

MANAGING GROWTH:

THE USE OF DEVELOPMENT IMPACT FEES AND BUILDING EXCISE TAXES IN MARYLAND 2011 SUPPLEMENT



DEPARTMENT OF LEGISLATIVE SERVICES 2011

Managing Growth: The Use of Development Impact Fees and Building Excise Taxes in Maryland

2011 Supplement

**Department of Legislative Services
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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

Warren G. Deschenaux
Director

January 12, 2011

The Honorable Thomas V. Mike Miller, Jr., President of the Senate
The Honorable Michael E. Busch, Speaker of the House of Delegates
Honorable Members of the General Assembly

Ladies and Gentlemen:

Managing growth continues to be a major issue confronting local governments in Maryland. In order to better manage growth, local governments have several tools which they may use including imposing development impact fees and building excise taxes to raise revenues to fund public facilities or by adopting adequate public facilities ordinances (APFOs) to ensure that the provision of public facilities is sufficient to meet the demands of a growing population.

In January 2008, the Department of Legislative Services prepared a report that reviewed the use of development impact fees and excise taxes among local governments in Maryland and in other states. The report also described how APFOs have been implemented in Maryland. A profile summarizing the uses and history of impact fees and excise taxes in each county that imposes such measures was also provided. The department prepared supplements in December 2008 and January 2010, to reflect updated impact fee/excise tax revenue collections and fee amounts/tax rates. The supplement also included a summary of county and State legislative changes to local development impact fees and excise taxes since the January 2008 report. This 2011 supplement further updates impact fee/excise tax revenue and rate information, providing revenue collections for fiscal 2010 and fee amounts/tax rates for fiscal 2011, and provides an updated summary of county and State legislative changes since the original January 2008 report. The supplement also discusses the distinction between impact fees and excise taxes imposed by Maryland counties.

The Honorable Thomas V. Mike Miller, Jr., President of the Senate
The Honorable Michael E. Busch, Speaker of the House of Delegates
Honorable Members of the General Assembly

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The supplement was prepared by Scott Kennedy and reviewed by Hiram Burch. Mindy McConville prepared the manuscript. The Department of Legislative Services trusts that the study will be useful to members of the General Assembly and to other persons interested in matters relating to managing local growth in Maryland.

Sincerely,

Warren G. Deschenaux
Director

WGD/mlm

cc: Mr. Karl S. Aro

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Chapter 1. Use of Development Impact Fees and Excise Taxes in Maryland

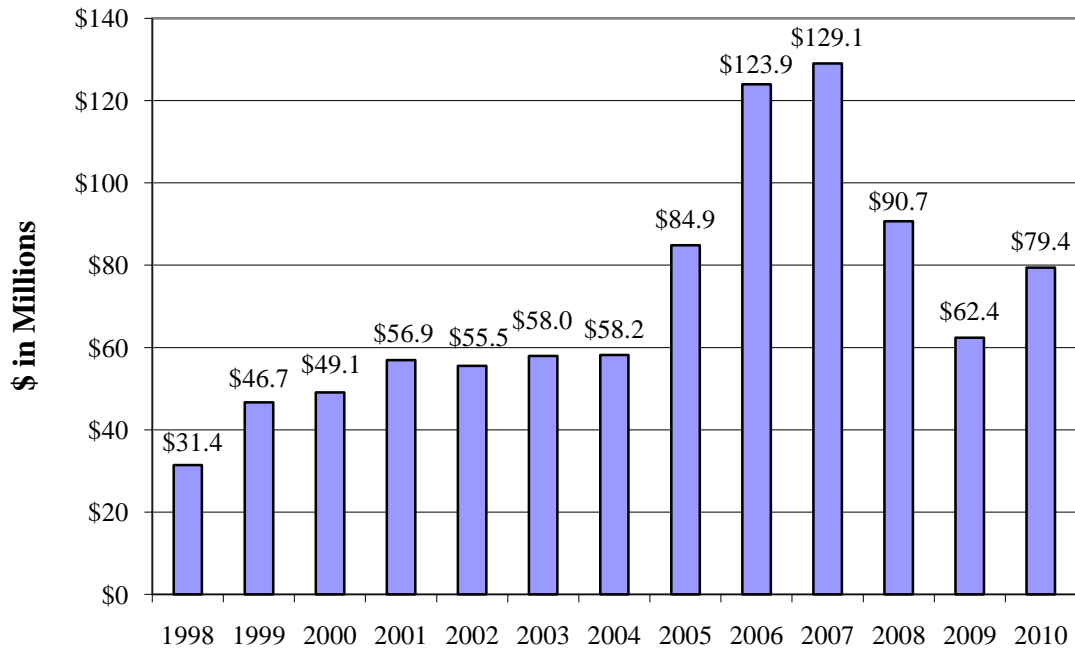
Introduction

Development impact fees and building excise taxes enable local governments to collect revenue from builders for public facilities necessitated by new residential or commercial development. As a result of these development charges, local governments are able to shift the costs of financing new public facilities from existing taxpayers to individuals responsible for the development. In many situations, the use of such development charges may eliminate the need for jurisdiction-wide tax increases. Another benefit of development charges is that local officials can collect the needed revenue for the expansion or construction of new public facilities prior to the construction of any new residential development. In this manner, payment of an impact fee or excise tax may be required by local officials before the issuance of a building permit or approval of a subdivision plat.

