

**MEMORANDUM**

May 6, 2016

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney  
Glenn Orlin, Deputy Council Administrator



SUBJECT: **Public Hearing:** Expedited Bill 15-16, Recordation Tax – Rates – Allocations - Amendments

Expedited Bill 15-16, Recordation Tax – Rates – Allocations - Amendments, sponsored by Lead Sponsor Council President Floreen, was introduced on April 19, 2016. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for May 12, at 9:30 a.m.

Bill 15-16 would increase the rate of the recordation tax levied under state law and allocate the revenue received from the recordation tax for different uses.

**Background**

Recordation taxes are paid when a house or building is sold, or if the mortgage on a house or building is refinanced. There are three elements of the recordation tax:

- The “base” recordation rate is \$2.20/\$500 on the sale price or, if refinancing, on the additional amount borrowed over the remaining principal. (If acquiring a home, the first \$50,000 of the sale cost is exempt.) Bill 15-16 would not change the “base” rate or how its revenue is allocated.
- The “school increment” went into effect in 2004 and its rate is \$1.25/\$500. It is also based on the sale price or, if refinancing, on the additional amount borrowed over the remaining principal. This Bill would raise the rate to \$2.00/\$500, effective July 1, and would generate \$125 million over the next six years. Currently the proceeds can be used for any Montgomery County Public Schools (MCPS) capital project and for any Montgomery College information technology capital project. The Bill would dedicate all the proceeds to MCPS projects; College information technology projects can still be funded with general Current Revenue.

- The “Recordation Tax Premium” went into effect in 2008 and its rate is \$1.55/\$500. Unlike the other two elements, the Premium applies only to the cost of a property or a refinancing that is in excess of \$500,000. Half of the proceeds from the Premium are allocated to County Government capital projects (i.e., capital projects of departments in the Executive Branch); the other half is for rent assistance. This Bill would raise the rate to \$2.30/\$500, effective July 1, and would generate \$30 million more for County Government projects and \$30 million more for rental assistance over the next six years. On March 22, the Council heard from Enterprise Community Partners about the need for more affordable housing in Montgomery County and that part of the solution is more money. The Recordation Tax Premium is an important revenue source for the Housing Initiative Fund. It has been used for traditional monthly rental assistance and very effectively at the Bonifant to make many of these new units affordable to very low income seniors. The Department of Housing and Community Affairs has projects in the pipeline that may need \$40 to \$50 million. This funding will help make sure there is adequate funding to move forward when projects and programs are ready.

Lead Sponsor, Council President Floreen, explained the need for this Bill in an April 12 memorandum at ©5-6.

### **Initial Reconciliation of the FY17-22 Capital Improvements Program**

The Council approved an initial reconciliation of the FY17-22 CIP to bring its programmed spending within the approved spending levels and yet maintain an adequate reserve. The initial reconciliation assumes an additional \$196 million in revenue for the CIP over FY17-22. One way to increase revenue for the CIP would be to increase the recordation tax dedicated to school construction by \$1/\$500 instead of \$.75/\$500. The proposed rates for different values of consideration on a conveyance is compared to the proposed rates under Bill 15-16 at ©7.

### **Clarification of the \$50,000 Exemption for an Owner-occupied Home**

Scott Foncannon, Acting Chief of the Division of Finance and Procurement in the County Attorney’s Office, recommended an amendment to clarify the application of the \$50,000 exemption for an owner-occupied home. See the Bill Review Memo at ©8. Mr. Foncannon recommends the following amendment:

*Amend lines 21-26 as follows:*

- (b) *Exemption.* The first \$50,000 of the consideration payable on the conveyance of any owner-occupied residential property is exempt from the recordation tax if the buyer of that property is an individual and intends to use the property as the buyer’s principal residence by actually occupying the residence for at least 7 months of the 12-month period immediately after the property is conveyed.

The County has interpreted this provision to apply to a transfer to an individual and not a trust, and this amendment would codify this interpretation.

