



THE PRINCE GEORGE'S COUNTY GOVERNMENT

Office of Audits and Investigations

September 14, 2022

FISCAL AND POLICY NOTE

TO: Robert J. Williams, Jr.
Council Administrator

William M. Hunt
Deputy Council Administrator

THRU: Josh Hamlin
Director of Budget and Policy Analysis

FROM: Arian Albear
Legislative Budget and Policy Analyst

RE: Policy Analysis and Fiscal Impact Statement
CB-087-2022

CB-087-2022 (*Proposed and presented by:* Council Chair Hawkins at the request of the County Executive)

Assigned to the Planning, Housing, and Economic Development (PHED) Committee

AN ACT CONCERNING RIGHT OF FIRST REFUSAL PILOT PRE-AUTHORIZATION for the purpose of creating a Payment In Lieu of Taxes ("PILOT") pre-authorization process for properties purchased under the Right of First Refusal ("ROFR") program. The County enacted the ROFR program in 2013 to further the County's goal of preserving affordable rental housing for low and moderate-income households in targeted area of the County. PILOT assistance that reduces real estate tax obligations will enhance the ability of the County to support the preservation of affordable rental housing through the ROFR program by enabling property owners to commit to long-term rent and income restrictions.

Fiscal Summary

Direct Impact

Expenditures: No additional expenditures likely.

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Revenue: Reduced revenue up to \$1,500,000 per year.

Indirect Impact

Potentially positive.

Legislative Summary:

CB-087-2022¹, proposed by Council Chair Hawkins at the request of the County Executive, was presented on September 6, 2022, and referred to the Planning, Housing, and Economic Development (PHED) Committee. CB-087-2022 would grant preauthorization to the Director of the Department of Housing and Community Development (DHCD) to enter into select Payment in Lieu of Taxes (PILOT) agreements for Right of First Refusal (ROFR) projects.

For PILOT agreements to be eligible under this subsection, they must meet the following qualifications:

- Property must be acquired in accordance with the Right of First Refusal Code.
- Director determines financial necessity of PILOT agreement through economic feasibility reviews and underwriting.
- Property is located in a geographic area deemed to be of focus or priority for affordable rental housing.

PILOT agreements are subject to the following:

- Agreements must meet requirements of Section 7-506-1 of the Tax-Property Article of the Annotated Code of Maryland.
- Agreements must be memorialized in writing.
- Properties must agree to Affordability Covenants for a period of at least fifteen (15) years for at least 20% of the rental units in the property. Rents must not surpass 80% of the Area Median Income.²
- Agreements may be structured to assist up to 100% of units within each property.
- Term of PILOT agreement equal to affordable housing covenant period (expected to be fifteen (15) years or greater).

The Director of DHCD may grant PILOT agreements up to \$1,500,000 per fiscal year. The balance may roll over to the following fiscal year if the entirety of the \$1.5 million is not used in the given fiscal year.

¹ [CB-087-2022](#).

² Defined as the Washington Metropolitan Area.

Background/Current Law:

Authority to enter in PILOT agreements for low-income housing acquired under the Right of First Refusal program is granted to the County by the State of Maryland under Title 7. Property Exemptions, Subtitle 5. County Exemptions – Optional; Payments in Lieu of Taxes “§ 7-506.3 Payment in lieu of taxes agreements – Low-income housing.”

With CB-027-2013, Section 13-113³ of the County Code establishes the Right of First Refusal program under which the owner of a multifamily rental facility must offer to sell the property to DHCD before selling the rental housing to another party. The Department then has the option to accept or reject the offer. Under Section 13-1119, “the Department may partner with or assign its right of first refusal to a non-profit, governmental agency, tenant organization, or other third-party entity, to acquire or finance the purchase of rental housing.” The Department therefore serves to guide and have final say on which entities may buy such properties.

An overview of the Right of First Refusal Program can be found in the Housing Opportunities for All presentation [here](#).

Resource Personnel:

- Amanda Denison, Office of Law
- Jose C. Sousa, Assistant Deputy Chief Administrative Officer, Economic Development

Discussion/Policy Analysis:

Pilot Agreement Terms

Under the bill, properties receiving PILOT assistance must agree to maintain affordable housing for at least 15 years for at least 20% of the total units. However, PILOT agreements may be used to assist up to 100% of units and are expected to last 15 years or greater. Therefore, as a possible extreme example, a PILOT agreement for 50 years. After the first year, remove 80% of affordable units, while keeping 20% affordable (by the stated definition of affordable) for 15 years and then charge market-rate rents for the other 35 years on all units.

Area Median Income

Affordable housing is a critical issue in an area with rising home values and lack of housing in general. However, Prince George’s County’s median income is already well below the area median. According to the U.S. Department of Housing and Urban Development (HUD), the median income for the “Washington-Arlington-Alexandria, DC-VA-MD HUD Metro FMR Area” is \$106,415⁴ and the median income for Prince George’s County is \$86,994.⁵ The County median,

³ Prince George’s County Code, Section 13-1113. – [County right of first refusal](#).

⁴ U.S. Department of Housing and Urban Development, [Washington-Arlington-Alexandria Metro Area](#).

⁵ U.S. Department of Housing and Urban Development, [Prince George’s County](#).

therefore, is already 81.7% of the Area Median Income (AMI). Thus, using this definition to define affordable housing may not protect or expand affordable housing for *County* residents.

Questions for Committee Consideration:

1. What is the justification for removing the Council from the approval process? *I.e.*, would the County Council ceding the power to grant PILOT agreements for ROFR properties to the Director of DHCD help expedite such procedures?
 - a. If the power is ceded, how would the Council examine such agreements in the future?
 - b. Should the Bill include an annual reporting process, or notification of each agreement, to the Council?
 2. What purpose does the \$1,500,000 maximum reduction in real property taxes serve? Did this number result from prior PILOT agreement data per fiscal year?
 3. Is removing the Council from the individual PILOT approval process sufficiently urgent to justify enacting CB-087-2022 on the compressed timeline in which the Council is operating?
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Fiscal Impact:

- *Direct Impact*

Enactment of CB-087-2022 may have an adverse short-term direct fiscal if the Director enters into PILOT agreements up to \$1.5 million per year.

- *Indirect Impact*

Enactment of CB-087-2022 may increase the availability of affordable housing (as defined regionally) in the County by allowing the Director of DHCD to expedite PILOT agreements for ROFR program properties.

Effective Date of Proposed Legislation:

The proposed Bill shall be effective forty-five (45) calendar days after it becomes law.

If you require additional information, or have questions about this fiscal impact statement, please email me.