For purposes of clarification, county development impact fees and building excise taxes, as referred to and identified in this supplement, are those charges generally termed development impact fees or building excise taxes, or a variation of those terms. Development impact fees and building excise taxes, as characterized in this supplement, however, do not necessarily encompass all charges that are imposed by counties on new development to help pay for new or expanded public facilities. Some jurisdictions, for example, impose water- and sewer-related charges affecting new development, such as connection charges or system development charges, that may serve a similar purpose as impact fees or excise taxes, generating revenue for costs associated with new or expanded facilities. In addition, though not focused on in the 2008 *Managing Growth* report or this or previous supplements, a number of municipal corporations impose impact fees or similar charges on new development.

Development impact fees and building excise taxes are imposed in 16 counties in Maryland, with one county imposing both an impact fee and an excise tax. Until recently, overall development impact fee and building excise tax revenues were, for the most part, increasing each year. From fiscal 1998 to 2007, county revenues from development impact fees and building excise taxes increased from \$31.4 million to \$129.1 million as shown in **Exhibit 1**. Due to the downturn in the real estate market, impact fee and excise tax revenues declined by 30% in fiscal 2008 to \$90.7 million and by another 31% in fiscal 2009 to \$62.4 million. In fiscal 2010, revenues increased to \$79.4 million.

Exhibit 1
Development Impact Fees and Excise Taxes
Maryland Counties
Fiscal 1998-2010



Source: Maryland Association of Counties; Department of Legislative Services

Development Impact Fee/Excise Tax Distinction

The original 2008 *Managing Growth: The Use of Development Impact Fees and Excise Taxes in Maryland* report defined impact fees as regulatory measures and described a distinction between impact fees and excise taxes based on principles stated in the 1990 *Eastern Diversified v. Montgomery County* Maryland Court of Appeals opinion and a 2004 Maryland Attorney General opinion. The report indicated that an impact fee must be designed to fund facilities specifically required by new development projects; there must be a reasonable connection between the amount of an impact fee and the actual cost of providing facilities to the property assessed; and the revenue from the fee must be dedicated to substantially benefit those properties. The report indicated that the amount of an excise tax, on the other hand, does not have to be closely related to the actual cost of providing public facilities to serve new development, and excise tax revenue does not have to be spent to specifically benefit the properties that are taxed.

In both the *Eastern Diversified* and the Attorney General opinions, the impact fees in question were being evaluated with regard to whether they could validly be imposed under the jurisdictions' regulatory authority. Maryland counties that impose impact fees, however, have specific authority granted by the General Assembly to impose the fees and it is not clear whether, or to what extent, the restrictions stated above apply to impact fees imposed under specific grants of authority.

The specific grants of authority by the General Assembly to code counties, as a group, and other individual counties, for the most part do not explicitly include a level of restrictions similar to those stated above, seeming to leave open a question of whether most counties authorized to impose impact fees are restricted in that manner when imposing the fees. The code counties' authorization from the General Assembly, for example, states simply that a county "may fix, impose, and provide for the collection of development impact fees for financing, in whole or in part, the capital costs of additional or expanded public works, improvements and facilities required to accommodate new construction or development." The General Assembly authorizations for most of the other counties authorized to impose impact fees use similar language.

A number of counties that impose development impact fees, however, indicate that they view themselves as subject to restrictions not explicitly stated in the General Assembly authorizations for the fees. Similarly, when asked about their understanding of the legal distinction between impact fees and excise taxes, a number of planning officials and county attorneys in Maryland counties that impose development impact fees and/or excise taxes indicated an understanding of the distinction between impact fees and excise taxes that was generally consistent with, or similar to, the distinction made in the 2008 *Managing Growth* report. The officials in general indicated that impact fees are based upon and used to mitigate the impact of a given development (or development within a certain area) on public facilities, while excise taxes are comparatively free of restrictions on their amount or use.

Therefore, whether or not they may have broader authority and discretion, the counties appear to generally seek to conform to the principle that the amount and use of impact fees be in some manner connected to the impact of the development paying the fee on public facilities. One county official also indicated that using a formula-based methodology to establish the basis for the county's impact fees has the benefit of providing justification for what are substantial charges.

The extent of the authority the General Assembly has granted counties to impose impact fees may also not be the sole limitation on the counties' discretion in implementing the fees. Legal challenges, for example, have also been brought against impact fees alleging that the fees amount to takings of private property for public use without just compensation in violation of the Fifth Amendment of the U.S. Constitution. The question of whether and how takings law applies to impact fees, and what restrictions it may impose on them, however, appears to be unresolved (see, for example, Michael B. Kent, Jr., *Theoretical Tension and Doctrinal Discord: Analyzing Development Impact Fees as Takings*, 51 Wm. & Mary L. Rev. 1833 (2010)).

Local Rates and Revenues by County

Expected revenue collections for individual counties in fiscal 2010 range from approximately \$130,000 in Caroline County to \$17.8 million in Prince George's County. On a per capita basis, revenue collections range from \$4 in Caroline County to \$43 in Calvert County with the statewide average (among counties that impose impact fees and/or excise taxes) at \$20 per capita. **Exhibit 2** shows the development impact fees and building excise tax rates applicable to single-family development for each county in fiscal 2009 through 2011. A more detailed listing of the fee amounts and tax rates for fiscal 2011 is provided in the appendices. **Exhibit 3** shows the revenue collections for fiscal 2009 and 2010. Information for fiscal 2011 is not complete as of the publication of this supplement.

Governmental Uses

Public services funded by development impact fees and building excise taxes include public school construction, libraries, community colleges, transportation, public safety, parks and recreation, and utilities. In fiscal 2010, approximately 76.0% of development charges were targeted to education-related projects while 21.7% were targeted to transportation projects – the two leading governmental uses for these revenues. Education-related projects include funding for public schools, libraries, and community colleges. **Exhibit 4** shows the governmental uses for both development impact fees and building excise taxes for fiscal 2010.

