



MEMORANDUM

September 7, 2018

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 
Glenn Orlin, Deputy Executive Director 

SUBJECT: Expedited Bill 27-18, Taxation – Development Impact Tax for Transportation Improvements – Refunds - Credits – Amendments

PURPOSE: Public Hearing – No Council votes required

Expedited Bill 27-18, Development Impact Tax for Transportation Improvements – Refunds - Credits – Amendments, sponsored by Lead Sponsor Council President Riemer at the request of the County Executive, was introduced on July 17. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for September 24 at 2:00 p.m.

Expedited Bill 27-18 would

- (1) authorize a transportation impact tax credit for certain expenses paid by a property owner for improvements listed in a Unified Mobility Program or the White Oak Local Area Transportation Improvement Program;
- (2) extend the time for the County to spend transportation impact taxes to equal the time transportation impact tax credits remain valid; and
- (3) change the time to certify an impact tax credit from the issuance of a building permit to the collection of the impact tax.

Background

Under current law, a property owner can receive a transportation impact tax credit for an improvement on a State Road within the White Oak Local Area Transportation Improvement Program (LATIP) or a future Unified Mobility Program (UMP) only to the extent the cost of the improvement exceeds the listed cost in the program. This provision discourages an owner from building a listed improvement when the cost is greater than the LATIP or UMP fee but is not greater than the listed cost. Bill 27-18 would authorize a credit against the development impact tax for transportation for an improvement built by a property owner to the extent the cost exceeds the property owner's LATIP or UMP fees.¹ This change would provide an incentive for a property owner to build a listed improvement during development rather than simply pay a LATIP or UMP fee.

¹ The property owner would also receive a credit against the LATIP or UMP fee for building a listed improvement under Code §52-51(e).

The Bill would also increase the time the County must schedule a use for the transportation impact taxes collected from 6 years to 12 years before the property owner can request a refund. This change would make this time consistent with the time a transportation impact tax credit remains valid. Finally, the Bill would change the time for the Department of Transportation to certify an impact tax credit from the issuance of a building permit to the collection of the impact tax.

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Expedited Bill No. 27-18
 Concerning: Taxation – Development
Impact Tax for Transportation
Improvements – Refunds - Credits -
Amendments
 Revised: August 3, 2018 Draft No.2
 Introduced: July 17, 2018
 Expires: January 17, 2020
 Enacted: _____
 Executive: _____
 Effective: _____
 Sunset Date: None
 Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President Riemer at the request of the County Executive

AN EXPEDITED ACT to:

- (1) authorize a transportation impact tax credit for certain expenses paid by a property owner for improvements listed in a Unified Mobility Program or the White Oak Local Area Transportation Improvement Program;
- (2) extend the time for the County to spend transportation impact taxes to equal the time transportation impact tax credits remain valid;
- (3) change the time to certify an impact tax credit from the issuance of a building permit to the collection of the impact tax; and
- (4) generally amend the law governing the administration of Development Impact Tax for Transportation Improvements.

By amending
 Montgomery County Code
 Chapter 52, Taxation
 Section 52-46, 52-47

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 52-46 and 52-47 are amended as follows:**

2 **52-46. Refunds.**

- 3 (a) Any person who has paid a development impact tax may apply for a
4 refund of the impact tax if:
- 5 (1) the County has not appropriated the funds for impact transportation
6 improvements of the types listed in Section 52-50, or otherwise
7 formally designated a specific improvement of a type listed in
8 Section 52-50 to receive funds, by the end of the [~~sixth~~] twelfth
9 fiscal year after the tax is collected;
- 10 (2) the building permit has been revoked or has lapsed because
11 construction did not start; or
- 12 (3) the project has been physically altered, resulting in a decrease in
13 the amount of impact tax due.
- 14 (b) Only the current owner of property may petition for a refund of the impact
15 tax. A petition for refund of the impact tax must be filed within the time
16 established for filing a claim for refund of a local tax under state law.
- 17 (c) The petition for refund of the impact tax must be submitted to the Director
18 of Permitting Services on a form provided by the County. The petition
19 must contain at least:
- 20 (1) A statement that petitioner is the current owner of the property;
- 21 (2) A copy of the dated receipt for payment of the development impact
22 tax issued by the Department of Permitting Services;
- 23 (3) A certified copy of the latest recorded deed for the subject
24 property; and
- 25 (4) The reasons why a refund of the impact tax is sought.
- 26 (d) The Director of Permitting Services must investigate each claim and hold
27 a hearing if the petitioner requests a hearing. Within 3 months after

