

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 663
Ways and Means

(Delegate Barve, *et al.*)

Municipal Corporations - Building Excise Tax

This bill authorizes a municipality to impose a building excise tax on any building construction within its jurisdiction and provide for tax credits against and exemptions from the building excise tax. The tax rate must relate to the development or growth-related infrastructure needs in the municipality. Before a municipality imposes an excise tax, it has to hold a public hearing, and is prohibited from imposing an excise tax if it already imposes an impact fee.

The bill takes effect July 1, 2008.

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 amount of the tax. 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 revenues 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 is a regulatory measure intended to mitigate the impact of development on infrastructure or public facilities. Therefore, an impact fee must be designed to fund facilities specifically required by new development projects. An impact fee may not be imposed simply to raise revenue to fund facilities for the general public since such a fee would be a tax. There must be a reasonable connection between the amount of the impact fee imposed and the actual cost of providing facilities to the properties assessed. Moreover, the revenue from the fee must be dedicated to substantially benefit those properties. Thus, a county cannot collect an impact fee in one geographic area and spend the funds in another area. In order to justify the imposition of an impact fee, a jurisdiction must conduct a study that measures the effects that new development will have on public facilities. The amount of an impact fee is subject to judicial review.

An excise tax, unlike an impact fee, is not a regulatory measure, but simply a means of raising revenue from new development. The amount of an excise tax does not have to be closely related to the actual cost of providing public facilities to serve new development, and excise tax revenue does not have to be spent to specifically benefit the properties that are taxed. Therefore, excise taxes collected in one geographic area may be spent in another area. The amount of an excise tax, like any other tax, is not subject to judicial review.

Background: Local governments in Maryland must have authority from the General Assembly before imposing a development impact fee or excise tax. Two exceptions to this restriction apply to code home rule counties, which have already received authority from the General Assembly to impose such charges, and municipalities, which can already impose a regulatory impact fee. Sixteen counties currently impose either a development impact fee or excise tax, generating \$123.4 million in fiscal 2007. Services funded by these charges include public school construction, transportation, public safety, and parks and recreation. **Exhibit 1** shows the counties that impose either a development impact fee or excise tax and the revenues generated by such charges.

Structure of Local Governments in Maryland

Counties are the primary unit of local government in Maryland, responsible for basic services such as police, fire, local corrections, sanitation, local highways, and parks and

recreation. In addition, counties are responsible for funding public schools, libraries, local community colleges, local health departments, and the circuit courts. Compared to counties, municipalities in Maryland provide a more limited array of public services. Municipalities account for only 4% of total local government expenditures. In five counties, municipal governments account for over 15% of local government expenditures. **Exhibit 2** shows local government expenditures in fiscal 2004 for counties and municipalities (the most recent in which data is readily available). County expenditures include the local school systems, library boards, health departments, and local community colleges.

Public works and public safety are the two largest functions of municipal governments, comprising approximately 65% of municipal expenditures. Common public services performed by municipalities include street lighting, trash/refuse collection, snow removal, and street maintenance. Police protection, planning/zoning, leaf collection, and water services are provided by at least one-half of municipalities. Unlike county governments, municipalities do not fund local school systems and community colleges, which account for over 50% of local government expenditures.

Most of the 156 municipalities in Maryland are relatively small: 60% of municipalities have fewer than 2,500 residents and only 5% have more than 25,000 residents. 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. **Exhibit 3** shows the number of municipal residents in each county.

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 2007, county governments collected \$123.4 million in building excise taxes/impact fees. This represents approximately \$32 per county resident in the 16 counties with building excise taxes/impact fees. If the amount of building excise tax revenues collected by municipalities total \$32 per municipal resident, municipal revenues could increase by \$26.5 million annually. In any event, the impact of the bill is likely to vary by municipality.

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 that have APFOs – adequate public facilities ordinances – with school adequacy tests substantially similar to or more stringent than the county's APFO are

allowed to retain a portion of the tax revenue to be used for specified capital costs associated with the expansion of public facilities.

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 range from \$3,671 in Dorchester County to \$31,105 in Montgomery County. Of the 16 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 183,000 individuals in calendar 2005, resulting in \$8.4 billion in wages and \$883 in average weekly wages per worker. The construction industry accounts for 8.9% of total private-sector employment and 9.6% of private-sector wages.

Additional Information

Prior Introductions: HB 523 and SB 591, similar bills, were introduced during the 2007 session. HB 523 was passed by the House and received a hearing in the Senate Budget and Taxation Committee but no further action was taken. SB 591 received a hearing in Budget and Taxation but no further action was taken. HB 1260 and SB 854, similar bills, were introduced during the 2006 session. HB 1260 was passed by the House but was not acted on by the Senate Budget and Taxation Committee. SB 854 received a hearing in Budget and Taxation but no further action was taken.