Exhibit 2
County Development Impact Fees and Excise Tax Rates

<u>County</u>	<u>Type</u>	<u>Fee/Rate Per Dwelling¹</u>		
		<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
Anne Arundel ²	Impact Fee	\$1,795	\$3,590	\$8,976
Calvert	Excise Tax	12,950	12,950	12,950
Caroline ³	Excise Tax	5,000	5,000	5,000
Carroll	Impact Fee	6,836	6,836	6,836
Charles	Excise Tax	11,598	12,625	12,097
Dorchester ⁴	Excise Tax	3,671	3,671	3,671
Frederick ⁵	Impact Fee/ Excise Tax	13,733	14,283	15,185
Harford	Impact Fee	8,269	6,000 ⁶	6,000
Howard ⁷	Excise Tax/ Surcharge	See note	See note	\$2.15/sq. ft.
Montgomery ⁸	Impact Tax	31,105	33,331	33,331
Prince George's ⁹	Surcharge	20,638	20,494	20,945
Queen Anne's	Impact Fee	\$4.05/sq. ft.	\$4.25/sq. ft.	\$4.36/sq. ft.
St. Mary's	Impact Fee	4,500	4,500	4,500
Talbot ¹⁰	Impact Fee	5,684	5,957	6,113
Washington	Excise Tax	\$3.00/sq. ft.	\$3.00/sq. ft.	\$3.00/sq. ft.
Wicomico	Impact Fee	5,231	5,231	5,231

¹ Rates listed are generally those applicable to single-family detached dwellings and are per dwelling unless otherwise indicated.

² Rates for a 1,500-1,999 square foot residential unit. These rates are those applicable in the second half of fiscal 2009, 2010, and 2011, the result of increases effective January 1 in each of those years. Residential rates vary by the square footage of a unit.

³ A \$750 development excise tax for agricultural land preservation is also imposed on new lots created by subdivision in a "rural district."

⁴ A slightly higher rate, \$3,765 per dwelling, applies outside of the Cambridge and Hurlock areas.

⁵ The rates shown only reflect the public school and library impact fee total. The roads tax (unchanged for all three fiscal years) is \$0.10/sq. ft. or \$0.25/sq. ft. (depending on the square footage), with the first 700 square feet not taxed.

⁶ Effective December 4, 2009.

⁷ Fiscal 2011 amount represents roads tax of \$0.99/sq. ft. and school surcharge of \$1.16/sq. ft. In fiscal 2009 and 2010, the roads tax was \$400 for the first 500 sq. ft. and \$0.90 and \$0.95, respectively, for sq. ft. in excess of 500 sq. ft. The school surcharge was \$1.14/sq. ft. in fiscal 2009 and 2010.

⁸ Fiscal 2010 and 2011 amounts represent \$11,411 for transportation and \$21,920 for schools. Fiscal 2009 amount represents \$10,649 for transportation and \$20,456 for schools. The school excise tax is increased by \$2 for each square foot between 3,500 and 8,500 gross square feet. Different transportation rates apply in the Metro Station and Clarksburg impact tax districts.

⁹ Fiscal 2011 amount represents \$14,227 for school facilities and \$6,718 for public safety. A lower school facilities rate (\$8,299 in fiscal 2011) applies inside the beltway and a lower public safety rate (\$2,240 in fiscal 2011) applies inside the "developed tier" as defined in the 2002 Prince George's County Approved General Plan.

¹⁰ A lower rate (\$5,281 in fiscal 2011) applies to "in-town" development.

Source: Department of Legislative Services

Exhibit 3
County Development Impact Fees and Excise Tax Revenues

<u>County</u>	<u>FY 2009 Actual¹</u>	<u>FY 2010 Estimated²</u>	<u>Revenue Increase/Decrease</u>	<u>% Change</u>
Anne Arundel	\$5,319,888	\$6,508,553	\$1,188,665	22.3%
Calvert	2,922,226	3,802,793	880,567	30.1%
Caroline	107,808	129,574	21,766	20.2%
Carroll	869,347	1,304,575	435,228	50.1%
Charles ³	4,623,006	5,370,374	747,368	16.2%
Dorchester	472,224	436,811	(35,413)	-7.5%
Frederick	7,570,953	8,681,461	1,110,508	14.7%
Harford	2,436,848	3,499,446	1,062,598	43.6%
Howard	7,509,092	11,564,874	4,055,782	54.0%
Montgomery	10,323,805	15,072,029	4,748,224	46.0%
Prince George's	14,592,417	17,849,427	3,257,010	22.3%
Queen Anne's	991,107	1,165,813	174,706	17.6%
St. Mary's	1,867,455	1,941,566	74,111	4.0%
Talbot	514,311	543,809	29,498	5.7%
Washington	1,766,019	1,027,065	(738,954)	-41.8%
Wicomico	480,267	476,252	(4,015)	-0.8%
Total	\$62,366,773	\$79,374,422	\$17,007,649	27.3%

¹ Some of the fiscal 2009 revenue numbers have been updated/modified since the 2009 supplement was finalized.

² Due to the timing of the survey from which the fiscal 2010 revenues were compiled, some counties identified their fiscal 2010 revenue numbers as unaudited or otherwise not final and numbers for other counties may also be unaudited or otherwise not final.

³ In Charles County, the excise tax is collected annually over a period of 10 years at level, amortized payments of principal and interest. The excise tax became effective in fiscal 2004 and revenues have been steadily increasing as annual payments from properties on which the tax was assessed in previous fiscal years continue to be collected while new developments begin payments each year.

