Montgomery County Council

Committee: Joint
Committee Review: Completed
Staff: Robert H. Drummer, Senior Legislative Attorney
Purpose: Final action – vote expected
Keywords: #AffordableHousingPilot

AGENDA ITEM #19B
December 14, 2021
Action

SUBJECT

Bill 26-21, Taxation – Payments in Lieu of Taxes – Affordable Housing - Amendments

Lead Sponsors: Councilmembers Riemer and Friedson

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Bill 26-21, as amended by the Committee, would establish a minimum payment in lieu of taxes for a housing development owned or operated by the Housing Opportunities Commission (HOC) or a non-profit housing developer with at least 50% of the dwelling units affordable to households earning 60% or less of area median income.

- The Bill would also repeal the annual maximum aggregate amount of all payments in lieu of taxes approved under this law.

DESCRIPTION/ISSUE

- Is the potential loss of tax revenue a reasonable tradeoff for the increase in affordable housing?

SUMMARY OF KEY DISCUSSION POINTS

- The amount of the payment in lieu of taxes necessary to increase affordable housing.

- The areas of the County where affordable housing is most needed.

<u>This report contains:</u>

F:\LAW\BILLS\2126 Taxation - Payment In Lieu Of Taxes - Amendments\Action Cover Sheet.Docx

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Agenda Item #19B
December 14, 2021
Action

M E M O R A N D U M

December 9, 2021

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Bill 26-21, Taxation – Payments in Lieu of Taxes – Affordable Housing - Amendments

PURPOSE: Final Action – vote expected

Committee recommendation (5-0): approval of the Bill as amended.

Bill 26-21, Taxation – Payments in Lieu of Taxes – Affordable Housing – Amendments, sponsored by Lead Sponsors Councilmembers Riemer and Friedson, was introduced on June 29, 2021. A public hearing was held on July 20, 2021 and a joint Government Operations & Fiscal Policy and Planning Housing & Economic Development Committee worksession was held on November 18, 2021.[1]

Bill 26-21, as amended by the Committee, would establish a minimum payment in lieu of taxes for a housing development owned or operated by the Housing Opportunities Commission (HOC) or a non-profit housing developer with at least 50% of the dwelling units affordable to households earning 60% or less of area median income. The Bill would also repeal the annual maximum aggregate amount of all payments in lieu of taxes approved under this law.

Background

Code §52-24 currently authorizes the Director of Finance to accept a negotiated payment in lieu of real property taxes (PILOT) for a qualifying housing development in which the owner is eligible for a PILOT. State laws authorize a PILOT for properties owned or controlled by the HOC or for other housing developments where the owner agrees to limit the rent on certain dwelling units under a government affordable housing program. The County law also requires the Council to establish an aggregate amount of all PILOTs that can be approved under this law. PILOTs for HOC properties are excluded from the aggregate maximum established by the Council. In addition, both the decision to offer a PILOT for a qualifying housing development and the

[1] #AffordableHousingPilot

amount of the PILOT is discretionary with the Director. In practice, the Department of Housing and Community Development negotiates the PILOTs.

Bill 26-21, as amended by the Committee, would amend this law by mandating a PILOT for HOC projects and establishing the following minimum PILOT for other affordable housing developments owned by a non-profit housing developer when authorized by State law. If at least 50% of the dwelling units limit the rent charged for at least 15 years to an amount affordable to households earning less than 60% of the area median income, the PILOT must be 100% of the property tax for at least 15 years. The Bill would continue to permit the Director to negotiate a PILOT for affordable housing in other situations authorized by State law.

Finally, Bill 26-21 would eliminate the annual maximum aggregate amount for all payments in lieu of taxes approved under this law.

The County Attorney's Office (OCA) concluded that the Bill raised no legal issues. OCA did point out that the Bill might be interpreted to permit a developer to qualify for a PILOT on property by locating the affordable units on a different site. See ©6. OCA updated their Bill review memo on November 10 ©8. OCA pointed out that the PILOT must be authorized by State law and that the calculation of the partial PILOT needs to be clarified.

Public Hearing

DHCA Director Aseem Nigam, testifying on behalf of the Executive, expressed support for the intent of increasing affordable housing in the County but also expressed the need for amendments to avoid certain issues (©10). Jane Lyons, representing the Coalition for Smarter Growth and Mike English, representing Jews United for Justice (©11), each supported the Bill and requested amendments that would increase the required minimum number of affordable units from 50% to 60% and that would eliminate the 15-year limit on the PILOT. Mary Kolar, representing the Montgomery Housing Alliance also supported the Bill and requested the elimination of the 15-year limit on the PILOT (©13). Al Jackson, JBG Smith, and Rob Goldman, Montgomery Housing Partnership, also supported the Bill. Blaise Rastello supported the Bill but felt that the DHCA Director should have some flexibility to provide a PILOT based on need.

GO-PHED Worksession

Aseem Nigam, DHCA Director and Roderick Simpson, DHCA, represented the Executive Branch. Senior Legislative Analyst Linda McMillan and Senior Legislative Attorney Robert Drummer represented the Council staff. The Committee discussed the purpose of the Bill, the current method of providing a PILOT for affordable housing by negotiation with DHCA, and how the Bill would change the process.

The Committee unanimously approved the following amendments:

1. limit the automatic PILOT in the Bill to properties that have not previously received a PILOT and a property that is eligible due to affordable units that become under rent restriction on or after the date the Act takes effect;
2. limit the automatic PILOT to HOC or a non-profit housing developer;
3. require a property owned by a non-profit developer to provide at least 50% of the units to be affordable to households earning 60% or less of AMI

(Councilmember Jawando made a motion to additionally require 20% of the units to be affordable to households earning 50% or less of AMI that was rejected);

4. amended HOC eligibility to a property owned or controlled by HOC;
5. amended the Bill to clarify that the affordable units must be on the property receiving the PILOT; and
6. amended the Bill to eliminate the automatic partial PILOT for less than 50% affordable dwelling units but directed staff to try to work out language with DHCA for a further amendment; and
7. amended the Bill to clarify that the binding agreement must be with the County.

The Committee recommended (5-0) approval of the Bill with these amendments.

Issues

1. What is the fiscal impact of the Bill?

OMB was unable to estimate the total fiscal impact for Bill 26-21 due to the inability to predict the number of PILOTs that the Bill would authorize ©15. OMB did predict that the Bill would substantially increase eligibility for a PILOT. Assuming the Bill would permit existing properties with a partial negotiated PILOT to become eligible for the 100% PILOT, OMB estimated lost property tax to range between $8 million and $85 million. OMB also estimated that the increase in PILOTs would require 1 additional staff member in DHCA at $102,000/year and an additional $80,000 in annual operating costs. OMB also raised several issues that will be discussed below.

2. Should the Bill permit a PILOT for an existing development that already received a PILOT?

The Executive strongly suggested an amendment that would limit the Bill to newly constructed or rehabilitated developments. This would prevent existing developments from receiving additional tax exemptions without providing additional affordable housing. **Committee recommendation:** limit the automatic PILOT established in the Bill to properties that have not previously received a PILOT or a property that is eligible due to affordable units that become under rent restriction on or after the date the Act takes effect. See lines 35-37 and the Transition Clause at lines 69-72 of the Bill at ©3-4.

