

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1109

(Prince George's County Delegation)

Environment and Transportation

Finance

**Prince George's County - Economic Development - Business Improvement
Districts
PG 407-23**

This bill exempts Prince George's County from the statewide business improvement district law and establishes a separate law solely for Prince George's County that authorizes the county to establish business improvement districts. The bill specifies the procedures and requirements for establishing a district, including the creation of specified boards of directors and steering committees, public notification regarding the establishment of an improvement district, district expansion, funding, taxing authority, and the evaluation and termination of a business improvement district.

Fiscal Summary

State Effect: None.

Local Effect: Prince George's County expenditures may increase minimally due to additional public hearings for proposed business improvement districts. Prince George's County local revenues and expenditures are further affected to the extent that the bill alters the number of business improvement districts established or expanded relative to current law, as discussed below.

Small Business Effect: Potential meaningful. Small businesses that are located in, or adjacent to, a business improvement district established or expanded in Prince George's County due to the bill are affected, as discussed below.

Analysis

Bill Summary/Current Law: Chapter 461 of 2010 authorized a county or municipality to establish business improvement districts, subject to specified conditions, as discussed below. Chapter 444 of 2017 exempted Montgomery County from the statewide business improvement district law and established a separate law solely for Montgomery County and its municipalities.

General Purpose for Business Improvement Districts

Current Law: The purpose of the law authorizing the creation of business improvement districts is to promote the general welfare of residents, employers, property owners, and others within the districts. A local government may adopt a local law to create a business improvement district.

The Bill: No change for districts in Prince George's County, except that the bill only applies to Prince George's County and not municipalities in the county.

Property Subject to Taxation in a Business Improvement District

Current Law: "Nonexempt property" means *nonresidential* real property that is not exempt from paying real property taxes.

The Bill: "Nonexempt property" means *all* real property that is not exempt from paying real property taxes except (1) condominium units and cooperative housing corporation units that exist on or before the date of establishment of a district; (2) homeowners associations; or (3) residential property with fewer than four dwelling units. However, a condominium or a cooperative housing corporation may petition to join a new or expanding business improvement district, subject to specified conditions.

Business Improvement District Formation

Current Law: Documentation necessary to form a district must be sent to the governing body of the county and municipality, if applicable, in which the proposed district is located. The documentation must contain specified information, including (1) a statement expressing the intent to establish a district corporation that is signed by at least 80% of the owners of the total number of nonexempt property parcels within the proposed district and (2) a proposed three-year plan that contains information such as the proposed annual business improvement district tax and the proposed articles of incorporation and district corporation bylaws.

The Bill: The documentation, which is submitted by the formation steering committee, must contain specified information including a statement expressing the intent to establish a district corporation that is signed by (1) owners of at least 51% of the total number of nonexempt property parcels within the proposed district and (2) in the case of a condominium or cooperative housing corporation, the signature of board member.

Notwithstanding any other law, a condominium or cooperative housing corporation that is located in the proposed district may petition to join the district corporation if it is governed by a board, the board votes to join, and the board has a representative member sign the appropriate documents discussed above. For purposes of the 51% ownership thresholds required to establish a district corporation, a condominium or cooperative housing corporation is considered a single parcel, and the decision reached by the board constitutes the vote of the condominium or housing corporation.

The proposed three-year plan requirement is changed to a five-year requirement, except that it no longer needs to include a list of the names and addresses of all commercial tenants within the proposed district.

Current Law: A local governing body is required to hold a public hearing within 45 days of receiving documentation from property owners seeking to establish the district. At least 21 days before the hearing, the local governing body is required to publish notice of the hearing, and the property owners seeking to establish the district must send notice to nonexempt property owners and commercial tenants within the proposed district. Within 10 days after the public hearing, if a local governing body determines that the needs of the district meet *the purposes* set forth in the law, the governing body *must* authorize the district.

The Bill: A formation steering committee seeking to establish a district must send notice of the public hearing and a summary of the application to each owner of nonexempt property and to the extent reasonably ascertainable, each commercial tenant of nonexempt property within the proposed district by the earlier of (1) at least 90 days before the public hearing or (2) when owners of at least 20% of the total number of parcels of nonexempt property express the intent to establish a district. If, within 10 days of the public hearing, Prince George's County determines, in the sole discretion of the county, that the needs of the district meet *a purpose* set forth in the law, the governing body *may* authorize the district.