Source: Department of Legislative Services

Exhibit 4
Governmental Uses of Development Impact Fees and Excise Taxes
Fiscal 2010

County	Education	Transportation	Public Safety	Recreation	Other	Total Estimated Revenues	Per Capita Revenues
Allegany	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00
Anne Arundel	1,470,223	4,863,836	174,494	0	0	6,508,553	12.49
Baltimore City	0	0	0	0	0	0	0.00
Baltimore	0	0	0	0	0	0	0.00
Calvert	1,737,249	1,361,359	0	589,366	114,818	3,802,792	42.63
Caroline	115,874	0	0	0	13,700	129,574	3.88
Carroll	1,185,583	0	0	118,992	0	1,304,575	7.67
Cecil	0	0	0	0	0	0	0.00
Charles	5,370,374	0	0	0	0	5,370,374	37.76
Dorchester	410,330	0	26,481	0	0	436,811	13.63
Frederick	7,620,207	1,061,254	0	0	0	8,681,461	38.08
Garrett	0	0	0	0	0	0	0.00
Harford	3,499,446	0	0	0	0	3,499,446	14.43
Howard	5,905,301	5,659,573	0	0	0	11,564,874	41.03
Kent	0	0	0	0	0	0	0.00
Montgomery	11,473,071	3,598,958	0	0	0	15,072,029	15.51
Prince George's	17,752,053	0	97,374	0	0	17,849,427	21.39
Queen Anne's	852,201	0	195,879	117,733	0	1,165,813	24.31
St. Mary's	1,528,050	191,966	0	221,550	0	1,941,566	18.85
Somerset	0	0	0	0	0	0	0.00
Talbot	267,153	152,198	0	38,636	85,822	543,809	15.00
Washington	658,008	339,213	0	0	29,844	1,027,065	7.04
Wicomico	476,252	0	0	0	0	476,252	5.05
Worcester	0	0	0	0	0	0	0.00
Total	\$60,321,375	\$17,228,357	\$494,228	\$1,086,277	\$244,184	\$79,374,421	\$19.97
Share of Total	76.0%	21.7%	0.6%	1.4%	0.3%	100.0%	

Source: Department of Legislative Services

Chapter 2. Local Government and State Legislative Actions

Local Government Actions

Since the publishing of the 2008 *Managing Growth* report, Anne Arundel and Washington counties have made notable changes to the structure of their impact fee and building excise tax ordinances. Harford County reduced its public school development impact fee to provide an economic stimulus for the local housing market and made an earlier revision to a fee exemption. The Washington County Commissioners also adopted a temporary residential construction stimulus plan allowing for reductions in excise taxes and a temporary job attraction and creation program allowing for certain businesses to pay excise taxes over three years. St. Mary's, Montgomery, and Frederick counties also made changes described below.

Anne Arundel County

After lengthy consideration of a change to Anne Arundel County's impact fees, to better account for the costs of new development, the county enacted an ordinance in 2008 that, among other things, initially lowered both the residential and nonresidential impact fees for 2009 but increased them in 2010 and 2011 to eventually be, on average, noticeably higher than they were in 2008. The ordinance restructured the fees for residential development to be imposed at different rates depending on the total square footage of the finished area of a residential unit. The ordinance also removed a provision that made refunds of impact fees available if the fees were not utilized within six years. The ordinance also specifies exemptions for low-to-moderate income housing constructed by, or under a program sponsored by, a nonprofit entity in existence for at least three years and assisted living facilities, hospice facilities, hospitals, and nursing homes that will be owned and operated by a nonprofit entity in existence for at least three years. The General Assembly approved legislation at the 2008 session (Chapter 509) that authorized the county to grant exemptions for nonprofit development.

Anne Arundel County also adopted a new transportation impact fee district map in 2009 that creates a smaller district around Arundel Mills, ensuring that impact fees collected in that area, including any fees collected from development of a video lottery facility, are used for projects in the area.

Harford County

Effective December 4, 2009, the Harford County public school development impact fees were each reduced from \$8,269 for a single-family detached home, \$5,720 for a townhouse/duplex, and \$1,637 for all other residential dwellings to \$6,000, \$4,200, and \$1,200, respectively, returning the fee amounts to those applicable in fiscal 2006, when the fees were first imposed. The reduction was enacted as emergency legislation "necessary to protect the welfare of the citizens by reducing the Public School Development Impact Fee during the current economic recession to provide an economic stimulus for the local housing market[.]"

In 2008, Harford County revised an exemption from payment of the public school development impact fee for redevelopment, reconstruction, or replacement of structures, establishing more specific criteria for the exemption.

Washington County

As mentioned in the 2008 *Managing Growth* report, legislation adopted at the 2007 session (Chapter 277) required the Washington County Commissioners to appoint a task force to study and make recommendations concerning the excise tax rates and structure for residential development. The task force undertook an expanded scope of study at the direction of the county commissioners, addressing the entire building excise tax ordinance. Task force recommendations included eliminating the matrix of per square foot tax rates for nonresidential construction in favor of a flat rate and basing the tax rate for residential construction on square footage rather than dwelling units.

