

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council of Howard County, Maryland

2019 Legislative Session

Legislative Day No. **11**

Bill No. 42 -2019

Introduced by: Christiana Mercer Rigby and Deb Jung
Co-sponsored by: Opel Jones and Liz Walsh

AN ACT to alter the school facilities surcharge in accordance with Chapter 744 of the Acts of the General Assembly of 2019; and generally relating to the school facilities surcharge.

Introduced and read first time _____, 2019. Ordered posted and hearing scheduled.

By order _____
Diane Schwartz Jones, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2019.

By order _____
Diane Schwartz Jones, Administrator

This Bill was read the third time on _____, 2019 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Diane Schwartz Jones, Administrator

Sealed with the County Seal and presented to the County Executive for approval this _____ day of _____, 2019 at ___ a.m./p.m.

By order _____
Diane Schwartz Jones, Administrator

Approved by the County Executive _____, 2019

Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **Whereas**, the County Council has considered the following issues when determining the amount
2 of the school facilities surcharge:

3 (i) the capital costs for the construction of new public schools and additions to existing
4 public schools;

5 (ii) the anticipated amount of the state contribution for school construction funding;

6 (iii) the average percentage of student enrollments that will be generated by the
7 residential new construction;

8 (iv) the impact of school redistricting by the Howard County Board of Education;

9 (v) the potential for charging different amounts for differently sized residential new
10 construction units;

11 (vi) the effect on affordable housing units; and

12 (vii) sources of tax and fee revenue for the county, including the transfer tax.

13 Now therefore,

14 **Section 1. *Be It Enacted*** by the County Council of Howard County, Maryland, that the Howard
15 County Code is amended as follows:

16 *By amending:*

17 *Title 20 - Taxes, charges, and fees.*

18 *Subtitle 1. - Real property tax; administration, credits, and enforcement.*

19 *Sections 20.142. - [Surcharge enacted.] and. 20.143. - Surcharge*

20 *imposed.*

21
22 **Title 20 - Taxes, charges, and fees.**

23 **Subtitle 1. - Real property tax; administration, credits, and enforcement.**

24
25 **SEC. 20.142. - SURCHARGE ENACTED.**

26 (a) (1) In this section the following words have the meanings indicated:

27 (2) Applicant means the individual, partnership, corporation, or other legal
28 entity whose signature appears on the building permit application.

29 (3) (i) Building means a structure with exterior walls which combine to form
30 an occupiable structure.

31 (ii) Building does not include a temporary structure, as defined in the
32 Howard County Building Code.

1 (4) (i) New construction means construction of a building which requires a
2 Howard County building permit.

3 (ii) New construction does not include, if the building replaces an
4 existing building, replacement of a building due to casualty or loss within three
5 years of that casualty or loss, or replacement of a mobile home on a site, except to
6 the extent the gross square footage of the replacement building or replacement
7 mobile home exceeds the gross square footage of the building or mobile home
8 being replaced.

9 (5) Occupiable means space that is:

10 (i) Designed for human occupancy in which individuals may live, work,
11 or congregate for amusement; and

12 (ii) Equipped with means of egress, light, and ventilation.

13 (6) (i) Residential means a building that contains one or more dwelling units
14 and includes a boarding house.

15 (ii) Residential includes all areas that are contained within a residential
16 building, including an attached garage or area for home occupations.

17 (iii) Residential does not include:

18 1. Transient accommodations, including a hotel, country inn, or
19 bed and breakfast inn;

20 2. Nonresidential uses in a mixed-use structure; or

21 3. Detached accessory buildings, including a detached garage or
22 shed that does not contain living quarters.

23 (b) The County Council by ordinance shall impose a school facilities surcharge on
24 residential new construction for which a building permit is issued on or after July 1,
25 2004.

26 (c) (1) [[For fiscal year 2005, a school facilities surcharge imposed on residential
27 new construction shall be in the amount of one dollar per square foot of occupiable area
28 in the residential new construction.

29 (2) For fiscal year 2006 and each succeeding fiscal year, the facilities surcharge
30 established in paragraph (1) of this subsection shall be adjusted for inflation in
31 accordance with the Consumer Price Index for All Urban Consumers published by the

1 United States Department of Labor, for the fiscal year preceding the year for which the
2 amount is being calculated]].

3 (I) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, FOR FISCAL YEAR 2020
4 AND EACH SUCCEEDING FISCAL YEAR, A SCHOOL FACILITIES SURCHARGE IMPOSED
5 ON RESIDENTIAL NEW CONSTRUCTION SHALL BE IN AN AMOUNT:

6 1. EQUAL TO OR GREATER THAN THE AMOUNT IMPOSED BY THE
7 COUNTY COUNCIL ON JUNE 30, 2019, PER SQUARE FOOT OF OCCUPIABLE
8 AREA IN THE RESIDENTIAL NEW CONSTRUCTION; AND

9 2. EQUAL TO THE AMOUNT IMPOSED BY THE COUNTY COUNCIL ON
10 JUNE 30, 2019, PER SQUARE FOOT OF OCCUPIABLE AREA IN THE
11 RESIDENTIAL NEW CONSTRUCTION THAT IS CLASSIFIED AS SENIOR HOUSING
12 UNDER 42 U.S.C. § 3607(B).