Expansion of an Established Business Improvement District

Current Law: An established district may expand the geographic area of the district if (1) a petition for inclusion is submitted from at least 80% of the owners of the total number of parcels of nonexempt property in the geographic area proposed for inclusion in the district;

(2) the petition is accepted by a majority vote of the board of the district corporation; and
(3) the appropriate documents, as applicable, are submitted to, and a hearing is held by, the appropriate local governing body.

The Bill: Requirements to expand an existing district in Prince George's County are unchanged, except that the petition for inclusion must be submitted from (1) owners of at least 51% of the total number of nonexempt property parcels proposed for inclusion within the district and (2) a designated board member of a condominium or a cooperative housing corporation. Notwithstanding any other law, a condominium or cooperative housing corporation that is located in the proposed expanded geographic area of the district may petition to join the district corporation under the same conditions and subject to the same requirements as discussed above for district creation.

District Corporation Board and Powers

Current Law: District corporations are governed by a five-member board of directors, which is appointed by members of the district according to procedures specified in the local law establishing the district. The board is required to file an annual report with the applicable local governing body that includes (1) a financial statement for the prior year; (2) a proposed operating budget; (3) information showing the goals and results of operations; and (4) any proposed business plan revisions.

Except as limited by any articles of incorporation, a district corporation may (1) receive money from its incorporating local government, the State, other governmental units, or nonprofit organizations; (2) charge fees for its services; (3) employ individuals and hire consultants; and (4) use the services of other governmental units.

The Bill: Generally, a board of a district corporation consists of at least nine members. However, the county may determine a different number of members for the board if the district is connected with a business improvement district in another county or State or in the District of Columbia. A board must be representative of property owners, business owners, residents, and representatives of the local jurisdictions within the boundaries of the business improvement district. It is the responsibility of the initial board of the business improvement district to determine in the district's bylaws the specific details pertaining to board structure, including the specific number of positions, terms, and voting procedures. A board must retain as nonvoting members, the members of the Maryland Senate and House of Delegates who represent the legislative district where a district corporation is established. Board seats must be elected in accordance with an election process that is established by the county where the district is located. To the extent practicable, the election process must reflect the diversity of businesses and other organizations in the district.

Local Government Authority and Requirements

Current Law: Subject to a public hearing, local governing bodies are authorized to adopt a local law creating a district. If a district is adopted, local governing bodies are required every three years to review the effectiveness and desirability of continuing the district. In addition, if requested by owners of nonexempt property within the district, local governing bodies are required to develop policies and procedures for evaluating the desirability of continuing the district. If the local governing body does not approve the continued existence of the district, the district will cease to exist as directed by the local governing body but will continue its existence only as long as necessary to terminate operations in a reasonable manner.

The Bill: No change for districts in Prince George's County, except that the definition of nonexempt property is changed under the bill. The bill only applies to Prince George's County and not municipalities in the county.

Local Fiscal Effect: Under the bill, Prince George's County must hold a public hearing on a proposed business improvement district if the local jurisdiction receives, in addition to other documentation, a statement signed by owners of at least 51% of the total number of parcels of nonexempt property in the proposed district. This is a lower threshold than under current law, and, as such, local government expenditures for Prince George's County may increase minimally due to additional public hearings.

Under the bill, if Prince George's County determines that the needs of the district meet a purpose of the business improvement district law, the county may adopt a local law approving the district.

The effect on the number of business improvement districts ultimately established or expanded under the bill is unclear. The added flexibility provided to Prince George's County to authorize – or not authorize – a proposed district may increase or decrease the number of districts ultimately approved under the bill, relative to current law.

Therefore, Prince George's County revenues and expenditures are affected to the extent that the bill increases or decreases the number of business improvement districts established or expanded relative to current law. The amount cannot be reliably estimated at this time. Any additional costs for business improvement district administration is recoverable through taxes on the assessable base of all nonexempt real property in the district, as authorized under the bill.

Small Business Effect: Currently, there are no business improvement districts in Prince George's County. Small businesses are affected, potentially significantly, to the

extent that they are included in business improvement districts established or expanded under the bill, relative to current law. These businesses benefit from the services provided by the district, but they also pay additional taxes for those services. In addition, small businesses included in business improvement districts may benefit from the broadened tax base under the bill.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Prince George's County; Comptroller's Office; Department of Legislative Services

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