During the 2008 session, the General Assembly approved legislation (Chapter 533) that modified the county's authority to impose a building excise tax. The county commissioners subsequently repealed and reenacted the county's building excise tax ordinance citing changes in conditions, developments since the original adoption of the ordinance (in 2003), and changes in the authorizing legislation (Chapter 533), as making it necessary to update the ordinance. The new ordinance establishes a base building excise tax for residential construction of \$3 per square foot of habitable gross square footage. The rate for residential addition construction is one-half that amount. Similar to the old ordinance, in a single subdivision or development for which 25 building permits for new residential dwelling units have been issued in a fiscal year, in specified instances, the building excise tax is doubled for the twenty-sixth or any subsequent units that a building permit is applied for in the same fiscal year.

The new ordinance establishes flat rates of \$3 per square foot for nonresidential, retail construction and \$1 per square foot for nonresidential, nonretail construction. These rates are also shown in **Appendix 15**.

In October 2009, the Washington County Commissioners approved a temporary residential construction stimulus plan that allowed for reductions in the excise tax, recordation tax, and permit fees applicable to specified residential construction. The commissioners also approved a temporary job attraction and creation program in December 2009 that, among other things, allowed for the excise tax on construction or expansion of a facility by certain businesses to be paid on a three-year payment plan beginning a year after the issuance of the building permit.

Other Changes

Modifications were made in September 2008 to the St. Mary's County impact fee waiver/deferral program to reflect changes under Chapter 321 of 2006 to the State law

authorization for the waivers/deferrals. The modifications to the program included making it a permanent program and increasing the number of waivers and deferrals that may be issued per fiscal year. In Montgomery County, as part of a revision to the county's development district law, a credit against the transportation impact tax for the amount of a development district special tax, special assessment, fee, or charge paid was eliminated, effective January 2009. The county also made a number of other changes affecting transportation impact tax credits through two bills in late 2010. Lastly, following the enactment of Chapter 386 and 387 of 2008 (described below), Frederick County, in late 2010, established an impact fee exemption for specified affordable housing.

State Legislative Actions

At the 2008 session, the General Assembly approved several bills relating to development impact fees and building excise taxes including a statewide measure that authorizes local jurisdictions to waive or modify development fees for low-income housing units. Bills that affected Anne Arundel, Prince George's, and Washington counties were also approved. The General Assembly did not approve legislation that would have enabled municipalities to impose building excise taxes. In 2009, a bill that would have increased the amount of impact fees Prince George's County is authorized to impose for transportation projects was passed by the Senate, but was not acted on by the House. Prince George's County does not currently utilize the transportation impact fee authority.

Statewide Exemptions for Low-income Housing Units

Chapters 386 and 387 of 2008 authorize a county or municipality to waive or modify building permit or development impact fees and charges that are not mandated under State law, for the construction or rehabilitation of lower-income housing units in order to support, foster, or promote an affordable housing program. The amount of the fees and charges that may be waived must be in proportion to the number of lower-income housing units of a development.

The lower-income housing units must be financed, in whole or in part, by public funding that requires mortgage restrictions or recorded covenants restricting the rental or sale of the housing units to lower-income residents in accordance with specific government program requirements; or be developed by a nonprofit organization that has been exempt from federal taxation under § 501(c)(3) of the Internal Revenue Code for at least three years and requires the homebuyer to participate in the construction or rehabilitation of the housing unit.

The Department of Housing and Community Development (DHCD) was required to report to the General Assembly by October 1, 2010, on the counties and municipalities that waived or modified permit or development fees; the number and type of housing units for which fees were waived or modified; and the amount of fees waived and collected in accordance with the enactment. The legislation terminates September 30, 2011.

DHCD submitted the required report in October 2010, finding that fee waivers since the enactment of Chapters 386 and 387 had a meaningful impact on 15 projects in the State (consisting of 1,119 housing units), resulting in a total of \$4.4 million in waived fees. The waivers were largely of fees other than the impact fees/excise taxes focused on in this report. The DHCD report recommended continuing local governments' authority to provide fee waivers for lower-income housing.

Exemptions for Nonprofit Entities in Anne Arundel County

Chapter 509 of 2008 authorizes Anne Arundel County to grant exemptions from or credits against development impact fees for development by nonprofit entities that have been in existence for at least three years. The county council must adopt an ordinance that sets the amount of the exemptions or credits, establishes conditions of eligibility, and adopts application procedures.

Exemptions for Replacement Dwellings in Prince George's County

Chapter 108 of 2008 provides that the Prince George's County school facilities surcharge does not apply to a single-family dwelling unit to be built or subcontracted by an individual owner to replace, on the same lot, a previously existing single-family dwelling unit destroyed by fire, explosion, or a natural disaster. The new dwelling unit must be similar to the previously existing dwelling unit and owned and occupied by the same individual.

Modification to Building Excise Tax in Washington County

Chapter 533 of 2008 made several changes to the Washington County building excise tax with the most significant change being the modification to the building excise tax rate limits. In addition, a school capacity limit, which authorizes a higher building excise tax on specified residential subdivision development of more than 25 units in a school district that exceeds the limit, was adjusted from 85% to 90% of State rated school capacity. The county's existing authorization to impose up to twice the building excise tax on residential units, in specified instances, was amended to apply specifically where 25 building permits have been issued by the county for new residential units in a single subdivision within a fiscal year. The exemption for the first 50,000 square feet of nonresidential additional construction was repealed along with an authorization for the county commissioners to waive building excise taxes for certain nonresidential building types or uses. An authorization for the county commissioners to provide for additional exemptions was also repealed. Finally, the building excise tax credit for workforce housing was eliminated.

Authority for Municipalities to Impose Building Excise Taxes

Legislation was introduced at the 2008 session (Senate Bill 791/House Bill 663) that would have enabled a municipality to impose a building excise tax on any building construction within its jurisdiction and provide for tax credits against and exemptions from the building excise tax. The legislation received an unfavorable report from the Senate Budget and Taxation Committee. The House Committee on Ways and Means did not take action on the bill.