This packet contains:	<u>Circle #</u>
Bill 15-16	1
Legislative Request Report	4
Council President Floreen April 12 Memorandum	5
Chart of Proposed Rates	7
County Attorney Bill Review Memorandum	8

Expedited Bill No. 15-16  
Concerning: Recordation Tax – Rates –  
Allocations - Amendments  
Revised: April 14, 2016 Draft No. 4  
Introduced: April 19, 2016  
Expires: October 19, 2017  
Enacted: [date]  
Executive: [date signed]  
Effective: [date takes effect]  
Sunset Date: None  
Ch. [#], Laws of Mont. Co. [year]

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

---

Lead Sponsor: Council President Floreen

---

**AN EXPEDITED ACT to:**

- (1) increase the rate of the recordation tax levied under state law for certain transactions;
- (2) allocate the revenue received from the recordation tax for certain uses; and
- (3) generally amend the law governing the recordation tax

By amending

Montgomery County Code  
Chapter 52, Taxation  
Section 52-16B

<b>Boldface</b>	<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. Section 52-16B is amended as follows:**

2   **52-16B. Recordation Tax.**

3           (a) *Rates.* The rates and the allocations of the recordation tax, levied under  
4           [state law] Md. Tax-Property Code §§12-101 to 12-118, as amended, are:

5           (1) [\$3.45] for each \$500 or fraction of \$500 of consideration payable  
6           or of the principal amount of the debt secured for an instrument of  
7           writing, including the amount of any mortgage or deed of trust  
8           assumed by a grantee;

9           (A) \$2.20, of which the net revenue must be reserved for and  
10           allocated to the County general fund; and

11           (B) \$2.00, of which the net revenue must be reserved for and  
12           allocated to the cost of capital improvements to schools; and

13           (2) if the consideration payable or principal amount of debt secured  
14           exceeds \$500,000, an additional [\$1.55] \$2.30 for each \$500 or  
15           fraction of \$500 of the amount over \$500,000, of which the net  
16           revenue must be reserved for and allocated equally to:

17           (A) the cost of County government capital improvements; and

18           (B) rent assistance for low and moderate income households,  
19           which must not be used to supplant any otherwise available  
20           funds.

21           (b) *Exemption.* The first \$50,000 of the consideration payable on the  
22           conveyance of any owner-occupied residential property is exempt from  
23           the recordation tax if the buyer of that property intends to use the property  
24           as the buyer's principal residence by actually occupying the residence for  
25           at least 7 months of the 12-month period immediately after the property  
26           is conveyed.

27   **Sec. 2. Prior allocations.**

1           The allocation of recordation tax revenue made in Section 1 replaces each  
2 allocation of recordation tax revenue established in previously enacted uncodified  
3 legislation.

4           **Sec. 3. Expedited Effective Date.**

5           The Council declares that this legislation is necessary for the immediate  
6 protection of the public interest. This Act takes effect on the date on which it becomes  
7 law, and applies to any transaction which occurs on or after July 1, 2016.

8 *Approved:*

9

---

Nancy Floreen, President, County Council

Date

10 *Approved:*

11

---

Isiah Leggett, County Executive

Date

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

13

---

Linda M. Lauer, Clerk of the Council

Date

## LEGISLATIVE REQUEST REPORT

### Expedited Bill 15-16 *Recordation Tax – Rates – Allocations - Amendments*

<b>DESCRIPTION:</b>	Expedited Bill 15-16 would increase the recordation tax rates and allocate the revenue received from the recordation tax. The portion of the base rate allocated to school capital projects would increase from \$1.25/\$500 to \$2.00/\$500 of value, effective July 1, 2016. The Bill would also increase the premium rate charged against sales valued at more than \$500,000 from \$1.55/\$500 to \$2.30/\$500. The revenue received from this premium rate would continue to be shared equally between County capital projects and rent assistance.
<b>PROBLEM:</b>	The County needs to generate additional tax revenue to support MCPS school construction and rent assistance for low and moderate income households in the County.
<b>GOALS AND OBJECTIVES:</b>	Increased funding for MCPS school construction and rent assistance for low and moderate income households in the County.
<b>COORDINATION:</b>	
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Robert H. Drummer, Senior Legislative Attorney
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	To be researched.
<b>PENALTIES:</b>	Not applicable.



MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND

NANCY FLOREEN  
COUNCIL PRESIDENT

MEMORANDUM

April 12, 2016

TO: Councilmembers

FROM: Nancy Floreen, Council President

SUBJECT: Proposed increase to the recordation tax

As I talk with residents across the county, it becomes increasingly clear to me that our capital needs, particularly in the areas of school construction and affordable housing, far outweigh our available resources. Times are tough to be sure, but we absolutely must keep up with our obligations in these two important areas. That's why I will introduce a bill to increase the rate of the recordation tax in a progressive way. The recordation tax is paid only when properties are sold or refinanced. While nobody likes the idea of increasing taxes of any kind, our needs are great, and this tax is less likely to affect those Montgomery County residents who are struggling most. On the up side, it will generate millions of dollars to support our desperate need for new schools and educational facility improvements. What's more, a portion of the recordation tax is earmarked for affordable housing. I believe this proposal is the most progressive approach to meeting the needs that our residents have clearly identified as their top priorities.

The attached expedited bill will raise both the School Increment of the Recordation Tax and the Recordation Tax Premium by \$0.75/\$500 each. Over the six-year period these rates will generate an estimated \$155 million more in revenue for the CIP and \$30 million more for rental assistance for low and moderate income households.

There are three elements of the recordation tax:

- The "base" recordation rate is \$2.20/\$500 on the sale price or, if refinancing, on the additional amount borrowed over the remaining principal. (If acquiring a home, the first \$50,000 of the sale cost is exempt.) This bill does not change the "base" rate or how its revenue is allocated.
- The "school increment" went into effect in 2004 and its rate is \$1.25/\$500. It is also based on the sale price or, if refinancing, on the additional amount borrowed over the remaining principal. **This bill would raise the rate to \$2.00/\$500, effective July 1, and would generate \$125 million over the next six years.** Currently the proceeds can be used for any Montgomery County Public Schools capital project and for any Montgomery College

information technology capital project. **This bill would dedicate all the proceeds to MCPS projects;** College information technology projects can be funded with general Current Revenue.

- The "Recordation Tax Premium" went into effect in 2008 and its rate is \$1.55/\$500. Unlike the other two elements, the Premium applies only to the cost of a property or a refinancing that is in excess of \$500,000. Half of the proceeds from the Premium are allocated to County Government capital projects (i.e., capital projects of departments in the Executive Branch); the other half is for rent assistance. **This bill would raise the rate to \$2.30/\$500, effective July 1, and would generate \$30 million more for County Government projects and \$30 million more for rental assistance over the next six years.** On March 22 the Council heard from Enterprise Community Partners about the need for more affordable housing in Montgomery County and that part of the solution is more money. The Recordation Tax Premium is an important revenue source for the Housing Initiative Fund. It has been used for traditional monthly rental assistance and very effectively at the Bonifant to make many of these new units affordable to very low income seniors. The Department of Housing and Community Affairs has projects in the pipeline that may need \$40 to \$50 million. This funding will help make sure there is adequate funding to move forward when projects and programs are ready.

Raising the two rates maintains a degree of progressivity in the recordation tax. The chart below shows what the burden of the total recordation tax (i.e., all three elements) would be for homes at different sale prices:

	<b>Current Rates</b>	<b>Proposed Rates</b>
\$300,000	\$1,725	\$2,100
\$400,000	\$2,415	\$2,940
\$500,000	\$3,105	\$3,780
\$600,000	\$4,105	\$5,080
\$700,000	\$5,105	\$6,380
\$800,000	\$6,105	\$7,680
\$900,000	\$7,105	\$8,980
\$1,000,000	\$8,105	\$10,280
\$1,100,000	\$9,105	\$11,580
\$1,200,000	\$10,105	\$12,880
\$1,300,000	\$11,105	\$14,180
\$1,400,000	\$12,105	\$15,480
\$1,500,000	\$13,105	\$16,780

**Increase Recordation Tax School Increment by \$0.75/\$500 (\$1.50/\$1000)**  
**and Recordation Tax Premium by \$0.75/\$500 (\$1.50/\$1000)**