28 receiving a petition for refund of the impact tax, the Director of
 29 Permitting Services must provide the petitioner, in writing, with a
 30 decision on the impact tax refund request. The decision must include the
 31 reasons for the decision, including, as appropriate, a determination of
 32 whether impact tax funds collected from the petitioner, calculated on a
 33 first-in-first-out basis, have been appropriated or otherwise formally
 34 designated for impact transportation improvements of the types listed in
 35 Section 52-50 within [6] 12 fiscal years. If a refund of the impact tax is
 36 due the petitioner, the Director of Permitting Services must notify the
 37 Department of Finance and, if the property is located in Gaithersburg or
 38 Rockville, the finance director of that city.

39 * * *

40 **52-47. Credits**

- 41 (a) A property owner is entitled to a credit if the owner, before July 1, 2002,
 42 entered into a participation agreement, or a similar agreement with the
 43 state or a municipality, the purpose of which was to provide additional
 44 transportation capacity. A property owner is also entitled to a credit if the
 45 owner receives approval before July 1, 2002[,] of a subdivision plan,
 46 development plan, or similar development approval by the County or a
 47 municipality that requires the owner to build or contribute to a
 48 transportation improvement that provides additional transportation
 49 capacity. The Department of Transportation must calculate the credit.
 50 The credit must equal the amount of any charge paid under the
 51 participation agreement. The Department may give credit only for
 52 building permit applications for development on the site covered by the
 53 participation agreement.

54 (b) Except as provided in subsection (l), a property owner must receive a
 55 credit for constructing or contributing to an improvement of the type
 56 listed in Section 52-50, including the cost of an improvement in a Unified
 57 Mobility Program or the White Oak Local Area Transportation
 58 Improvement Program, if the improvement reduces traffic demand or
 59 provides additional transportation capacity [, including the cost of an
 60 improvement in an Urban Mobility Program or the White Oak Local Area
 61 Transportation Improvement Program] and to the extent [it exceeds the
 62 listed cost of the improvement in that program] the cost of the
 63 improvement exceeds the property owner's fee under a Unified Mobility
 64 Program or the White Oak Local Area Transportation Improvement
 65 Program.

66 (1) If the property owner elects to make the improvement, the owner
 67 must enter into an agreement with a municipality or the County[,]
 68 or receive a development approval based on making the
 69 improvement, before any building permit is issued. The agreement
 70 or development approval must contain:

- 71 (A) the estimated cost of the improvement, if known then;
- 72 (B) the dates or triggering actions to start and, if known then,
 73 finish the improvement;
- 74 (C) a requirement that the property owner complete the
 75 improvement according to applicable municipal or County
 76 standards; and
- 77 (D) any other term or condition that the municipality or County
 78 finds necessary.

79 (2) The Department of Transportation must:

- 80 (A) review the improvement plan;

- 81 (B) verify costs and time schedules;
- 82 (C) determine whether the improvement is an impact
- 83 transportation improvement;
- 84 (D) determine the amount of the credit for the improvement that
- 85 will apply to the development impact tax; and
- 86 (E) certify the amount of the credit to the Department of
- 87 Permitting Services before that Department or a
- 88 municipality [issues any building permit] collects the
- 89 applicable impact tax.

90 * * *

91 (1) The Department must not certify a credit for:

92 (1) The cost of a project in [an Urban] a Unified Mobility Program or

93 the White Oak Local Area Transportation Improvement Program

94 up to the [listed cost of the improvement in that program] property

95 owner's fee under a Unified Mobility Program or the White Oak

96 Local Area Transportation Improvement Program; or

97 (2) Any improvement in the right-of-way of a State road, except:

98 (A) A transit program that operates on or relieves traffic on a

99 State road or an improvement to a State road that is included

100 in a memorandum of understanding between the County

101 and either Rockville or Gaithersburg; or

102 (B) The cost of an improvement in [an Urban] a Unified

103 Mobility Program or the White Oak Local Area

104 Transportation Improvement Program to the extent it

105 exceeds the [listed cost of the improvement in that program]

106 property owner's fee under a Unified Mobility Program or

107 the White Oak Local Area Transportation Improvement
108 Program.

109 **Sec. 2. Expedited Effective Date.**

110 The Council declares that this legislation is necessary for the immediate
111 protection of the public interest. This Act takes effect on the date on which it becomes
112 law.