3. Should the PILOT be limited to properties owned by HOC or other non-profit developers of affordable housing?

The County Attorney's Office is correct that the PILOT must be authorized by State law. Md. Tax-Property Code Ann. § 7-506.1 is the State law authorizing a PILOT for rental housing for lower income persons. A property is eligible under § 7-506.1(a)(2) if:

> **(ii)** the real property is used for a housing structure or project that is constructed or substantially rehabilitated under a federal, State, or local government program that:
>
> **1.** funds construction or insures its financing in whole or in part; or

2. provides interest subsidy, rent subsidy, or rent supplements;

Bill 26-21, as introduced, would provide a PILOT for any rental housing project that provides more than 25% of the units under a government regulation requiring those units to be affordable to persons at 65% of AMI for at least 15 years. The MPDU program requires all developments to have either 12.5% or 15% MPDUs. An MPDU for a garden apartment must be affordable to households at 65% of AMI. This would make a garden apartment project with at least 25% MPDUs eligible for a PILOT in addition to the existing waiver of impact taxes. Councilmember Jawando made a motion to additionally require 20% of the units to be affordable to households earning 50% or less of AMI. The Committee did not approve the motion. The Committee approved a motion by Councilmember Friedson to require at least 50% of the units affordable to households earning 60% or less of AMI. **Committee recommendation:** add a statement that the PILOT must be authorized by State law and limit the automatic PILOT to a property with at least 50% of the units affordable to households at 60% of AMI. See lines 19-34 of the Bill at ©2-3.

4. Should the Bill be amended to require the affordable units be located on the property receiving the PILOT?

The Executive raised concerns that the Bill would permit the affordable units to be located on a different property than the property receiving the PILOT. This would seem unlikely if the Bill is limited to HOC and non-profit housing developers, but DHCA is concerned about for-profit developers requesting a PILOT and locating the affordable units on a different property. Councilmember Friedson introduced an amendment to clarify that the affordable units must be located on the property receiving the PILOT. **Committee recommendation:** require the affordable units to be on the property receiving the PILOT. See lines 24-27 of the Bill at ©1.

6. Should DHCA have some discretion to limit the amount of the PILOT based on need?

The Bill would provide an automatic PILOT for certain qualifying developments that are currently eligible to negotiate a PILOT with DHCA. The Executive believes that the Bill would provide an automatic 100% PILOT for some projects that do not need that much of a tax exemption to go forward. Requiring negotiation with DHCA would permit DHCA to continue evaluating the finances of each new project and provide the appropriate amount of a tax exemption to permit the project to go forward. The non-profit housing developers argue that the automatic PILOT creates the certainty they need to obtain the financing for a project by eliminating a variable for future operating expenses. Both arguments may be true. **Committee recommendation:** keep the automatic PILOT provision.

7. Should the Bill be amended to change the calculation of the amount of a PILOT for affordable units to be based on a percentage of the total property tax rather than a per unit tax credit?

OMB, Finance, and OCA each pointed out that the property tax is not calculated on a per unit basis. The property tax for a multi-family rental apartment is based on the value of the land and the improvements. Therefore, it is unclear how the partial PILOTs must be calculated since the Bill requires a tax exemption equal to a certain number of units. If the total tax bill is divided by the number of units in a development, the Bill may require a PILOT that is worth more than the total tax bill. For example, if the project includes 25% of the units affordable at 30% of AMI and 20% of the units affordable 45% of AMI, each of the 30% units would be worth 3 times 25% or 75% of the tax and each of the 45% units would be worth 2 times 20% or 40% of the total tax. The result would be a PILOT worth 115% of the total tax. Would the County be required to pay the property owner the overage each year?

As specified in the current Executive Regulations, DHCA uses a per unit tax exemption equal to the average Montgomery County homeowner tax credit authorized under Section 9-104 of Md. Tax-Property Code Ann. §9-104 when providing a partial PILOT. **Committee recommendation:** approved an amendment moved by Councilmember Friedson to eliminate the automatic partial PILOTs authorized in the Bill and consider a new Bill for this at a later time. See lines 38-50 of the Bill at ©3.

8. Should a qualifying project owned or operated by HOC be changed to "owned or controlled" by HOC?

The State laws authorizing a PILOT for HOC would permit a PILOT for a property where HOC is the general partner of a limited partnership. To avoid a gap in the authority to issue an automatic PILOT for an HOC project, the Committee may want to amend lines 21-23 as follows:

> (1) owned or **[[operated]]** controlled by the Housing Opportunities Commission that exempts 100% of the real property tax that would otherwise be levied; and

Committee recommendation: change operated to controlled. See line 21 of the Bill at ©2.

9. Should the Bill be amended to clarify that the PILOT Agreement be between the property owner and the County?

OMB raised the issue in the fiscal impact statement that the Bill does not mandate that the PILOT Agreement be between the property owner and the County. We believe the intent of the Bill is to require the automatic PILOT be implemented through a written agreement between the property owner and the County. However, this language could be clarified by amending lines 24-25 as follows:

> (2) if at least 50% of the dwelling units are built under a government regulation or binding agreement with the County limiting the rent charged for the

and amend lines 34-35 as follows:

the dwelling units built under a government regulation or binding agreement with the County limiting the rent charged for the unit for at least 15 years but

Committee recommendation: add the phrase "with the County" to clarify the intent. See line 27 of the Bill at ©2.

10. What is the economic impact of the Bill?

OLO estimated that the Bill would have a positive impact on economic conditions in the County by increasing the speed and certainty of attaining a PILOT for affordable housing. OLO was unable to estimate whether the Bill would result in more affordable housing developments in the County than would otherwise occur. Increasing affordable housing could increase economic output, employee earnings, job creation, and value added. See ©21.

12. What is the racial equity and social justice impact of the Bill?

OLO estimates that the Bill would favorably impact racial equity and social justice if it increases and preserves affordable housing in the County. See ©27. OLO concluded that an increase in affordable housing is likely to disproportionately help Black and Latinx households in the County based on current demographic data.

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Bill No. 26-21
Concerning: Taxation – Payments in Lieu of Taxes – Affordable Housing - Amendments
Revised: 12-7- 2021 Draft No. 4
Introduced:
Expires:
Enacted:
Executive:
Effective:
Sunset Date:
Ch. _____, Laws of Mont. Co.

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Riemer and Friedson

AN ACT to:

(1) establish a minimum payment in lieu of taxes for certain qualifying housing developments;
(2) eliminate the annual maximum aggregate amount of all payments in lieu of taxes approved under this Section; and
(3) generally amend the law governing a payment in lieu of real property taxes for certain housing developments.

By amending
Montgomery County Code
Chapter 52, Taxation
Section 52-24

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*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:

Sec. 1. Section 52-24 is amended as follows:

52-24. Payments in lieu of taxes for certain housing developments.

(a) *Definitions.* In this Section, the following words have the following meanings.

Area median income means the median household income for the Washington, DC metropolitan area as estimated by the U.S. Department of Housing and Urban Development, adjusted by household size based on the occupancy standard for the unit.

Director means the Director of Finance or the Director's designee.

Payment in lieu of taxes means an authorized payment made by the owner of a qualifying housing development instead of paying the County real property tax, including a County real property tax levied under a special area taxing law, that would otherwise be due.

(b) When authorized by state law, the Director **[**of Finance**]** may agree to accept a negotiated payment in lieu of the real property tax that would otherwise be levied on a qualifying housing development. A qualifying housing development is any housing development of which the owner is expressly eligible under state law to make payments in lieu of taxes.