Under the Maryland Constitution, a municipality must have the express authorization of the General Assembly before it may impose any type of new tax or fee. In an opinion from 2004, the Maryland Attorney General concluded that a municipality could impose an impact fee as a valid regulatory measure. However, to constitute a valid regulatory fee, the municipality would need to show a reasonable connection between the new development and infrastructure as well as a reasonable connection between use of the resulting revenues and benefit to the property assessed. Pursuant to this legislation, these conditions would not have to be met since the legislation authorizes the imposition of a building excise tax instead of an impact fee.

Increased Cap for Prince George's County Impact Fee Proposed

Legislation was introduced at the 2009 session (Senate Bill 1043) that, as amended by the Senate, would have increased the limit on the amount of an impact fee that the Prince George's County Council is authorized to impose on single-family residences to finance transportation projects. The county council does not currently impose the impact fee. The current \$1,000 per unit limit would have been increased to \$3,000 per unit in the developed tier, as defined in the 2002 Prince George's County Approved General Plan, and \$5,000 per unit in the developing tier or the rural tier. Based on statements from two county sources at the time, the \$1,000 per unit limit was too low to, at least in certain cases, allow an equitable share of funding for transportation projects to be obtained from new development.

Appendix 1

Impact Fees in Anne Arundel County Effective January 1, 2011 – June 30, 2011¹

<u>Land Use Type</u>	<u>Levy</u>	<u>Transportation</u>	<u>Schools</u>	<u>Public Safety</u>	<u>Total</u>
Residential					
Under 500 feet	per unit	\$1,259	\$1,903	\$85	\$3,247
500-999 feet	per unit	2,065	3,502	138	5,705
1,000-1,499 feet	per unit	2,681	4,802	180	7,663
1,500-1,999 feet	per unit	3,111	5,657	208	8,976
2,000-2,499 feet	per unit	3,433	6,296	229	9,958
2,500-2,999 feet	per unit	3,682	6,807	246	10,735
3,000-3,499 feet	per unit	3,872	7,232	259	11,363
3,500-3,999 feet	per unit	4,050	7,596	271	11,917
4,000-4,499 feet	per unit	4,211	7,915	282	12,408
4,500-4,999 feet	per unit	4,355	8,197	291	12,843
5,000-5,499 feet	per unit	4,479	8,452	299	13,230
5,500-5,999 feet	per unit	4,583	8,683	307	13,573
6,000 feet and over	per unit	4,637	8,791	310	13,738
Amusement, recreation, place of assembly	per req'd parking space	886	0	35	921
Hotel/Motel	per room	4,266	0	109	4,375
Industrial	per 1,000 sq. ft.	3,680	0	136	3,816
Mini-warehouse	per 1,000 sq. ft.	606	0	30	636
For-profit hospital	per bed	4,801	0	144	4,945
For-profit nursing home	per bed	1,068	0	117	1,185
Marinas	per berth	1,210	0	43	1,253
Office space					
Less than 100,000 sq. ft.	per 1,000 sq. ft.	5,951	0	290	6,276
100,000-199,999 sq. ft.	per 1,000 sq. ft.	5,154	0	325	5,444
200,000 sq. ft. or more	per 1,000 sq. ft.	4,589	0	266	4,855
Mercantile	per 1,000 sq. ft.	6,200	0	827	7,027

¹In recent fiscal years, Anne Arundel County's impact fees have changed twice a year, at the beginning of the calendar year and the beginning of the fiscal year. Pursuant to an ordinance enacted in 2008, the rates have changed on January 1 of 2009, 2010, and 2011, phasing in an overall increase in rates. The fees, however, are also adjusted at the beginning of each fiscal year in accordance with changes in the 20-City Annual National Average Construction Cost Index from the *Engineering News-Record*.

Source: Anne Arundel County

Appendix 2

Excise Taxes in Calvert County Fiscal 2011

<u>Land Use Type</u>	<u>Levy</u>	<u>Schools</u>	<u>Recreation</u>	<u>Roads</u>	<u>Solid Waste</u>	<u>Total Excise Tax</u>
Single-family detached	per unit	\$7,800	\$1,300	\$3,500	\$350	\$12,950
Single-family attached	per unit	5,175	1,300	3,500	350	10,325
Manufactured home	per unit	3,900	1,300	3,500	350	9,050
Apartment	per unit	2,600	1,300	3,500	350	7,750
<i>Bona fide</i> elderly unit	per unit	N/A	1,300	3,500	350	5,150
Commercial, industrial, or institutional	per sq. ft.	N/A	N/A	N/A	0.11	0.11

Source: Calvert County

Appendix 3

Excise Taxes in Caroline County Fiscal 2011

<u>Land Use Type</u>	<u>Levy</u>	<u>School Construction</u>	<u>Agricultural Land Preservation</u>
Residential subdivision			
Single-family development (including mobile homes)	per lot	\$5,000	N/A
Other residential	per unit per lot	5,000	N/A
Subdivision of land in a rural district	per lot	N/A	750

Source: Caroline County

Appendix 4

Impact Fees in Carroll County Fiscal 2011

<u>Land Use Type</u>	<u>Levy</u>	<u>Impact Fee</u>
Residential		
Single-family	per unit	\$6,836
Townhouse	per unit	7,610
Multifamily	per unit	2,787
Mobile home	per unit	3,599

