

Bill No. 9-03
Concerning: Development Impact Tax –
School Facilities
Revised: 10-27-03 Draft No. 6
Introduced: April 8, 2003
Enacted: October 28, 2003
Executive: _____
Effective: [[September 1, 2003]]
March 1, 2004
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Perez and Andrews

AN ACT to:

- (1) establish a development impact tax to pay for certain school facilities;
 - (2) phase in the application of the school impact tax;
 - (3) provide for certain exemptions from and credits against the school impact tax;
 - (4) provide for certain uses for revenues from the tax;
 - (5) provide for the collection and use of a School Facilities Payment in certain circumstances; and
- [[~~(5)~~]] (6) generally amend the law governing impact taxes and the funding of school facilities.

By adding

Montgomery County Code
Chapter 52, Taxation
Article XII, Development Impact Tax for Public School Improvements

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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

1 **Sec. 1. Chapter 52 is amended by adding the following article:**

2 **Article XII. Development Impact Tax for Public School Improvements.**

3 **52-87. Definitions.**

4 In this Article all terms defined in Section 52-47 have the same meanings, and
5 the following terms have the following meanings:

6 Development impact tax for public school improvements means a tax imposed
7 to defray a portion of the costs associated with public school improvements that are
8 necessary to accommodate the enrollment generated by the development.

9 Public school improvement means any capital project of the Montgomery
10 County Public Schools that adds to the number of teaching stations in a public
11 school.

12 High-rise ~~[[residential]] unit [[means]] includes any dwelling unit located in a~~
13 multifamily residential or mixed-use building that is taller than 4 stories, and any 1-
14 bedroom garden apartment.

15 **52-88 Findings; purpose and intent.**

16 (a) The amount and rate of growth will place significant demands on the
17 County to provide public school improvements necessary to support and
18 accommodate that growth.

19 (b) The County, through its adoption of the Capital Improvements Program,
20 indicates its commitment to provide public school improvements.

21 (c) The County has determined that a combination of approaches will be
22 necessary to fully achieve the level of public school improvements
23 needed to accommodate growth . Thus, the County proposes to fund a
24 program of public school improvements through development impact
25 taxes to support new growth in the County.

26 (d) Imposing a development impact tax that requires new development to
27 pay a share of the costs of public school improvements necessitated by

28 that development in conjunction with other public funds is a reasonable
29 method of raising the funds to build improvements in a timely manner.

30 (e) The development impact tax for public school improvements will fund,
31 in part, the improvements necessary to increase public school capacity,
32 thereby allowing development to proceed. Development impact taxes
33 authorized in this Article will be used exclusively for public school
34 improvements.

35 (f) In order to assure that the necessary public school improvements are
36 constructed in a timely manner, the County intends to make sufficient
37 funds available to construct the public school improvements.

38 (g) The County retains the power to determine the public school
39 improvements to be funded by development impact taxes; estimate the
40 cost of such improvements; establish the proper timing of construction
41 of the improvements to meet school capacity needs as identified in the
42 Annual Growth Policy; determine when changes, if any, may be
43 necessary in the County CIP; and do all things necessary and proper to
44 accomplish the purpose and intent of this Article.

45 (h) The County intends to further the public purpose of assuring that
46 adequate public school capacity is available in support of new
47 development.

48 (i) The County's findings are based on the adopted or approved plans,
49 planning reports, capital improvements programs identified in this
50 Article, and specific studies conducted by Montgomery County Public
51 Schools.

52 (j) The County intends to impose development impact taxes for public
53 school improvements until the County has attained build-out as defined
54 by the General Plan.

55 **52-89. Imposition and applicability of tax.**

56 (a) An applicant for a building permit for a residential development must
 57 pay a development impact tax for public school improvements in the
 58 amount and manner provided in this Article before a building permit is
 59 issued for any residential development in the County unless:

60 (1) a credit for the entire tax owed is allowed under Section 52-93; or

61 (2) an appeal bond is posted under Section 52-56.