(c) **[[**The**]]** When authorized by state law, the Director must offer a payment in lieu of taxes for a qualifying housing development:

(1) owned or **[[**operated**]]** controlled by the Housing Opportunities Commission that exempts 100% of the real property tax that would otherwise be levied; **[[**and**]]** or

(2) owned or controlled by a non-profit housing developer if at least 50% of the dwelling units located on the property receiving the payment in lieu of taxes are built under a government regulation or binding agreement with the County limiting the rent charged for

the unit for at least 15 years to make the unit affordable to households earning 60% or less [[than 65%]] of the area median income. The offer must exempt 100% of the real property tax that would otherwise be levied for a period of at least 15 years, but no more than the number of years that rents charged for 50% of the dwelling units must remain restricted to households earning 60% or less of the area median income.

[(b)] (d) The Director must not offer a [[partial]] payment in lieu of taxes for a qualifying housing development under this Section for any property that has already received a payment in lieu of taxes under any Section [[with at least 25% but less than 50% of the dwelling units built under a government regulation or binding agreement limiting the rent charged for the unit for at least 15 years but no more than the number of years that the rents charged for affordable units must remain restricted:

(1) for each dwelling unit affordable for residents at 51% to 65% of area median income, the project must receive a payment in lieu of taxes for one unit;

(2) for each dwelling unit affordable for residents at 31% to 50% of area median income, the project must receive a payment in lieu of taxes for 2 units; and

(3) for each dwelling unit affordable for residents at 30% or less of area median income, the project must receive a payment in lieu of taxes for 3 units]].

(e) Any payment accepted by the Director [of Finance] must conform to guidelines included in a regulation adopted by the [County] Executive under method (1). Before the Director [of Finance] accepts a payment in lieu of taxes, the Director must consult the Director of the Department of Housing and Community Affairs on whether:

(1) the subject of the payment is a qualifying housing development; and

(2) the amount of the payment complies with applicable guidelines.

[(c)**]** (f) **[**The aggregate amount of all payments in lieu of taxes under this Section (other than payments for a housing development owned or operated by the Housing Opportunities Commission) must not exceed an amount set annually by Council resolution for the following 10-year period. The Council by separate resolution may approve a payment which exceeds the aggregate amount previously set.**]** The Executive, in each annual operating budget submitted to the Council, must calculate the amount of pending payments in lieu of taxes already approved under this Section, including payments for housing developments owned or operated by the Housing Opportunities Commission.

Sec. 2. Transition. The amendments in Section 1 establishing an mandatory payment in lieu of taxes must only apply to a property that is eligible for a payment in lieu of taxes due to affordable dwelling units that come under a government regulation or binding agreement limiting the rent charged on or after this Act takes effect.

LEGISLATIVE REQUEST REPORT

Bill 26-21, Taxation – Payments in Lieu of Taxes – Affordable Housing - Amendments

DESCRIPTION:	Bill 26-21 would establish a minimum payment in lieu of taxes for a housing development owned or operated by the Housing Opportunities Commission (HOC) and for any other housing development with at least 25% of the dwelling units built under a government regulation or binding agreement limiting the rent charged for at least 15 years. The Bill would also repeal the annual maximum aggregate amount of all payments in lieu of taxes approved under this law.
PROBLEM:	The County needs to encourage developers to build more affordable housing.
GOALS AND OBJECTIVES:	To increase the stock of affordable housing in the County.
COORDINATION:	Finance, Department of Housing and Community Affairs
FISCAL IMPACT:	Office of Management and Budget.
ECONOMIC IMPACT:	Office of Legislative Oversight.
RACIAL EQUITY AND SOCIAL JUSTICE IMPACT:	Office of Legislative Oversight.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	None

OFFICE OF THE COUNTY ATTORNEY

Marc Elrich
County Executive

Marc P. Hansen
County Attorney

M E M O R A N D U M

TO: Aseem Nigam
Director, Department of Housing and Community Affairs

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

Edward B. Lattner

FROM: Taggart B. Hutchinson
Associate County Attorney

Taggart Hutchinson

DATE: July 9, 2021

RE: **Bill No. 26-21, Taxation – Payments in Lieu of Taxes – Affordable Housing – Amendments**

Summary:

Bill No. 26-21 amends the law on payments in lieu of taxes for affordable housing under Chapter 52, Section 24, to establish a minimum payment for a qualifying housing development owned or operated by the Housing Opportunities Commission (HOC) or any housing development with at least 25% of the dwelling units built under a government regulation or binding agreement which limits the rent charged for at least 15 years. The Bill would also eliminate the annual cap on all payments in lieu of taxes.

Legal Implications:

The bill as drafted has no legal issues. However, under existing law and the proposed amendments to the law under Bill No. 26-21 a developer may be able to claim the requisite moderately priced dwelling units (MPDUs) under Chapter 25A for a qualifying development by locating those MPDUs on a different site. Developers have already begun to make this argument with their negotiated agreements with the County. If the Council's intent was to require that all requisite MPDUs be located on the same site in which the qualifying development is located, OCA can assist in drafting additional language to clarify their intent under this bill.

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If you have any concerns or questions concerning this memorandum, please call me.

TH

cc: Robert H. Drummer, Senior Legislative Attorney
Frank Demarais, Deputy Director Affordable Housing, DHCA
Jennifer Bryant, Deputy Director, Office of Management and Budget
Dale Tibbitts, Special Assistant to the County Executive
Marc Hansen, County Attorney
Vickie Gaul, Associate County Attorney

21-003994

OFFICE OF THE COUNTY ATTORNEY

Marc Elrich
County Executive

Marc P. Hansen
County Attorney

M E M O R A N D U M

TO: Aseem Nigam
Director, Department of Housing and Community Affairs

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

FROM: Taggart B. Hutchinson
Associate County Attorney

DATE: November 10, 2021

RE: UPDATE to Bill No. 26-21, Taxation - Payments in Lieu of Taxes - Affordable Housing - Amendments

This Memorandum updates our July 9 memorandum on Bill 26-21. After discussing the proposed law with Council staff and staff from the Departments of Finance and Housing and Community Affairs, we believe that the Bill's formula for calculating a partial PILOT needs clarification.

The Bill would amend the criteria under County Code § 52-24 for the County to accept payment in lieu of taxes agreements ("PILOTs") for housing developments (that qualify under state law) owned or operated by the Housing Opportunities Commission (HOC) or any housing development with at least 25% of the dwelling units built under a government regulation or binding agreement which limits the rent charged for at least 15 years. The PILOT would provide a credit against the County real property tax otherwise due. Bill 26-21 would also eliminate the annual cap on all PILOT agreements.

As an initial matter, we note that any housing development seeking a PILOT will have to meet state law eligibility requirements, in addition to the requirements under the Bill. The County does not have independent legal authority to grant a PILOT agreement—that authority is found in state law. Thus, the Bill provides that a "qualifying housing development is any housing development of which the owner is expressly eligible under state law to make payments in lieu of taxes." The enabling authority for County PILOTS based upon affordable housing is found in Md. Code Ann., Tax-Prop. § 7-506.1 ("Government subsidized housing outside Baltimore City"). That section provides the County with the authority to negotiate a PILOT agreement with

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a property owner for a housing facility that is constructed or substantially rehabilitated under a federal, State, or local government program that either (i) funds construction or insures financing for the project, or (ii) provides interest subsidy, rent subsidy, or rent supplements to the "lower income" tenants of the affordable housing.

