Anne's	Ch. 410 of 1988	\$6,363	\$1,511,500
St. Mary's	Ch. 814 of 1974	\$4,500	\$3,417,900
Talbot	Ch. 48 of 2003	\$5,152	\$762,500
Washington	Ch. 598 of 2005	\$13,000	<u>\$3,546,200</u>
Total			\$101,405,700

Appendix 2
Residents Residing in Municipalities
July 2004

County	County Population	Municipal Population	Percent of County	Rank
Allegany	73,871	33,325	45.1%	3
Anne Arundel	508,572	36,328	7.1%	19
Baltimore City	636,251	0	0.0%	24
Baltimore	780,821	0	0.0%	24
Calvert	86,474	5,249	6.1%	20
Caroline	31,058	10,012	32.2%	9
Carroll	166,159	42,711	25.7%	12
Cecil	95,526	25,437	26.6%	10
Charles	135,807	11,605	8.5%	18
Dorchester	30,912	14,087	45.6%	1
Frederick	217,653	86,618	39.8%	6
Garrett	30,124	6,742	22.4%	13
Harford	235,594	35,691	15.1%	16
Howard	266,738	0	0.0%	24
Kent	19,582	8,184	41.8%	4
Montgomery	921,690	152,200	16.5%	15
Prince George's	842,967	223,410	26.5%	11
Queen Anne's	45,078	4,438	9.8%	17
St. Mary's	94,921	1,983	2.1%	21
Somerset	25,863	5,437	21.0%	14
Talbot	35,017	15,931	45.5%	2
Washington	139,624	49,769	35.6%	7
Wicomico	88,782	36,095	40.7%	5
Worcester	48,974	17,135	35.0%	8
Statewide	5,558,058	822,387	14.8%	

Source: Maryland Department of Planning, Department of Legislative Services

Appendix 3
Local Government Expenditures
Fiscal 2004
(\$ in Millions)

County	County	Municipal	Total	Percent Municipal
Allegany	\$202.6	\$13.4	\$216.0	6.2%
Anne Arundel	1,477.3	56.5	1,533.8	3.7%
Baltimore City	2,810.9	0.0	2,810.9	0.0%
Baltimore	2,209.6	0.0	2,209.6	0.0%
Calvert	286.2	8.5	294.7	2.9%
Caroline	84.0	11.1	95.1	11.7%
Carroll	449.9	38.1	488.0	7.8%
Cecil	231.1	20.2	251.2	8.0%
Charles	469.8	13.5	483.3	2.8%
Dorchester	95.1	18.1	113.1	16.0%
Frederick	650.2	90.3	740.6	12.2%
Garrett	101.5	5.8	107.2	5.4%
Harford	675.3	37.7	712.9	5.3%
Howard	1,035.0	0.0	1,035.0	0.0%
Kent	57.2	6.5	63.7	10.1%
Montgomery	3,995.6	154.0	4,149.6	3.7%
Prince George's	2,683.2	103.5	2,786.7	3.7%
Queen Anne's	149.4	1.4	150.8	0.9%
St. Mary's	269.4	1.9	271.4	0.7%
Somerset	64.1	4.6	68.7	6.7%
Talbot	85.8	59.1	144.9	40.8%
Washington	310.0	78.7	388.7	20.3%
Wicomico	232.8	43.3	276.0	15.7%
Worcester	168.7	94.5	263.2	35.9%
Statewide	\$18,794.6	\$860.6	\$19,655.2	4.4%

Source: Department of Legislative Services