62 (b) Except as expressly provided in this Article, this tax must be levied,
 63 collected, and administered in the same way as the tax imposed under
 64 Article VII. All provisions of Article VII apply to this tax unless the
 65 application of that Article would be clearly inconsistent with any
 66 provision of this Article. This tax is in addition to the tax imposed
 67 under Article VII, and any tax paid under this Article must not be
 68 credited against any tax due under Article VII.

69 (c) The tax under this Article must not be imposed on:

70 (1) any Moderately Priced Dwelling Unit built under Chapter 25A or
 71 any similar program enacted by either Gaithersburg or Rockville,

72 ~~[(2) any Productivity Housing unit, as defined in Section 25B-17(j),~~
 73 ~~which meets the price or rent eligibility standards for a~~
 74 ~~moderately priced dwelling unit under Chapter 25A;]~~

75 ~~[(3)] (2) any other dwelling unit built under a government regulation~~
 76 ~~or binding agreement that limits for at least 15 years the price or~~
 77 ~~rent charged for the unit in order to make the unit affordable to~~
 78 ~~households earning less than ~~[[50%]] 60% of the area median~~~~
 79 ~~income, adjusted for family size;~~

80 ~~[(4)] (3) any Personal Living Quarters unit built under Sec. 59-A-6.15,~~
 81 ~~which meets the price or rent eligibility standards for a~~

82 moderately priced dwelling unit under Chapter 25A;
 83 ~~[(5)]~~ (4) any dwelling unit in an Opportunity Housing Project built
 84 under Sections 56-28 through 56-32, which meets the price or
 85 rent eligibility standards for a moderately priced dwelling unit
 86 under Chapter 25A; and

87 ~~[(6)]~~ (5) any development located in an enterprise zone designated by
 88 the State.

89 (d) The tax under this Article does not apply to:

90 (1) any reconstruction or alteration of an existing building or part of
 91 a building that does not increase the number of dwelling units of
 92 the building; and

93 (2) any building that replaces an existing building on the same site or
 94 in the same project (as approved by the Planning Board or the
 95 equivalent body in Rockville or Gaithersburg) to the extent of the
 96 number of dwelling units of the previous building, if:

97 (A) construction begins within one year after demolition or
 98 destruction of the previous building was substantially
 99 completed; or

100 (B) the previous building is demolished or destroyed, after the
 101 replacement building is built, by a date specified in a
 102 phasing plan approved by the Planning Board or
 103 equivalent body.

104 However, if in either case the tax that would be due on the new,
 105 reconstructed, or altered building is greater than the tax that would have
 106 been due on the previous building if it were taxed at the same time, the
 107 applicant must pay the difference between those amounts.

108 (e) If the type of proposed development cannot be categorized under the

109 residential definitions in Section 52-47 and 52-87, the Department must
 110 use the rate assigned to the type of residential development which
 111 generates the most similar school enrollment characteristics.

112 **52-90. Tax rates.**

113 (a) The Countywide rates for the tax under this Article are:

<i>Dwelling type</i>	<i>Tax per dwelling unit</i>
Single-family detached [[residential]]	[[3920]] 8000
Single-family attached [[residential]]	[[3220]] 6000
Multifamily [[residential]] (except high-rise)	[[1960]] 4000
High-rise [[residential]]	[[770]] 1600
Multifamily senior [[residential]]	\$0

120 (b) The tax on any single-family detached or attached dwelling unit must be
 121 increased by \$1 for each square foot of gross floor area that exceeds
 122 4500 square feet, to a maximum of 8500 square feet.

123 (c) Any Productivity Housing unit, as defined in Section 25B-17(j), must
 124 pay the tax at 50% of the otherwise applicable rate.