The Bill describes a PILOT that provides a full credit against the County property tax and a PILOT that provides a partial credit. There is a 100% credit against the County real property tax for a qualifying housing development that is either (1) owned or operated by HOC or (2) if at least 50% of the dwelling units limit the rent[1] charged for at least 15 years to an amount affordable to households earning less than 65% of the area median income. There is also a partial credit (described as a partial PILOT) for a qualifying housing development with at least 25% but less than 50% of the units rent restricted:

(1) **for each dwelling unit** affordable for residents at 51% to 65% of area median income, the project must receive a payment in lieu of taxes **for one unit**;
(2) **for each dwelling unit** affordable for residents at 31% to 50% of area median income, the project must receive a payment in lieu of taxes **for 2 units**; and
(3) **for each dwelling unit** affordable for residents at 30% or less of area median income, the project must receive a payment in lieu of taxes **for 3 units**.

The Bill does not clearly indicate how these partial credits are to be calculated. Rental properties pay a County property tax based upon the land and its improvements; they are not taxed on a per unit basis. And even if they were taxed on a per unit basis, the tax would likely vary with the unit size (e.g., three bedrooms versus a studio apartment). Instead of basing the partial PILOT on a number of units, it would be preferable to base it on a fixed percentage of the real property tax (e.g., A% reduction in County property tax for each dwelling unit affordable for residents at 51% to 65% of area median income; B% for each dwelling unit affordable for residents at 31% to 50% of area median income; C% for each dwelling unit affordable for residents at 30% or less of area median income.

Finally, the "may" in line 14 should read as "must" given that the Bill is mandating PILOT agreements. To further clarify the intent of the Bill, it would be advisable to add "as provided in this section" before the period in line 16.

If you have any concerns or questions concerning this memorandum, please call me.

cc: Robert H. Drummer, Senior Legislative Attorney
Ken Hartman, Director of Strategic Partnerships
Frank Demarais, Deputy Director Affordable Housing, DHCA
Mike Coveyou, Director, Department of Finance
Marc Hansen, County Attorney
Vickie Gaul, Associate County Attorney

[1] The rent limitations are spelled out in COMCOR 52.18M.01.

TESTIMONY ON BEHALF OF COUNTY EXECUTIVE MARC ELRICH ON BILL 26-21 TAXATION – PAYMENT IN LIEU OF TAXES – AFFORDABLE HOUSING

July 20, 2021

Good afternoon Council President and Councilmembers, my name is Aseem Nigam, Director of the Department of Housing and Community Affairs. I am here on behalf of the County Executive to address Bill 26-21 Taxation – Payment In Lieu Of Taxes – Affordable Housing.

The County Executive is a strong supporter of increasing and retaining the supply of affordable housing in the County. For example, the recently negotiated transfer of a County-owned parcel adjacent to Halpine View allowed us to leverage additional and deeply affordable housing in exchange for transferring ownership of the land.

Our current practice in awarding PILOT property tax relief to developers is based on DHCA's underwriting of the financial need of the project in delivering affordable housing units. We currently offer PILOT tax benefits only for preservation and creation of dedicated affordable housing units. We do not offer PILOT tax relief for market rate units nor for Moderately Priced Dwelling Units, (MPDUs) that already are required under the law. Further, we only negotiate PILOT terms after the property is acquired to avoid unintentionally increasing the acquisition price of the property.

The Bill proposes changes to the PILOT program that need review and analysis to ascertain the impact on the delivery of incremental deeply affordable housing units. The changes proposed in the Bill would award, by-right, real estate tax relief for market rate units and required MPDUs. We look forward to working with the Committee members on the review and to ensure all expected affordable housing is built on site.

We support the overall intent of increasing affordable housing units in the County.

Thank you

Jews United for Justice (JUFJ)
Mike English
Silver Spring, MD
www.jufj.org

JEWS UNITED FOR JUSTICE
THINK JEWISHLY. ACT LOCALLY.

JUFJ Official Testimony In Support With Amendments
Bill 26-21: Taxation - Payments in Lieu of Taxes - Affordable Housing Amendments

My name is Mike English, I'm a resident of District 5, and I am testifying in support with amendments on Bill 26-21 on behalf of Jews United for Justice.

The Mishneh Torah, a foundational Jewish legal text, states that a house must "be made as a place for people to live. It must be made as an honorable place. It must be made as a permanent place." Our neighbors in search of affordable housing deserve more than temporary shelter - they deserve honorable, permanent homes in which to live.

Bill 26-21 would facilitate the construction of nonprofit, affordable housing by reinstating the County's previous practice of automatically granting a payment in lieu of taxes (PILOT) to all nonprofit housing developers, to aid in meeting construction costs. This change will save nonprofit providers time, cost, and uncertainty. By formally mandating the granting of a PILOT to qualifying projects, Bill 26-21 will not only make development of a particular proposal more predictable for non-profit providers, but will provide them with more certainty that the administrative practices of the County will not change suddenly as they make multi-year plans for critical housing initiatives.

Bill 26-21 will also help minimize the spending of funds from the Housing Initiative Fund (HIF) on County property taxes, a practice increasingly prevalent since the recent shift in Department of Housing and Community Affairs (DHCA) policy. HIF funds would be better spent on the investment, development, and maintenance of more affordable units.

As other advocates have requested, we ask that the Council ensure that the PILOT not terminate after the 15-year minimum, but rather continue for as long as affordability is maintained on any given project.

And in agreement with the Coalition for Smarter Growth, we similarly propose an amendment specifying that any nonprofit eligible to receive a PILOT for 100% of property taxes must have at least 60% affordable units, instead of the current 50% affordable units. We believe this strikes a strong balance between providing the greatest number of affordable units possible and ensuring that affordable units will be built and will welcome diverse income levels.

We believe this bill will help our County improve racial and economic equity in housing, as this bill encourages the construction of housing that will be affordable to more people of diverse backgrounds and economic circumstances. However, we recognize that even within non-profit housing, there can be racial disparities in who gets housed and the living conditions residents encounter. Continued vigilance in the reform of our County's housing policies is still needed. We ask that the Council seriously consider the recommendations of the Office of Legislative Oversight's Racial Equity and Social Justice Impact statement on this bill once it is released.

We look forward to working with the council and its staff to make this legislation the best it can be, and to help foster additional legislation that will further address the dire housing crisis in our County.

Thank you,

Mike English
Silver Spring, MD

Testimony on Bill 26-21
Taxation – Payments in Lieu of Taxes – Affordable Housing - Amendments
Montgomery Housing Alliance

July 20, 2021

Good afternoon, Council President Hucker and members of the Council. My name is Mary Kolar, and I am testifying on behalf of Montgomery Housing Alliance. MHA is a coalition of organizations focused on increasing the rate of affordable housing preservation and development in Montgomery County. MHA members include non-profit developers, organizations that serve people in need of affordable housing, and other groups who count affordable housing as one of their policy goals.

MHA strongly supports Bill 26-21, establishing a minimum payment in lieu of taxes (PILOT) for properties with affordable housing. PILOTs targeted to affordable housing properties are one of several important tools that allow the County to effectively partner with housing providers to meet our collective production and preservation goals.

As you know, the need for affordable housing in Montgomery County is acute and is projected to increase. In 2018, the County estimated a gap of 48,000 units affordable to households with incomes at or below 50% of the area median income, and between 2020 and 2040 this gap is projected to grow. Prior to the pandemic, half of tenants in Montgomery County were already cost burdened – paying more than 30% of adjusted income toward rent; the ongoing economic shocks caused by the COVID crisis have only deepened need.

We applaud the Council’s commitment to affordable housing programs and your unanimous affirmation of the housing targets identified in the 2019 Council of Governments report. To make progress toward meeting these targets, the County needs an array of tools that allow developers to meaningfully provide affordable housing opportunities to households with low incomes. PILOTs are one such critical tool.