13 (II) THE COUNTY COUNCIL MAY NOT IMPOSE A SCHOOL FACILITIES
14 SURCHARGE ON RESIDENTIAL NEW CONSTRUCTION THAT IS CLASSIFIED AS SENIOR
15 HOUSING AND AN AFFORDABLE HOUSING UNIT, AS DEFINED IN § 28.116 OF THE
16 COUNTY CODE.

17 (2) THE COUNTY COUNCIL MAY ENACT A LOCAL LAW THAT PROVIDES FOR AN
18 ANNUAL ADJUSTMENT IN THE AMOUNT OF THE SCHOOL FACILITIES SURCHARGE UNDER
19 PARAGRAPH (1)(I) OF THIS SUBSECTION IN THE FOLLOWING MANNER:

20 (I) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, AN INCREASE OR
21 DECREASE IN THE AMOUNT OF THE SCHOOL FACILITIES SURCHARGE UNDER
22 PARAGRAPH (1)(I)1 OF THIS SUBSECTION;

23 (II) A DECREASE IN THE AMOUNT OF THE SCHOOL FACILITIES SURCHARGE
24 UNDER PARAGRAPH (1)(I)2 OF THIS SUBSECTION; OR

25 (III) ESTABLISHMENT OF A GRANDFATHERING PROCESS FOR RESIDENTIAL
26 NEW CONSTRUCTION BASED ON THE STATUS IN THE DEVELOPMENT PROCESS.

27 (3) THE COUNTY COUNCIL MAY NOT IMPOSE A SCHOOL FACILITIES SURCHARGE ON
28 RESIDENTIAL NEW CONSTRUCTION UNDER PARAGRAPH (1)(I)1 OF THIS SUBSECTION IN AN
29 AMOUNT THAT IS LESS THAN THE AMOUNT IMPOSED BY THE COUNTY COUNCIL ON JUNE 30,
30 2019.

1 (4) BEFORE ENACTING A LOCAL LAW TO ADJUST THE AMOUNT OF THE SCHOOL
2 FACILITIES SURCHARGE UNDER THIS SUBSECTION, THE COUNTY COUNCIL SHALL CONSIDER
3 THE FOLLOWING ISSUES WHEN DETERMINING THE AMOUNT:

4 (I) THE CAPITAL COSTS FOR THE CONSTRUCTION OF NEW PUBLIC SCHOOLS
5 AND ADDITIONS TO EXISTING PUBLIC SCHOOLS;

6 (II) THE ANTICIPATED AMOUNT OF THE STATE CONTRIBUTION FOR SCHOOL
7 CONSTRUCTION FUNDING;

8 (III) THE AVERAGE PERCENTAGE OF STUDENT ENROLLMENTS THAT WILL BE
9 GENERATED BY THE RESIDENTIAL NEW CONSTRUCTION;

10 (IV) THE IMPACT OF SCHOOL REDISTRICTING BY THE HOWARD COUNTY
11 BOARD OF EDUCATION;

12 (V) THE POTENTIAL FOR CHARGING DIFFERENT AMOUNTS FOR DIFFERENTLY
13 SIZED RESIDENTIAL NEW CONSTRUCTION UNITS;

14 (VI) THE EFFECT ON AFFORDABLE HOUSING UNITS; AND

15 (VII) SOURCES OF TAX AND FEE REVENUE FOR THE COUNTY, INCLUDING THE
16 TRANSFER TAX.

17 (d) (1) The school facilities surcharge shall be paid by the applicant at the time a
18 building permit is issued for the residential new construction.

19 (2) The school facilities surcharge may not be construed to be a settlement cost.

20 (e) (1) The County shall rebate to the Applicant the school facilities surcharge
21 imposed on residential new construction under this section if, on the initial sale of the
22 property, the property is sold for a fair market value that is less than \$200,000.00.

23 (2) If, on completion, the residential new construction is not sold but the
24 property is occupied by the Applicant or the immediate family of the Applicant, the
25 County shall rebate to the Applicant the school facilities surcharge imposed under this
26 section if the initial assessment value assigned to the property by the State Department of
27 Assessments and Taxation for purposes of the County real property tax equates to a
28 market value that is less than \$200,000.00.