113

114 *Approved:*

115

Hans D. Riemer, President, County Council Date

116 *Approved:*

117

Isiah Leggett, County Executive Date

118 *This is a correct copy of Council action.*

119

Megan Davey Limarzi, Esq., Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 27-18

Taxation – Development Impact Tax for Transportation Improvements – Refunds - Credits - Amendments

DESCRIPTION:	<p>The Bill would:</p> <ol style="list-style-type: none">(1) authorize a transportation impact tax credit for certain expenses paid by a property owner for improvements listed in a Unified Mobility Program or the White Oak Local Area Transportation Improvement Program;(2) extend the time for the County to spend transportation impact taxes to equal the time transportation impact tax credits remain valid; and(3) change the time to certify an impact tax credit from the issuance of a building permit to the collection of the impact tax.
PROBLEM	<p>Under the provisions of Section 52-47 of the County Code, Transportation Impact Tax Credits are permitted on State Roads within the White Oak LATIP and future UMPs only where the cost of the improvement exceeds the listed cost in the program. This provision limits an owner's ability to implement the listed improvements when the cost does not exceed the listed cost.</p>
GOALS AND OBJECTIVES:	<p>The objective of this bill is to allow owners to receive credit against their impact tax liability to the extent their financial investment in a listed improved within the LATIP or UMP exceeds their LATIP or UMP fees. This change will increase the incentive for owners to implement transportation improvement concurrent with development activity instead of paying fees to the County for public implementation of the improvements.</p>
COORDINATION:	<p>M-NCPPC Planning Department, Department of Permitting Services, Maryland Department of Transportation/State Highway Administration.</p>
FISCAL IMPACT:	<p>Potential reduction in Impact Tax Payments within the LATIP and future UMP areas coupled with increased private implementation of planned transportation improvements.</p>
ECONOMIC IMPACT:	<p>N/A</p>
EVALUATION:	<p>The LATIP will be re-evaluated every six years, consistent with the timeframe of the Capital Improvement Program and the Subdivision Staging Policy evaluation.</p>
EXPERIENCE ELSEWHERE:	<p>N/A</p>
SOURCE OF INFORMATION:	<p>Montgomery County Department of Transportation (MCDOT)</p>

**APPLICATION
WITHIN
MUNICIPALITIES:** N/A

PENALTIES: None.

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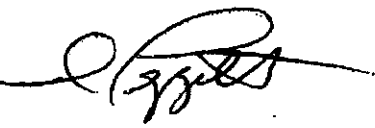
OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

July 2, 2018

TO: Hans Riemer, Council President

FROM: Isiah Leggett, County Executive 

SUBJECT: Introduction of Expedited Bill to Address Impact Credits and Local Area Transportation Review Mitigation Credits

I am requesting introduction of legislation to amend Chapter 52 of the Montgomery County Code related to the certification of Transportation Impact Tax credits at locations within the White Oak Local Area Transportation Improvement Program (LATIP) and future Unified Mobility Programs (UMPs).

These revisions would allow certification of Transportation Impact Tax credits at locations listed in these programs for property-owner expenditures on transportation improvements that exceed the owner's fee obligations under the LATIP or UMP. Modification of this element of the code will encourage property owners to implement needed transportation improvements concurrent with their development since their expenditures will offset the fees they would otherwise pay to the County.

In addition to this specific change to the code, other minor technical corrections related to the Unified Mobility Program (UMP) terminology and timeframe for expenditure of impact tax receipts for consistency with the life span of impact tax credits are included in this legislation. I have also included Financial and Economic Impact Statements for this legislation with this transmittal.

I recommend prompt passage of legislation to advance these programs.

Fiscal Impact Statement
Expedited Bill XX-18 – Taxation: Development Impact Tax Credits and
Local Area Transportation Review Mitigation Payments

1. Legislative Summary

The purpose of this legislation is to clarify the provisions of Transportation Impact Tax Credits and their relationship to the White Oak Local Area Transportation Improvement Program (LATIP) and future Unified Mobility Programs. Other technical corrections are also included. The primary purpose is to allow Impact Tax Credits when the costs of owner-constructed improvements exceeds the owner's LATIP fees.

2. As estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Impact Taxes revenues are reduced, but they are offset by the construction of identified infrastructure by private owners. This is more efficient for the County and net savings can be expected as transportation projects are implemented at the time they are needed to support a project.