Establishing a minimum PILOT for affordable housing will increase certainty for developers as they work to structure deals. Right now, ambiguity around whether a property will receive a PILOT (and the amount of that PILOT) adds one more variable that complicates the bidding process, potentially jeopardizing projects.

A minimum PILOT for affordable properties is also critical because it will amplify the County's investment in the Housing Initiative Fund (HIF). When a property does not receive a PILOT, a developer must seek a greater allocation from the HIF; ultimately a share of that HIF investment goes toward paying property taxes, therefore diluting the HIF. We estimate that every 100-unit affordable property not receiving a PILOT costs the HIF approximately $1 million. Adding a minimum PILOT to the toolbox available to developers will allow HIF dollars to go further, and ultimately result in the production and preservation of more units.

We urge one point of clarity in Bill 26-21. It is critical to ensure that the PILOT does not terminate after the 15-year minimum threshold, so long as the housing provider maintains affordability beyond that period. The term of the benefit should be clearly linked to the term of affordability.

Again, we urge the Council to support Bill 26-21. We recognize that increasing the level of affordable housing in the County is an important goal of the Council, and PILOTs for affordable housing are one important step toward achieving the goal. Thank you for the opportunity to provide input.

Fiscal Impact Statement
Council Bill 26-21, Taxation – Payments in Lieu of Taxes –
Affordable Housing - Amendments

1. Legislative Summary.

Bill 26-21 would:

- Establish a minimum payment in lieu of taxes for certain qualifying housing developments;

- eliminate the annual maximum aggregate amount of all payments in lieu of taxes (PILOT) approved under this Section; and

- generally, amend the law governing a payment in lieu of real property taxes for certain housing developments.

Bill 26-21 would amend County Code (Code) §52-24 "by mandating a PILOT for Housing Opportunities Commission (HOC) projects and establishing the following minimum PILOT for other affordable housing developments. If at least 50 percent of the dwelling units limit the rent charged for at least 15 years to an amount affordable to households earning less than 65 percent of the area median income, the PILOT must be 100 percent of the property tax for at least 15 years."

The Montgomery County Director of Finance would be required to offer a partial PILOT for a qualifying housing development with at least 25 percent but less than 50 percent of the units rent restricted:

- For each dwelling unit affordable for residents at 51 percent to 65 percent of area median income, the project must receive a payment in lieu of taxes for one unit;

- for each dwelling unit affordable for residents at 31 percent to 50 percent of area median income, the project must receive a payment in lieu of taxes for two units; and

- for each dwelling unit affordable for residents at 30 percent or less of area median income, the project must receive a payment in lieu of taxes for three units.

Bill 26-21 defines area median as the median household income for the Washington, DC metropolitan area as estimated by the U.S. Department of Housing and Urban Development, adjusted by household size based on the occupancy standard to one unit.

2. An 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.

Revenue Estimates:
The Montgomery County Department of Finance consulted with the Housing Opportunities Commission (HOC) and the Department of Housing and Community Affairs (DHCA) to provide granular data to estimate the potential fiscal impact of Bill 26-21. Since future real

estate development by private developers, which would have previously been subject to property taxes, will now be eligible for a partial PILOT under this Bill, there is likely to be a negative fiscal impact. Because of the uncertainty governing the number of, i) approved applications, ii) the distribution of applications among the various ranges of resident area median income, iii) the complexity of the calculation, and iv) the extension of the PILOT to 15 years, it is difficult to estimate the impact of this Bill with any precision.

Section (c) of the Bill notes that the Montgomery County Director of Finance must offer a payment in lieu of taxes for a qualifying housing development. Qualifying Housing Development does not limit application to newly restricted properties – as worded this would provide PILOT by right ('must offer') on existing properties which meet the State Law eligibility and threshold of 25 percent or 50 percent which had an original restriction of 15 years (no matter the remaining restrictions) creating new PILOT standard documentation for all existing Qualifying Developments.

Properties with existing PILOTs would need new agreements to provide the 100 percent of taxes for the greater than 50 percent of units and for the calculated adjustment to taxes for the 25 percent of units projects based on the number of units at the lower AMI tiers (30 percent AMI, 50 percent AMI). This will expand the HOC PILOTs to all existing properties owned or operated. Each existing project now covered will require analysis of existing restriction documents to certify eligibility, then issuing a new PILOT on the new terms.

The Rental Licensing Division (RLD) of DHCA provided data on rental properties that may be eligible for a PILOT. RLD provided a list of 551 rental properties of current stock in Montgomery County and Treasury searched the property tax base to obtain the taxable assessment for each of the 551 properties. The search yielded a total taxable assessment of $8.710 billion. Based on the total taxable assessments and a weighted average real property tax rate of $0.9785 per $100 assessed value, the potential estimated amount of revenue loss from PILOT is as follows:

- 100 percent of rental properties approved for the PILOT: -$85.230 million
- 50 percent of rental properties approved for the PILOT: -$42.615 million
- 33 percent of rental properties approved for the PILOT: -$28.125 million
- 25 percent of rental properties approved for the PILOT: -$21.310 million
- 10 percent of rental properties approved for the PILOT: -$8.530 million

Of the 551 properties, 17 properties currently have a partial PILOT with a current taxable assessment of $193.600 million or 48 percent of the taxable assessment before the PILOT exemption. HOC typically brings on average two projects and 150 units annually.

Expenditure Estimates:

To date, the current PILOT program is administered jointly between DHCA and Montgomery County Department of Finance. DHCA manages the negotiation of terms, the creation/production of the agreements, and the ongoing compliance/monitoring as part of duties for one Senior Planning Specialist and two Program Manager II positions. The Senior Planning Specialist manages the PILOT as a part of the financing package to support the creation and preservation of affordable units throughout the County. Two Program Manager IIs provide the ongoing annual compliance reviews to verify rents and household income for occupied units supported by the PILOT agreement, as well as bill and collect the annual monitoring fee for each agreement. In addition, there is some legal review provided by the County Attorney for each agreement to ensure all legal parameters and eligibilities are met prior to execution by the Director of DHCA.

Montgomery County Department of Finance has one Property Billing Manager tasked with managing the PILOT program for the onboarding and ongoing maintenance of the annual preparation of the PILOT abatement for inclusion in the annual real property tax bill, which is the method of provision of this resource to the property owner. Similarly, there is a review of the agreement by the County Attorney to ensure all legal parameters and eligibilities are met prior to execution by the Montgomery County Director of Finance.

In summary, for DHCA-only, there are three positions that are providing the support for the existing PILOT program. For the County Attorney's Office (DHCA), there is one position that supports the PILOT program. Due to these duties being managed in addition to other duties, the estimated amount of time allocated directly for the PILOT is as follows:

- Senior Planning Specialist – 25 percent
- Program Manager II (compliance) – 15 percent
- Program Manager II (billing) – 2 percent
- County Attorney (DHCA) – 5 percent.

The proposed Bill 26-21 would require additional staffing needs in DHCA for implementation. Currently, the PILOT program is hinged to the packaging of direct financing from DHCA to create (for new construction) or preserve (for Rights of First Refusal "ROFR") affordable rental units throughout the County. The volume of transactions that flow through the department varies between a low of 10 to upwards of 25 PILOT transactions per year. This is due to the time frame required for the underlying property transaction to originate and close, which can take from 6 to 24 months depending on development type (construction or existing) and the complexity of the financing (market, governmental, LIHTC, etc.).