125 ~~[[b)]]~~ (d) The County Council by resolution, after a public hearing advertised
 126 at least 15 days in advance, may increase or decrease the rates set in this
 127 Section.

128 ~~[[c)]]~~ (e) The Director of Finance, after advertising and holding a public
 129 hearing as required by Section 52-17(c), must adjust the tax rates set in
 130 or under this Section on July 1 of each odd-numbered year by the
 131 annual average increase or decrease in the Consumer Price Index for all
 132 urban consumers in the Washington-Baltimore metropolitan area, or any
 133 successor index, for the two most recent calendar years. The Director
 134 must calculate the adjustment to the nearest multiple of one dollar. The

135 Director must publish the amount of this adjustment not later than May
 136 1 of each odd numbered year.

137 **52-91. Accounting; use of funds.**

138 (a) The Department of Finance must maintain and keep adequate financial
 139 records that:

140 (1) show the source and disbursement of all revenues under this
 141 Article;

142 (2) account for all funds received; and

143 (3) assure that the funds are used exclusively for the public school
 144 improvements listed in subsection (d).

145 (b) Interest earned on revenues under this Article must be used solely for
 146 public school improvements.

147 (c) The Department of Finance must annually issue a statement for this
 148 account.

149 (d) Revenues raised under this Article may be used to fund any:

150 (1) new public elementary or secondary school;

151 (2) addition to an existing public elementary or secondary school that
 152 adds one or more teaching stations; or

153 (3) modernization of an existing public elementary or secondary
 154 school to the extent that the modernization adds one or more
 155 teaching stations.

156 **52-92. Refunds.**

157 (a) Except as provided in this Section, Section 52-54 applies to any petition
 158 for a refund of taxes paid under this Article. Subsections 52-54(a)(1)
 159 and (d) do not apply to taxes paid under this Article.

160 (b) Any person who has paid a tax under this Article may apply for a refund
 161 of the tax if the County has not appropriated the funds for public school

162 improvements of the types listed in Section 52-91(d) by the end of the
 163 sixth fiscal year after the tax is collected.

- 164 (c) The Director of Permitting Services must investigate each claim and
 165 hold a hearing at the request of the petitioner. Within 3 months after
 166 receiving a petition for refund, the Director must provide the petitioner,
 167 in writing, with a decision on the refund request. The Director must
 168 specify the reasons for the decision, including, if a refund is claimed
 169 under subsection (b), a determination of whether funds collected from
 170 the petitioner, calculated on a first-in-first-out basis, have been
 171 appropriated or otherwise formally designated for public school
 172 improvements of the types listed in Section 52-91(d) within 6 fiscal
 173 years.

174 **52-93 Credits.**

- 175 (a) Section 52-55 does not apply to the tax under this Article. A property
 176 owner must receive a credit for constructing or contributing to an
 177 improvement of the type listed in Section 52-91(d), including costs of
 178 site preparation. A credit must not be allowed for the cost of any land
 179 dedicated for school use, including any land on which the property
 180 owner constructs a school.
- 181 (b) If the property owner elects to make a qualified improvement, the owner
 182 must enter into an agreement with the Director of Permitting Services,
 183 or receive a development approval based on making the improvement,
 184 before any building permit is issued. The agreement or development
 185 approval must contain:
- 186 (1) the estimated cost of the improvement, if known then,
 187 (2) the dates or triggering actions to start and, if known then, finish
 188 the improvement,

189 (3) a requirement that the property owner complete the improvement
 190 according to Montgomery County Public Schools standards, and

191 (4) such other terms and conditions as MCPS finds necessary.

192 (c) MCPS must:

193 (1) review the improvement plan,

194 (2) verify costs and time schedules,

195 (3) determine whether the improvement is a public school
 196 improvement of the type listed in Section 52-91(d),

197 (4) determine the amount of the credit for the improvement, and

198 (5) certify the amount of the credit to the Department of Permitting
 199 Services before that Department or a municipality issues any
 200 building permit.