Source: Carroll County

Appendix 5

Excise Taxes in Charles County Fiscal 2011

<u>Land Use Type</u>	<u>Levy</u>	<u>Excise Tax</u>
Single-family	per unit	\$12,097
Townhouses	per unit	11,473
Multifamily (including mobile homes)	per unit	8,730

Source: Charles County

Appendix 6

Excise Taxes in Dorchester County Fiscal 2011

Cambridge/Hurlock

<u>Land Use Type</u>	<u>Levy</u>	<u>Schools</u>	<u>Communication Systems</u>	<u>Sheriff</u>	<u>Total Excise Tax</u>
Residential					
Single-family	per unit	\$3,555	\$87	\$29	\$3,671
Multifamily	per unit	2,510	72	22	2,604
Nonresidential					
Commercial/shop. ctr.*	per sq. ft.		0.029-0.044		0.029-0.044
Office*	per sq. ft.		0.047-0.057		0.047-0.057
Business park	per sq. ft.		0.041		0.041
Manufacturing	per sq. ft.		0.024		0.024
Warehousing	per sq. ft.		0.017		0.017

Other Municipalities/Unincorporated

<u>Land Use Type</u>	<u>Levy</u>	<u>Schools</u>	<u>Communication Systems</u>	<u>Sheriff</u>	<u>Total Excise Tax</u>
Residential					
Single-family	per unit	\$3,555	\$87	\$123	\$3,765
Multifamily	per unit	2,510	72	108	2,690
Nonresidential					
Commercial/shop. ctr.*	per sq. ft.		0.029-0.044	0.502-0.725	0.531-0.769
Office*	per sq. ft.		0.047-0.057	0.085-0.333	0.242-0.390
Business park	per sq. ft.		0.041	0.188	0.229
Manufacturing	per sq. ft.		0.024	0.056	0.080
Warehousing	per sq. ft.		0.017	0.073	0.090

* Rates vary according to the total square footage of the development.

Note: Additional rates exist for day care, hospital, light industrial, lodging, medical/dental office building, mini-warehouse, and nursing home land uses.

Source: Dorchester County

Appendix 7

Impact Fees and Excise Taxes in Frederick County Fiscal 2011

Impact Fees

<u>Land Use Type</u>	<u>Levy</u>	<u>Public School</u>	<u>Library</u>	<u>Total Impact Fee</u>
Single-family detached	per unit	\$14,426	\$759	\$15,185
Townhouse/duplex	per unit	12,380	709	13,089
All other residential (including manufactured homes)	per unit	2,368	477	2,845

Excise Taxes

<u>Land Use Type</u>	<u>Levy</u>	<u>Tax</u>
Residential*		
First 700 gross sq. ft.	per sq. ft.	\$0.00
701 sq. ft.-1,400 sq. ft.	per sq. ft.	0.10
In excess of 1,400 sq. ft.	per sq. ft.	0.25
Nonresidential	per sq. ft.	0.75

* Any gross square footage of multifamily residential construction not within a dwelling unit is allocated on a *pro rata* basis to each dwelling unit within the building.

Source: Frederick County

Appendix 8

Impact Fees in Harford County Fiscal 2011

<u>Land Use Type</u>	<u>Levy</u>	<u>Impact Fee</u>
Residential		
Single-family detached	per unit	\$6,000
Townhouse/duplex	per unit	4,200
All other residential (including mobile homes)	per unit	1,200

Source: Harford County

Appendix 9

Excise Taxes and Surcharge in Howard County Fiscal 2011

<u>Land Use Type</u>	<u>Levy</u>	<u>Transportation Excise Tax</u>	<u>School Facilities Surcharge</u>	<u>Total</u>
Residential	per sq. ft.	\$0.99	\$1.16	\$2.15
Office/retail	per sq. ft.	0.99	0.00	0.99
Distribution/manufacturing	per sq. ft.	0.50	0.00	0.50
Institutional/other	per sq. ft.	0.50	0.00	0.50

Source: Howard County

Appendix 10

Impact Taxes in Montgomery County Fiscal 2011

<u>Land Use Type</u>	<u>Levy</u>	<u>Transportation¹</u>			<u>Public Schools²</u>
		<u>General</u>	<u>Metro Station</u>	<u>Clarksburg</u>	<u>Countywide</u>
Residential					
Single-family detached	per unit	\$11,411	\$5,706	\$17,116	\$21,920
Single-family attached	per unit	9,337	4,669	14,005	16,503
Multifamily residential (except high rise)	per unit	7,261	3,630	10,891	10,431
High-rise residential	per unit	5,186	2,593	7,781	4,422
Multifamily senior residential	per unit	2,075	1,037	3,112	0
Nonresidential					
Office	per sq. ft.	10.40	5.20	12.50	N/A
Industrial	per sq. ft.	5.20	2.60	6.20	N/A
Bioscience facility	per sq. ft.	0.00	0.00	0.00	N/A
Retail	per sq. ft.	9.30	4.65	11.20	N/A
Place of worship	per sq. ft.	0.55	0.30	0.75	N/A
Private elementary and secondary school	per sq. ft.	0.85	0.40	1.10	N/A
Hospital	per sq. ft.	0.00	0.00	0.00	N/A
Social service provider	per sq. ft.	0.00	0.00	0.00	N/A
Other nonresidential	per sq. ft.	5.20	2.60	6.20	N/A

¹The transportation impact tax is imposed on each property according to which of the three subcategories in which it is classified.

²The public school impact tax on any single-family detached or attached dwelling unit is increased by \$2 for each square foot of gross floor area that exceeds 3,500 square feet, to a maximum of 8,500 square feet.