Bill 26-21 will eliminate the need for the PILOT transactions to be linked to any financing, and the primary requirement would be an agreement from the owner to restrict the rent on a minimum of 25 percent of the total units. Therefore, the volume of agreements could increase exponentially, as the Bill is currently worded that there is no property transaction required to qualify for the PILOT support. Based on the existing staff allocation for the PILOT program, a minimum of one full-time additional staff person (Program Manager I), would be recommended to support direct communication of the program with interested parties, to create/produce the agreement, circulate the agreement through approval/execution channel, and to assist in the ongoing compliance management of these and existing PILOT agreements. The annualized cost for a Program Manager I position would be approximately $102,000 (including benefits) to provide additional support for implementation of the proposed legislative changes.

The cost estimate assumes that Bill 26-21 will only apply to the creation of new income restricted units. However, if the Bill does apply to existing income restricted units, DHCA would have to evaluate and provide PILOT agreements on every property with over 25 percent of units restricted to the income and duration of the Bill. That would likely involve 161 properties out of 262 properties with income restricted units. Even if a property has an existing PILOT, the terms of PILOT under the Bill would need to be provided to the property. The processing of requests to update all the existing PILOTs on an immediate basis would require hiring of additional temporary contract staff. DHCA assumes each PILOT review, document drafting, and execution will require 5 hours of contractor time at $100 per hour. This is equivalent to $81,000 to process approximately 161 requested PILOT agreements.

3. **Revenue and expenditure estimates covering at least the next six fiscal years.**

   Given the complexity of the calculation of the PILOT exemption amount and the uncertainty of the number of approved applications for the PILOT, it is difficult to estimate the revenue loss over the next six fiscal years (See Question #2). The Bill's broader fiscal impact depends largely on whether there is a net increase in PILOT abatements for qualifying housing developments resulting in affordable housing development that would not have occurred in the absence of this legislation and the opportunity costs of real property taxes foregone by the County as a result of this Bill.

   For DHCA, the expenditures for the next six fiscal years are estimated as follows:

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Total 6 Years
Personnel Costs (PMI position)	102,000	105,060	108,212	111,458	114,802	118,246	659,778
Operating Expenses	81,000	81,000	81,000	81,000	81,000	81,000	486,000
Total	183,000	186,060	189,212	192,458	195,802	199,246	1,145,778

Note: Assuming a 3% escalation per year for personnel costs.

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

   Not applicable.

5. **An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

   No additional expenditures are needed for the County's information technology (IT).

6. **Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

   This bill does not authorize future spending.

7. **An estimate of the staff time needed to implement the bill.**

   There is no additional staff time needed in Finance to implement this bill. See response to question #2 for staff time needed in DHCA.

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

Not applicable.

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

See response to question #2.

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

The variables that could affect revenue estimates are the amounts of exemptions to property taxable assessments and approved applications, changes in the average annual PILOT amounts granted to qualifying housing developments, alterations in the speed and certainty involved in attaining PILOTs for qualifying housing developments, and net shifts in the average annual supply for affordable housing as a result of this legislation.

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

Because of the complexity of the criteria noted in the Legislative Summary and Paragraph 2, the range of revenues is uncertain at this time. See response to question #2.

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

See response to question #2.

13. Other fiscal impacts or comments.

Based on conversations with the Montgomery County Department of Finance and the County Attorney's Office, Councilmembers may want to consider the following discussion items:

1. PILOTs provided under the Bill would need to be authorized under State Law. TP 7-506.1 which requires the housing facility be constructed or substantially rehabilitated under a Federal, State, or local government program that; (i) funds construction or ensures its financing in whole or in part (e.g., a government loan or grant, or even a federally insured loan from Freddie Mac or Fannie Mae); or (ii) provides interest subsidy, rent subsidy, or rent supplements.

2. Clarification that the Bill does not apply to existing affordable housing units and existing PILOTs. Also, there is no language specifically applicable to new affordable units located on site provided after the effective date of the Bill to preclude current PILOT "holders" from shopping for a new PILOT by requiring that they retain the one they hold.

3. If the PILOT is mandatory, the County may be providing taxpayer funds to developments that do not financial require the PILOT in order to provide the affordable units.

4. Clarification that the anticipated binding PILOT agreement would be between the owner and the County, and not between private entities. See lines 24-25 and 34-35 – "under a government regulation or binding agreement (<u>with the County or municipal corporation).</u>"

5. Address the incalculable nature of the tiers as the value for each dwelling unit, and their tax base, will have different values as not all rental units are the same.

6. Are developers going to be able to choose between two competing PILOT incentives? What happens if the new PILOT provides additional tax incentives for a development without requiring the owner to make any changes?

7. Do developers potentially get both the increased density and the PILOT? Potential property tax losses from this could be enormous and similar in scope to the current 25 percent MPDU for impact taxes.

8. Clarify that the dwelling units need to be at the same site or project as the qualifying housing development. Developers should not be able to get credit for meeting affordable housing unit thresholds off-site.

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

James Babb, Director, Treasury Division, Department of Finance
David Platt, Chief Economist, Fiscal Management Division, Department of Finance
Dennis Hetman, Fiscal Manager, Fiscal Management Division, Department of Finance
Frank Demarais, Department of Housing and Community Affairs
Roderick Simpson, Department of Housing and Community Affairs
Derrick Harrigan, Office of Management and Budget

Jennifer R. Bryant

_________________________________ 11/12/21

Jennifer R. Bryant, Director — Date
Office of Management and Budget

Economic Impact Statement

Office of Legislative Oversight

Bill 26-21 Taxation – Payments in Lieu of Taxes – Affordable Housing – Amendments

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Bill 26-21 would have a positive impact on economic conditions in the County. The primary economic benefit to housing developers would be the likely increase in speed and certainty involved in the process of attaining payment in lieu of real property taxes (PILOT) for qualifying housing developments. The Bill's broader economic impacts depend largely on whether it results in a net increase in PILOT abatements for qualifying housing developments and, if so, whether this increase is sufficient to induce affordable housing development that would not occur in the absence of enacting the Bill. Due to information constraints, OLO is unable to quantify these potential effects. OLO notes however that inducing affordable housing development would significantly increase the magnitude of the Bill's economic impacts.

BACKGROUND

Consistent with the County's Economic Development Platform,[1] the goal of Bill 26-21 is to encourage developers to build more affordable housing. Under current law, the Director of Finance is authorized to accept a negotiated payment in lieu of real property taxes (PILOT) for properties "owned or controlled by the Housing Opportunities Commission or for other housing developments where the owner agrees to limit the rent on certain dwelling units under a government affordable housing program." In practice, the Department of Housing and Community Development (DHCD) negotiates the PILOTs with developers. The decision to offer a PILOT for a qualifying housing development and its amount is up to the discretion of the Director of Finance.

If enacted, Bill 26-21 would amend current law by mandating PILOTs for qualifying housing developments. Developments owned or operated by the Housing Opportunities Commission (HOC) would receive PILOTs exempting 100% of the real property tax that otherwise would be collected. The Bill would also mandate a PILOT for 100% of the property tax for at least 15 years "[i]f at least 50% of the dwelling units limit the rent charged for at least 15 years to an amount affordable to households earning less than 65% of the area median income," or AMI. Partial PILOTs for qualifying housing developments "with at least 30% but less than 50% of the units rent restricted:

> (1) for each dwelling unit affordable for residents at 51% to 65% of area median income, the project must receive a payment in lieu of taxes for one unit;
>
> (2) for each dwelling unit affordable for residents at 31% to 50% of area median income, the project must receive a payment in lieu of taxes for 2 units; and

[1] See link https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/2019/EDPlatformPlatformFinal.pdf.