201 (d) An applicant for subdivision, site plan, or other development approval
 202 from the County, Gaithersburg, or Rockville, or the owner of property
 203 subject to an approved subdivision plan, development plan, or similar
 204 development approval, may seek a declaration of allowable credits from
 205 MCPS. MCPS must decide, within 30 days after receiving all necessary
 206 materials from the applicant, whether any public school improvement
 207 which the applicant has constructed, contributed to, or intends to
 208 construct or contribute to, will receive a credit under this subsection. If
 209 during the initial 30-day period after receiving all necessary materials,
 210 MCPS notifies the applicant that it needs more time to review the
 211 proposed improvement, MCPS may defer its decision an additional 15
 212 days. If MCPS indicates under this paragraph that a specific
 213 improvement is eligible to receive a credit, the Director of Permitting
 214 Services must allow a credit for that improvement. If MCPS cannot or

215 chooses not to perform any function under this subsection or subsection
 216 (c), the Department of Permitting Services must perform that function.

217 (e) The Director of Finance must not provide a refund for a credit which is
 218 greater than the applicable tax. [[If, however, the amount of the credit
 219 exceeds the amount of the tax due, the property owner may apply the
 220 excess credit toward any tax imposed under this Article on any other
 221 building permit for development with the same ownership. In this
 222 Section, a property has the same ownership as another property if the
 223 same legal entity owns at least 30% of the equity in both properties.]]

224 (f) Any credit issued under this Section expires 6 years after the Director
 225 certifies the credit.

226 **52-94. School Facilities Payment.**

227 (a) In addition to the tax due under this Article, an applicant for a building
 228 permit for any building on which a tax is imposed under this Article
 229 must pay to the Department of Finance a School Facilities Payment if
 230 that building was included in a preliminary plan of subdivision that was
 231 approved under the School Facilities Payment provisions in the Annual
 232 Growth Policy.

233 (b) The amount of the Payment for each building must be calculated by
 234 multiplying the Payment rate by the latest per-unit student yield ratio for
 235 that level of school and for that type of dwelling unit and geographic
 236 area issued by MCPS.

237 (c) The Payment rate is \$12,500 per student, unless modified by Council
 238 resolution. The Council by resolution, after a public hearing advertised
 239 at least 15 days in advance, may increase or decrease the Payment rate
 240 or set different rates for different types of housing unit.

241 (d) The Payment must be paid at the same time and in the same manner as

242 the tax under this Article, and is subject to all provisions of this Article
 243 for administering and collecting the tax.

244 (e) The Department of Finance must retain funds collected under this
 245 Section in an account to be appropriated for MCPS capital
 246 improvements that result in added student capacity for the school
 247 cluster, or, if no cluster is established, another geographic administrative
 248 area, where the development for which the funds were paid is located.

249 **Sec. 2. Effective Date; Transition.**

250 (a) This Act takes effect on ~~[[September]]~~ March 1, ~~[[2003]]~~ 2004, and the
 251 development impact tax for public school improvements imposed under
 252 Section 52-89, added by Section 1 of this Act, applies to any building
 253 for which an application for a building permit is filed on or after that
 254 date.

255 ~~[[b)]~~ Each taxpayer must pay the development impact tax for public school
 256 improvements at:

257 (1) 50% of the rates set in Section 52-90, as inserted by Section 1 of
 258 this Act, for any building permit application filed between
 259 September 1, 2003 and December 31, 2003;

260 (2) 75% of the rates set in Section 52-90 for any building permit
 261 application filed between January 1, 2004, and June 30, 2004;
 262 and

263 (3) 100% of the rates set in Section 52-90 for any building permit
 264 application filed on or after July 1, 2004.

265 To the extent that any taxpayer pays a lower rate than that set in Section
 266 52-90 because this subsection applies, any credit claimed under Section
 267 52-93 must be reduced by the same ratio.]]