Cross File: SB 791 (Senator Forehand) – Budget and Taxation.

Information Source(s): Maryland Department of Planning, City of College Park, Kent County, Montgomery County, Prince George's County, Washington County, Worcester County, Maryland Municipal League, Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2008
mam/hlb

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Exhibit 1
Maryland Counties with Development Impact Fees or Excise Taxes

County	Type	FY 2008 Rate Per Dwelling ¹	FY 2007 Revenues
Anne Arundel	Impact Fee	\$4,904	\$9,235,359
Calvert	Excise Tax	12,950	3,990,000
Caroline ²	Excise Tax	5,000	351,178
Carroll	Impact Fee	6,836	1,547,977
Charles	Excise Tax	11,400	2,469,035*
Dorchester ³	Excise Tax	3,671	1,007,908
Frederick ⁴	Both	13,121	11,159,465
Harford	Impact Fee	8,269	4,700,428
Howard ⁵	Excise Tax	See note	13,107,941
Montgomery ⁶	Excise Tax	31,105	20,718,825
Prince George's ⁷	Excise Tax	19,864	41,994,549*
Queen Anne's	Impact Fee	\$3.93/sq. ft.	1,599,957
St. Mary's	Impact Fee	4,500	3,794,275*
Talbot ⁸	Impact Fee	5,513	1,919,972
Washington	Excise Tax	13,000	4,817,695
Wicomico	Impact Fee	5,231	1,017,662
Total			\$123,432,226

¹ Rates listed are generally those applicable to single-family detached dwellings.

² A \$750 development excise tax for agricultural land preservation is also imposed on single-family residential lots created by subdivision in a "rural district."

³ A slightly higher rate, \$3,765 per dwelling, applies outside of the Cambridge and Hurlock areas.

⁴ The fiscal 2008 rate shown reflects the public school and library impact fee total. The roads tax is \$0.10/sq. ft. or \$0.25/sq. ft. (depending on the square footage), with the first 700 square feet not taxed.

⁵ Roads tax is \$0.88/sq. ft. School surcharge is \$1.09/sq. ft.

⁶ Amount represents \$10,649 for transportation and \$20,456 for schools. The school excise tax is increased by \$2 for each square foot between 3,500 and 8,500 gross square feet. Different transportation rates apply in the Metro Station and Clarksburg impact tax districts. The rates reflect increases adopted by the county council on November 13, 2007, that took effect December 1, 2007.

⁷ Amount represents \$13,493 for school facilities and \$6,371 for public safety. A lower school facilities rate (\$7,870) applies inside the beltway and a lower public safety rate (\$2,124) applies inside the "developed tier" as defined in the 2002 Prince George's County Approved General Plan.

⁸ A lower rate (\$4,764) applies to "in-town" development.

* Revenue figure identified by county as recorded revenues prior to being audited for that fiscal year.

Note: Due to the timing of the survey from which the fiscal 2007 revenue numbers were collected, revenues reported by counties other than those specifically identified may also be unaudited.

Source: Department of Legislative Services

Exhibit 2
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

Exhibit 3
Residents Residing in Municipalities
July 2006

County	County Population	Municipal Population	% of County Population
Allegany	72,831	32,740	45.0%
Anne Arundel	509,300	36,518	7.2%
Baltimore City	631,366	0	0.0%
Baltimore	787,384	0	0.0%
Calvert	88,804	5,365	6.0%
Caroline	32,617	10,946	33.6%
Carroll	170,260	43,580	25.6%
Cecil	99,506	26,331	26.5%
Charles	140,416	12,411	8.8%
Dorchester	31,631	14,805	46.8%
Frederick	222,938	88,764	39.8%
Garrett	29,859	6,578	22.0%
Harford	241,402	36,667	15.2%
Howard	272,452	0	0.0%
Kent	19,983	7,563	37.8%
Montgomery	932,131	155,075	16.6%
Prince George's	841,315	224,124	26.6%
Queen Anne's	46,241	4,900	10.6%
St. Mary's	98,854	2,171	2.2%
Somerset	25,774	5,637	21.9%
Talbot	36,062	17,050	47.3%
Washington	143,748	51,968	36.2%
Wicomico	91,987	38,039	41.4%
Worcester	48,866	17,009	34.8%
Statewide	5,615,727	838,241	14.9%

Source: Maryland Department of Planning