(3) for each dwelling unit affordable for residents at 30% or less of area median income, the project must receive a payment in lieu of taxes for 3 units."[2]

Table 1 presents a matrix of the conditions specified in Bill 26-21 for non-HOC owned and operated properties.

Table 1. Affordable Housing PILOT Matrix for Non-HOC Properties

PILOT Award	PILOT Duration	% of Affordable Units	Affordability Depth	Affordability Duration
100% of real property taxes	at least 15 years	At least 50%	Less than 65% AMI	at least 15 years
For each affordable unit, PILOT per one unit	at least 15 years	At least 25% but less than 50%	51% to 65% AMI	at least 15 years
For each affordable unit, PILOT per 2 units	at least 15 years	At least 25% but less than 50%	31% to 50% AMI	at least 15 years
For each affordable unit, PILOT per 3 units	at least 15 years	At least 25% but less than 50%	30% AMI or less	at least 15 years

METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

For information on the Bill's potential economic impacts, OLO spoke with several representatives from the affordable housing industry. Based on these conversations, OLO anticipates that the Bill would depend on the following potential effects on affordable and/or market-rate housing developers:

- **Process Effect:** Change in speed and certainty involved in attaining PILOTs for qualifying housing developments.
- **Capital Effect:** Change in average annual PILOT amounts granted to qualifying housing developments.
- **Development Effect:** Change in average annual supply for affordable housing through construction, rehabilitation, and acquisition of affordable housing properties.

Process Effect: OLO anticipates that Bill 26-21 would have meaningful process effects. In general, local affordable housing projects require various sources of funding to complete. OLO's understanding is that many, if not the majority of local projects rely on the County's two primary sources of funding for affordable housing—the current negotiated PILOT program and the Housing Initiative Fund (HIF), which provides funding in the form of loans for affordable housing projects.[3] By changing the PILOT program from a negotiated to mandatory abatement, enacting Bill 26-21 would affect negotiations between the County and housing developers in the following manner: Rather than negotiating for two

[2] Montgomery County Council, Bill 26-21, Taxation – Payments in Lieu of Taxes – Affordable Housing – Amendments, introduced on June 29, 2021. See Bill in Introduction Staff Report, https://apps.montgomerycountymd.gov/ccllims/DownloadFilePage?FileName=2717_1_15539_Bill_26-2021_Introduction_20210629.pdf.

[3] For an overview of HIF, see Montgomery County's HIF and PILOT Programs, Department of Housing & Community Affairs, November 4, 2019, https://www.montgomerycountymd.gov/DHCA/Resources/Files/housing/multifamily/publications/presentations/PHED_Presentation_HIF_PILOTs_201911.pdf.

sources of funding support from the County, developers would only need to negotiate with the County for one source, HIF funding. As a result, the Bill would likely reduce, both, uncertainty for housing developers regarding financing and the amount of time it takes for them to receive the abatement.

Capital Effect: Due to data limitations, OLO is unable to project the Bill's capital effect. This effect would be based on the extent to which the Bill results in a net increase in PILOT abatements for qualifying housing that would not occur in the absence of enacting the Bill. Should a net increase occur developers of qualifying affordable housing projects would experience a net increase in cash flow.

Development Effect: Similarly, data limitations prevent OLO from estimating whether any potential "capital effect" would be sufficiently large to induce construction, rehabilitation, and/or acquisition of affordable housing projects that would not occur without increased abatements.

While the Bill's capital and development effects are unknown, OLO notes that a net increase in PILOT abatements and any induced affordable housing development would significantly increase the magnitude of the Bill's economic impacts. Both outcomes would have significant "multiplier effects," that is, how changes in economic activity affect other rounds of spending, and how additional spending impacts certain economic indicators.

To illustrate, let's assume the Bill's capital effect is sufficiently large to induce the construction of a new affordable housing development that would not otherwise occur. The project would largely fall within the Regional Input-Output Modeling System (RIMS II) final-demand multiplier for the "construction" industry. The RIMS II multipliers, developed by the U.S. Bureau of Economic Analysis,[4] measure the multiplier effect of economic activity in terms of four measures:

- Output (sales): total market value of industry output,
- Value-Added: total value of income generated from production (equivalent to gross domestic product),
- Earnings: employee compensation plus net earnings of sole proprietors and partnerships, and
- Employment: number of full- and part-time employees. [5]

Industries with relatively high multiplier values for these measures result in greater output, value-added, earning, and employment for every additional dollar of economic activity in those industries. There are multipliers for 64 industries in the County. **Table 2** presents the values of the RIMS II construction multiplier for Montgomery County.

[4] U.S. Bureau of Economic Analysis, *RIMS II: An Essential Tool for Regional Developers and Planners*, December 2013, https://apps.bea.gov/regional/rims/rimsii/rimsii_user_guide.pdf.
[5] Ibid, 3 – 3 and 3 – 4.

Table 2. RIMS II Construction Multiplier for Montgomery County

	Output	Earnings	Employment	Value-Added
Type I	1.2269	0.2669	4.6368	0.6513
Type II	1.4391	0.3092	5.6518	0.7831

Per every $1 million in new affordable housing construction, the County would experience:

- $1,226,900 to $1,439,100 in output;
- $266,900 to $309,200 in earnings;
- 5 to 6 new jobs; and
- $651-300 to $783,100 in value-added.

However, OLO notes that the "true" economic impact would also account for the economic opportunity cost from alternative uses of the County's real property tax revenue that may be forgone because of the Bill.

VARIABLES

The primary variables that would affect the economic impacts of Bill 26-21 are:

- change in average annual PILOT amounts granted to qualifying housing developments;
- change in speed and certainty involved in attaining PILOTs for qualifying housing developments; and
- change in average annual supply for affordable housing.

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organizations

OLO believes that Bill 26-21 would have positive economic impacts on private organizations in the County. As discussed above, OLO is most confident that the Bill would increase the speed and certainty involved in attaining PILOTs for qualifying housing developments. Affordable housing developers would primarily benefit from the Bill's process effect.

If enacting Bill 26-21 results in a net increase in PILOT abatements for qualifying housing developments and induces affordable housing development that would not otherwise occur, the magnitude of the positive economic impacts to local businesses would substantially increase. In terms of the capital effect, affordable housing developers would experience a net increase in cash-flow, which may be used to offset operating costs or increase business income. Holding all else equal, a net increase in PILOT abatements would increase the competitiveness of the County's local affordable housing industry vis a vis surrounding jurisdictions.

The Bill's potential development effects would have the deepest and broadest economic impacts. As previously discussed, every $1 million in new affordable housing construction would increase output from $1,226,900 to $1,439,100, earnings from $266,900 to $309,200, employment from 5 to 6 new jobs, and value-added from $651-300 to $783,100. A substantial increase in new development that otherwise would not occur would enhance the County's economic development and competitiveness in the affordable housing industry, as well as benefit workforces of affected businesses in terms of employment and income gains.

Residents

OLO believes that Bill 26-21's impact to County residents largely depend on the Bill's potential development effect. Lack of affordable housing is identified as a critical need in the County's Economic Development Platform. By increasing the supply of affordable housing, households at lower ends of the income spectrum would have more housing options, which could reduce rent from finding options appropriate to their income, as well as reduce transportation costs incurred from having long commutes to work due to lack of housing options. It is worth noting this last point illustrates that the Bill's economic impacts depend not only on whether it increases affordable housing supply, but also the geographic composition of affordable housing in the County.

DISCUSSION ITEMS

Based OLO's conversations with representatives from the affordable housing industry, Councilmembers may want to consider the following discussion items:

First, the extent to which the AMI and number of affordable unit thresholds specified in the Bill capture the specific housing needs of County residents across the income spectrum.