Source: Montgomery County

Appendix 11

Surcharges in Prince George's County Fiscal 2011

<u>Location of Development</u>	<u>Levy</u>	<u>School Facilities</u>	<u>Public Safety</u>
Outside of the Capital Beltway *	per unit	\$14,227	\$0
Inside of the Capital Beltway	per unit	8,299	0
Outside of the developed tier	per unit	0	6,718
Inside of the developed tier	per unit	0	2,240

* The school facilities surcharge for certain developments that abut an existing or planned mass transit rail station site is \$8,299.

Source: Prince George's County

Appendix 12

Impact Fees in Queen Anne's County Fiscal 2011

<u>Land Use Type</u>	<u>Levy</u>	<u>Public Schools</u>	<u>Fire/EMS</u>	<u>Parks and Recreation</u>	<u>Total Impact Fee</u>
Residential					
All residential	per sq. ft.	\$3.56	\$0.41	\$0.39	\$4.36
Nonresidential					
Commercial/shop. ctr.*	per sq. ft.	N/A	0.96-1.39	N/A	0.96-1.39
Office*	per sq. ft.	N/A	1.62-1.94	N/A	1.62-1.94
Business park	per sq. ft.	N/A	1.52	N/A	1.52
Light industrial	per sq. ft.	N/A	1.11	N/A	1.11
Warehousing	per sq. ft.	N/A	0.62	N/A	0.62
Institutional	per sq. ft.	N/A	0.38	N/A	0.38

*Rates vary according to the total square footage of the development.

Note: There is a 50% reduction on development impact fees imposed on nonresidential development within a designated growth area or within an incorporated municipality. The impact fees on all other nonresidential development are reduced by 25%.

EMS = Emergency Medical Services

Source: Queen Anne's County

Appendix 13

Impact Fees in St. Mary's County Fiscal 2011

<u>Land Use Type</u>	<u>Levy</u>	<u>Schools</u>	<u>Roads</u>	<u>Parks and Recreation</u>	<u>Total Impact Fee</u>
Residential	per unit	\$3,375	\$450	\$675	\$4,500

Source: St. Mary's County

Appendix 14

Impact Fees in Talbot County Fiscal 2011

		Outside Municipalities						
<u>Land Use Type</u>	<u>Levy</u>	<u>Library</u>	<u>Parks and Recreation</u>	<u>Public Schools</u>	<u>Community College</u>	<u>General Government</u>	<u>Transportation</u>	<u>Total Impact Fee</u>
Residential								
Single-family detached	per unit	\$499	\$966	\$2,712	\$106	\$1,014	\$816	\$6,113
Other residential	per unit	382	742	1,900	80	778	562	4,444
Nonresidential								
Commercial/shop. ctr.*	per sq. ft.	N/A	N/A	N/A	N/A	0.30-0.42	2.30-3.55	2.60-3.97
Office/Institutional*	per sq. ft.	N/A	N/A	N/A	N/A	0.49-0.62	1.06-1.79	1.55-2.41
Business park	per sq. ft.	N/A	N/A	N/A	N/A	0.45	1.02	1.47
Light industrial	per sq. ft.	N/A	N/A	N/A	N/A	0.35	0.54	0.89
Manufacturing	per sq. ft.	N/A	N/A	N/A	N/A	0.28	0.30	0.58
Warehousing	per sq. ft.	N/A	N/A	N/A	N/A	0.21	0.39	0.60
		Inside Municipalities						
<u>Land Use Type</u>	<u>Levy</u>	<u>Library</u>	<u>Parks and Recreation</u>	<u>Public Schools</u>	<u>Community College</u>	<u>General Government</u>	<u>Transportation</u>	<u>Total Impact Fee</u>
Residential								
Single-family detached	per sq. ft.	\$511	\$327	\$2,712	\$108	\$807	\$816	\$5,281
Other residential	per sq. ft.	384	246	1,900	81	606	561	3,778
Nonresidential								
Commercial/shop. ctr.*	per sq. ft.	N/A	N/A	N/A	N/A	0.21-0.28	2.29-3.55	2.50-3.83
Office/Institutional*	per sq. ft.	N/A	N/A	N/A	N/A	0.31-0.38	1.06-1.79	1.37-2.17
Business park	per sq. ft.	N/A	N/A	N/A	N/A	0.29	1.02	1.31
Light industrial	per sq. ft.	N/A	N/A	N/A	N/A	0.23	0.54	0.77
Manufacturing	per sq. ft.	N/A	N/A	N/A	N/A	0.16	0.30	0.46
Warehousing	per sq. ft.	N/A	N/A	N/A	N/A	0.10	0.39	0.49

* Rates vary according to the total square footage of the development.

Source: Talbot County

Appendix 15

Excise Taxes in Washington County Fiscal 2011

<u>Land Use Type</u>	<u>Levy</u>	<u>Excise Tax</u>
Residential development (units 1-25)	per sq. ft.	\$3.00
Residential Addition Construction	per sq. ft.	\$1.50
Large residential development (over 25 units) *	per sq. ft.	\$6.00
Nonresidential Nonretail Construction **	per sq. ft.	\$1.00
Nonresidential Retail Construction **	per sq. ft.	\$3.00

*Excise tax imposed beginning with the twenty-sixth unit under specified circumstances.

**The same rate applies to nonresidential addition construction.

Source: Washington County

Appendix 16

Impact Fees in Wicomico County Fiscal 2011

<u>Land Use Type</u>	<u>Levy</u>	<u>Impact Fee</u>
Single-family detached (including manufactured homes)	per unit	\$5,231
Other residential	per unit	1,524

Source: Wicomico County