**(Generates \$155M for CIP and \$30M for rental assistance in 6 years)**

<u>Consideration</u>	<u>Current Rates</u>	<u>Proposed Rates</u>	<u>Increase</u>
\$ 300,000	\$ 1,725	\$ 2,100	\$ 375
\$ 400,000	\$ 2,415	\$ 2,940	\$ 525
\$ 500,000	\$ 3,105	\$ 3,780	\$ 675
\$ 600,000	\$ 4,105	\$ 5,080	\$ 975
\$ 700,000	\$ 5,105	\$ 6,380	\$ 1,275
\$ 800,000	\$ 6,105	\$ 7,680	\$ 1,575
\$ 900,000	\$ 7,105	\$ 8,980	\$ 1,875
\$ 1,000,000	\$ 8,105	\$ 10,280	\$ 2,175
\$ 1,100,000	\$ 9,105	\$ 11,580	\$ 2,475
\$ 1,200,000	\$ 10,105	\$ 12,880	\$ 2,775
\$ 1,300,000	\$ 11,105	\$ 14,180	\$ 3,075
\$ 1,400,000	\$ 12,105	\$ 15,480	\$ 3,375
\$ 1,500,000	\$ 13,105	\$ 16,780	\$ 3,675

**Increase Recordation Tax School Increment by \$1.00/\$500 (\$1.50/\$1000)**  
**and Recordation Tax Premium by \$0.75/\$500 (\$1.50/\$1000)**

**(Generates \$196M for CIP and \$30M for rental assistance in 6 years)**

<u>Consideration</u>	<u>Current Rates</u>	<u>Proposed Rates</u>	<u>Increase</u>
\$ 300,000	\$ 1,725	\$ 2,225	\$ 500
\$ 400,000	\$ 2,415	\$ 3,115	\$ 700
\$ 500,000	\$ 3,105	\$ 4,005	\$ 900
\$ 600,000	\$ 4,105	\$ 5,355	\$ 1,250
\$ 700,000	\$ 5,105	\$ 6,705	\$ 1,600
\$ 800,000	\$ 6,105	\$ 8,055	\$ 1,950
\$ 900,000	\$ 7,105	\$ 9,405	\$ 2,300
\$ 1,000,000	\$ 8,105	\$ 10,755	\$ 2,650
\$ 1,100,000	\$ 9,105	\$ 12,105	\$ 3,000
\$ 1,200,000	\$ 10,105	\$ 13,455	\$ 3,350
\$ 1,300,000	\$ 11,105	\$ 14,805	\$ 3,700
\$ 1,400,000	\$ 12,105	\$ 16,155	\$ 4,050
\$ 1,500,000	\$ 13,105	\$ 17,505	\$ 4,400



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett  
County Executive

Marc P. Hansen  
County Attorney

MEMORANDUM

TO: Joseph Beach, Director  
Department of Finance

FROM: Scott R. Foncannon, Acting Chief  
Division of Finance and Procurement 

VIA: Edward B. Lattner, Chief  
Division of Government Operations 

DATE: April 22, 2016

RE: Bill 15-16E, Recordation Tax – Rates – Allocations - Amendments

---

I have had an opportunity to review Expedited Bill 15-16, Recordation Tax – Rates – Allocations – Amendments. This bill increases the rates of recordation tax and modifies the allocation of the recordation tax imposed. This bill is authorized by State law and is within the authority of the County Council. The bill is not vague, will not increase or decrease the County's liability exposure and, in my opinion, the bill is constitutional.

Over the years there have been issues with the provisions of 52-16(b). This section creates an exemption for the first \$50,000 of consideration on a conveyance of owner occupied residential property where the buyer intends to use the property as the buyer's principal residence for 7 out of the 12 months immediately after the property is conveyed. This has always been interpreted by the County to only apply to a transfer to an individual and not to a transfer to a trust. I would recommend that an amendment be proposed in line 23 so that this exemption reads, "... if the buyer of that property is an individual and intends to use the property...." With the amendment of this section of the County Code, it will become clear that the exemption applies only to an individual buyer and not to transfers to a trust.

I have no further comments.

cc: Bonnie Kirkland, Assistant Chief Administrative Officer

16-002983  
Bill review