29 (3) For fiscal year 2006 and each succeeding fiscal year, the value of the
30 property that is entitled to a rebate under this subsection shall be adjusted for inflation in
31 accordance with the Consumer Price Index for all Urban Consumers published by the

1 United States Department of Labor, for the fiscal year preceding the year for which the
2 value is being calculated.

3 (4) Within 30 days after the start of each fiscal year, the Howard County Office
4 of Finance shall calculate and publish in a newspaper of general circulation in the County
5 the value of the property that is entitled to the rebate specified under this subsection.

6 (f) Payment of the school facilities surcharge does not eliminate any authority to apply
7 any test concerning the adequacy of school facilities under the County's adequate public
8 school facility ordinance.

9 (g) Revenue collected under the school facilities surcharge shall be deposited in a
10 separate account and may only be used to pay for:

11 (1) Additional or expanded public school facilities such as renovations to
12 existing school buildings or other systemic changes; or

13 (2) Debt service on bonds issued for additional or expanded public school
14 facilities or new school construction.

15 (h) Revenue collected under the school facilities surcharge is intended to supplement
16 funding for public school facilities and may not supplant other County or State funding
17 for school construction.

18 (i) (1) Subject to section 22.1000 of the County Code, the County Executive of
19 Howard County shall prepare an annual report on the school facilities surcharge on or
20 before August 31 of each year for the County Council of Howard County, the Howard
21 County Senate Delegation, and the Howard County House Delegation, to include:

22 (I) DETAILED INFORMATION REGARDING THE SCHOOL FACILITIES
23 SURCHARGE, AND THE AMOUNT AND KIND OF RESIDENTIAL DEVELOPMENT AND THE
24 CHANGE IN SCHOOL POPULATION IN THE COUNTY OVER THE PREVIOUS 5 YEARS;

25 ~~[[1]]~~ (II) A detailed description of how fees were expended; ~~[[and]]~~

26 ~~[[2]]~~ (III) The amount of fees collected~~[[.]]~~ ; AND

27 (IV) RECOMMENDATIONS REGARDING HOW THE COUNTY
28 SHOULD PROCEED IN ITS CALCULATION OF THE SCHOOL FACILITIES SURCHARGE
29 FOR THE NEXT 5 YEARS.

30 (K) IN A YEAR THAT THE COUNTY COUNCIL ENACTS A LOCAL LAW TO PROVIDE FOR AN
31 ANNUAL INCREASE IN THE SCHOOL FACILITIES SURCHARGE IN ACCORDANCE WITH

1 SUBSECTION (C)(2) OF THIS SECTION, THE COUNTY EXECUTIVE SHALL INCLUDE IN THE
2 REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION A DESCRIPTION OF THE
3 COUNTY COUNCIL'S CONSIDERATION OF THE ISSUES UNDER SUBSECTION (C)(4) OF THIS
4 SECTION.

5
6 **Sec. 20.143. - Surcharge imposed.**

7 (a) [[House bill 1445 of the Acts of the General Assembly of 2004]] CHAPTER 744 OF
8 THE ACTS OF THE GENERAL ASSEMBLY OF 2019, [[to be codified as]] SET FORTH IN section
9 20.142 of the Howard County Code, requires that the County Council impose a school
10 facilities surcharge on residential new construction for which a building permit is issued
11 on or after July 1, 2004, with the revenue from the surcharge to be used to pay for
12 additional or expanded public school facilities such as renovations to existing school
13 buildings or other systemic changes, debt service on bonds issued for additional or
14 expanded public school facilities, or new school construction.

15 (b) (1) In accordance with [[House bill 1445]] CHAPTER 744 OF THE ACTS OF
16 THE GENERAL ASSEMBLY OF 2019, there is a public school facilities surcharge imposed on
17 residential new construction for which a building permit is issued on or after July 1,
18 2004, OTHER THAN RESIDENTIAL NEW CONSTRUCTION THAT IS BOTH:

19 (I) CLASSIFIED AS SENIOR HOUSING; AND

20 (II) AN AFFORDABLE HOUSING UNIT, AS DEFINED IN § 28.116 OF THE
21 COUNTY CODE.

22 (2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, THE SURCHARGE
23 IS \$6.80 PER SQUARE FOOT OF OCCUPIABLE AREA IN RESIDENTIAL NEW CONSTRUCTION.

24 (3) THE SURCHARGE IS \$1.32 PER SQUARE FOOT OF OCCUPIABLE AREA IN
25 RESIDENTIAL NEW CONSTRUCTION THAT IS CLASSIFIED AS SENIOR HOUSING UNDER 42
26 U.S.C. § 3607(B).

27 (c) The amount and terms of the surcharge, and the use of the revenue collected under
28 the surcharge, shall be as required by section 20.142 of the Howard County Code, as
29 enacted by [[House bill 1445]] CHAPTER 744 OF THE ACTS OF THE GENERAL ASSEMBLY
30 OF 2019.

31

1 **Section 2. And Be It Further Enacted** by the County Council of Howard County, Maryland that
2 *this Act shall become effective 61 days after its enactment.*