Second, the extent to which the PILOT program specified in Bill 26-21 would complement existing affordable housing incentives from the County, State, and Federal Government to increase affordable housing development in the County.

Third, the extent to which a mandatory PILOT program would undermine DHCA's ability to negotiate for additional affordable housing units for projects that receive County funding support.

WORKS CITED

Montgomery County Code. Sec. 2-81B. Economic Impact Statements.

Montgomery County Council. Bill 26-21, Taxation – Payments in Lieu of Taxes – Affordable Housing – Amendments. Introduced on June 29, 2021.

Montgomery County's HIF and PILOT Programs. Department of Housing & Community Affairs. November 4, 2019.

U.S. Bureau of Economic Analysis. *RIMS II: An Essential Tool for Regional Developers and Planners*. December 2013.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 26-21: TAXATION-PAYMENTS IN LIEU OF TAXES-AFFORDABLE HOUSING-AMENDMENTS

SUMMARY

OLO anticipates that Bill 26-21 will favorably impact racial equity and social justice (RESJ) if it increases and preserves affordable housing in Montgomery County.

BACKGROUND

Bill 26-21, Taxation - Payments in Lieu of Taxes - Affordable Housing - Amendments, was introduced on June 29, 2021.[1] The purpose of the bill is to preserve and increase affordable housing for renters in Montgomery County. Bill 26-21 responds to the Montgomery County Preservation Study's call for policymakers to expand the County's payment in lieu of taxes (PILOT) provision and other cost reduction approaches to make it financially feasible to preserve and develop affordable housing in the County.[2]

PILOT programs provide tax abatements to property owners in exchange for designating rental units as affordable housing. The value of the PILOT to owners depends on the share of units devoted to affordable housing and the type of housing unit. Currently, PILOT tax abatements for non-Housing Opportunity Commission (HOC) properties expire after ten years; PILOT agreements are negotiated with the Department of Housing and Community Affairs (DHCA) and their cumulative costs cannot exceed the PILOT cap on tax abatements. For FY22, the PILOT cap was set at $20.024 million.[3]

Bill 26-21 would change current policy in three ways. First, it would standardize and guarantee the value of PILOT tax abatements for affordable housing developers based on the type of unit offered. Second, it would extend PILOT tax abatement eligibility from 10 to 15 years. Third, it would eliminate the annual maximum PILOT cap for non-HOC properties. The Department of Finance is in the process of calculating the fiscal impact of this bill.

The intent of Bill 26-21 is to increase the supply of affordable housing in the County. As noted in the Preservation Study, the County is at risk to lose 7,500 to 11,000 naturally occurring affordable housing units by 2030 and another 1,400 deed-restricted units over the next 20 years once their subsidy compliance period expires. All these units are currently affordable for households earning up to 60 percent of the County's average median income ($66,000); many are also affordable for households earning up to 30 percent of average median income ($33,000).[4]

The Preservation Study further notes the need for more affordable housing units for lower-income households. Whereas about half of households earning up to $66,000 per year reside in affordable housing units whose rental burden account for 30 percent or less of their household income, only a quarter of households earning up to $33,000 per year reside in affordable housing units.[5] Thus the need for affordable housing is especially high for the lowest income households in the County.

DEMOGRAPHIC DATA

The potential impact of Bill 26-21 on RESJ requires understanding data on rent-burdened households that expend more than 30 percent of their monthly income on housing. A review of American Community Survey data demonstrates that Black and Latinx residents are disproportionately rent-burdened in the County.[6] Whereas, Black and Latinx residents were over-represented among rent-burdened households, representing larger shares of rent-burdened households than their shares of all households. White and Asian residents were under-represented among rent-burdened households compared to their shares of all households in the County. More specifically:

- Black residents accounted for 18 percent of County households but 36 percent of rent-burdened households;
- Latinx residents accounted for 13 percent of County households but 24 percent of rent-burdened households;
- White residents accounted for 57 percent of County households but 37 percent of rent-burdened households; and
- Asian residents accounted for 15 percent of County households but 6 percent of rent-burdened households.

	All Occupied Housing Units		All Occupied Rental Housing Units		Occupied Rentals with Households paying 30% or more for rent	
All	368,897		125,266		63,885	
White	211,158	57%	54,605	43%	23,470	37%
Black	68,489	18%	39,283	31%	23,491	36%
Asian	57,524	15%	12,206	9%	4,027	6%
Latinx	48,955	13%	24,728	19%	15,875	24%

ANTICIPATED RESJ IMPACTS

Bill 26-21 aligns with the recommendations made by the Preservation Study to expand the PILOT provision to preserve affordable housing for low-income renters in Montgomery County. Assuming the changes proposed by this bill increase and preserve the supply of affordable housing in the County, OLO expects Bill 26-21 to disproportionately benefit Black and Latinx households who are more likely to be rent burdened than White and Asian households. As such, OLO anticipates the bill will advance racial equity and social justice by narrowing disparities in affordable housing by race and ethnicity. However, if Bill 26-21 neither increases nor preserves the supply of affordable housing in the County, this bill could exacerbate racial and social inequities by transferring County funding away from programs beneficial to communities of color and low-income residents to more affluent property owners with greater wealth.

METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

OLO reviewed several sources of information to develop this RESJ impact statement, including the following:

- Montgomery County Preservation Study, HR&A Advisors, Inc, July 2020
- 2019 American Community Survey, 1-Year Estimate
- Montgomery County Racial Equity Profile, 2019.

OLO also met with representatives from the Planning Department,[7] Department of Housing and Community Affairs[8] , and the Affordable Housing Corporation, Inc.[9]

Recommended Amendments

The County's Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.[10] OLO has determined that key provisions included in Bill 26-21 adequately address RESJ in the County. Consequently, this RESJ impact statement does not offer recommendations.

Caveats

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

Contributions

OLO staffer Dr. Theo Holt, Performance Management and Data Analyst, drafted this racial equity and social justice impact statement with assistance from Dr. Elaine Bonner-Tompkins, OLO Senior Legislative Analyst.

[1] Montgomery County Council, Bill 26-21, Taxation - Payments in Lieu of Taxes - Affordable Housing - Amendments, introduced on June 29, 2021, Montgomery County, Maryland.

[2] Montgomery County Preservation Study, July 2020, HR&A Advisors, Inc. Montgomery County Preservation Study, July 2020

[3] Montgomery County's HIF and PILOT Programs, November 2019, Department of Housing & Community Affairs, Montgomery County, Maryland. https://www.montgomerycountymd.gov/DHCA/Resources/Files/housing/multifamily/publications/presentations/PHED_Presentation_HIF_PILOTs_201911.pdf

[4] Preservation Study

[5] Ibid

[6] American Community Survey, Gross Rent as a Percentage of Household Income, 2019 One-Year Estimate, The United State Census Bureau. https://data.census.gov/cedsci/table?q=&t=-00%20-%20All%20available%20races%3AIncome%20and%20Poverty%3ARace%20and%20Ethnicity&g=0500000US24031&tid=ACSSPP1Y2019.S0201

[7] OLO met with Lisa Govoni, a representative from Montgomery Planning on July 12, 2021.

[8] OLO met with Lawrence Cager and Francis Demarais, representatives from DCHA on July 8,2021

[9] OLO met with Alan Goldstein, a representative from AHC (Affordable Housing Corporation) Inc. DCHA on July 14,2021

[10] Montgomery County Council, Bill 27-19, Administration – Human Rights - Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee - Established