Recurring updates to the UMP / LATIP fees will result in lower fees as actual construction costs are reduced. As fees are directly tied to expenditures this has no direct net revenue impact to the County. Indirectly, lower fees could spur more rapid development of the tax base within an UMP / LATIP policy area.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.
See item #2 above.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable. There are no personnel costs associated with this bill.

5. Later actions that may affect future venue and expenditures if the bill authorizes future spending.

Not applicable.

6. An estimate of the staff time needed to implement the bill.

Not applicable. This bill would not affect staff responsibilities.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

Not applicable. This bill would not affect staff responsibilities.

8. An estimate of costs when an additional appropriation is needed.

Not applicable.

9. A description of any variable that could affect revenue and cost estimates.

The cost of improvements is a key variable. This analysis assumes that development can implement projects at lower costs than the County. The inverse is unlikely to occur, as cost estimates prepared by developers will be reviewed and approved before

authorizing credits. In the event that construction costs are affirmed by the County to be higher than estimated in the UMP / LATIP analysis, this discrepancy would be addressed at the next recurring UMP / LATIP update.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

11. If a bill is likely to have no fiscal impact, why that is the case.


Credits are assigned based on implementation of projects that would have had to have been implemented by the County. The net value remains relatively unchanged, other than a benefit to the County amounting to the cost savings from developments' reduced construction costs.

12. Other fiscal impacts or comments.

Impact Taxes are assigned Countywide, and UMP / LATIP projects are locked to a geographic policy area. This change would increase the potential for Impact Tax credits to be applied more regularly toward UMP / LATIP policy areas, reducing the overall funding that could be available outside of these policy areas.

13. The following contributed to and concurred with this analysis:

Andrew Bossi, Department of Transportation


Jennifer D. Hughes, Director
Office of Management and Budget


Date

Economic Impact Statement
Bill xx-18 Taxation: Development Impact Tax Credits and Local Area
Transportation Review Mitigation Payments

Background:

The purpose of this legislation is to clarify the provisions of Transportation Impact Tax Credits and their relationship to the White Oak Local Area Transportation Improvement Program (LATIP) and future Unified Mobility Programs (UMPs). Other technical corrections are also included. The primary purpose is to allow Impact Tax Credits when the costs of owner-constructed improvements exceeds the owner's LATIP fees. This change is designed to increase the incentive for owners to implement transportation improvement concurrent with development activity instead of paying fees to the County for public implementation of the improvements.

1. The sources of information, assumptions, and methodologies used.

- White Oak impact tax data, Department of Transportation

2. A description of any variable that could affect the economic impact estimates.

Variables that could affect the economic estimates include the potential reduction in Impact Tax Payments within the LATIP and future UMP areas and increases in the private implementation of planned transportation improvements. This bill is anticipated to have a modest positive economic impact from increased construction as reduced impact taxes are coupled with increased implementation of identified infrastructure.

3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

As noted in the fiscal impact statement for the bill, a net savings to the County can be expected due to private implementation of identified transportation improvements at the time they are needed to support a development project. Recurring updates to the UMP / LATIP fees will result in lower fees as actual construction costs are reduced. As fees are directly tied to expenditures this has no direct net revenue impact to the County. Indirectly, lower fees could eventually spur more rapid development of the tax base within an UMP / LATIP policy area.

The legislation is intended to modify the eligibility of private expenditures on transportation projects for impact tax credits. The bill makes changes to the provisions allowing credits against impact taxes for development within areas covered by the White Oak Local Area Transportation Improvement Program or future Unified Mobility Programs. It does not, however, change the required mitigation or other provisions that would affect the economic performance of real estate projects. The potential revenue impact cannot be quantified with specificity given a lack of data enumerating future mitigation projects in the proposed areas. The impact is expected to be modest as the legislation covers a relatively small area of the County, a set list of projects, and only the incremental amount of funds that the developer would otherwise owe based on the estimated cost of the projects.

4. If a Bill is likely to have no economic impact, why is that the case?

Please see paragraph 3.

5. The following contributed to or concurred with this analysis:

Christopher Conklin - Department of Transportation.

Economic Impact Statement
Bill xx-18 Taxation: Development Impact Tax Credits and Local Area
Transportation Review Mitigation Payments

David Platt, Dennis Hctman – Department of Finance.

Mauricio Espinosa for A.A.E.
Alexandre Espinosa, Director
Department of Finance

6/22/18
Date