

No. 145. An act relating to transportation impact fees.

(H.740)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS AND INTENT

(a) The General Assembly finds that:

(1) To issue a land use permit under 10 V.S.A. chapter 151 (Act 250), a District Commission must make required findings, including that the proposed development and subdivision does not cause unreasonable traffic congestion or unsafe traffic conditions and does not materially interfere with or jeopardize the function, safety, and efficiency of Vermont's public highway and transportation systems.

(2) To ensure that the development or subdivision meets the statutory requirements related to transportation impacts, District Commissions often require physical improvements or other measures to mitigate those impacts.

(3) Because the District Commissions address mitigation on a case-by-case basis, the obligation to mitigate transportation impacts often falls on the development or subdivision whose traffic impacts cause existing traffic conditions to become unsafe or unreasonably congested.

(4) This approach, often referred to as "last-one-in," can require an applicant to bear the entire burden of installing mitigation measures that benefit not only the applicant's project, but existing and future developments or subdivisions, as well as regional and statewide through traffic. The potential for this outcome is high in areas that are already developed and experiencing significant traffic volumes.

(5) Physical improvements to mitigate transportation impacts can be costly and exceed the cost of a proposed development and subdivision, particularly if the proposal is a small project in an already developed area.

(b) In enacting this legislation, the General Assembly intends:

(1) to establish an alternative to the “last-one-in” approach that enables the costs to mitigate transportation impacts to be allocated proportionally among the State and the land use projects that have traffic impact and that will benefit from the mitigation;

(2) to foster in-fill development, further Vermont’s planning goals set forth in 24 V.S.A § 4302, and encourage economic growth by creating a mechanism to apportion the cost of new transportation infrastructure in already developed areas; and

(3) to encourage planning for the establishment of transportation improvement districts in which the costs of transportation infrastructure are allocated proportionally and thereby to support economic growth, the construction of needed transportation improvements, and Vermont’s planning goals.

Sec. 2. 10 V.S.A. chapter 151, subchapter 5 is added to read:

Subchapter 5. Transportation Impact Fees

§ 6101. PURPOSE

The purpose of this subchapter is to provide a mechanism to allocate the costs to mitigate the impacts of land use projects to the transportation system in

a manner that is equitable and that supports the planning goals of 24 V.S.A.

§ 4302.

§ 6102. DEFINITIONS

As used in this subchapter:

(1) “Agency” means the Agency of Transportation.

(2) “Capacity” means each of the following:

(A) the number of vehicles per hour accommodated by transportation infrastructure;

(B) the ability of transportation infrastructure to provide connectivity for pedestrians and cyclists; and

(C) the number of people that can be accommodated by bus at levels of service specified for each mode of travel.

(3) “Capital Transportation Program” means the multiyear transportation program under 19 V.S.A § 10g as established each year by the General Assembly.

(4) “Capital transportation project” means:

(A) a physical improvement to the State transportation system or to a municipal highway, right-of-way, or transportation facility; and

(B) a study or survey requested or commissioned by a District Commission or the Agency relating to any physical improvement of one or more of the following:

(i) the State transportation system; and

(ii) a municipal highway, right-of-way, or transportation improvement or facility.

(5) “District Commission” shall have the same meaning as under section 6001 of this title except that the term also shall include the Board in exercising its authority to make findings of fact and conclusions of law.

(6) “Land use project” means any activity requiring a permit under this chapter or 19 V.S.A. § 1111.

(7) “Municipality” means a city, town, incorporated village or unorganized town or gore.

(8) “Pass-by trips” means traffic that is present on a roadway adjacent to a land use project for reasons other than accessing the project and that enters the project.

(9) “Regional planning commission” shall have the same meaning as under 24 V.S.A. § 4303.

(10) “Secretary” means the Secretary of Transportation or designee.

(11) “State transportation system” means the highways, rights-of-way, and transportation facilities under the jurisdiction of the Agency or any other agency of the State and does not include highways, rights-of-way, and transportation facilities under the jurisdiction of a municipality.

(12) “Transportation Demand Management” or “TDM” means measures that reduce vehicle trips or redistribute vehicle trips to non-peak times or other areas. Examples include telecommuting, incentives to carpool or ride public transit, and staggered work shifts.

(13) “Transportation impact fee” means a fee that is assessed to a land use project as a condition of a permit issued under this chapter or a State highway access permit under 19 V.S.A. § 1111 and is used to support any portion of the costs of a completed or planned capital transportation project that will benefit or is attributable to the land use project.

(14) “Transportation Improvement District” or “TID” means a discrete geographic area that includes and will benefit from one or more capital transportation projects included in the Capital Transportation Program and for which the Agency has established a transportation impact fee under this subchapter.

(15) “Vehicle trips” means the number of trips by motorized conveyance generated by a proposed land use project measured at a specific place and for a specific duration. The ownership of and number of persons within the conveyance shall be irrelevant.

§ 6103. AUTHORITY

A District Commission or the Agency may assess a transportation impact fee in accordance with this subchapter.

§ 6104. TRANSPORTATION IMPACT FEE; DISTRICT COMMISSION

(a) A District Commission may require payment of a transportation impact fee in accordance with section 6106 of this title to fund, in whole or in part, capital improvements that are necessary to mitigate the transportation impacts of a proposed development or subdivision or that benefit the proposed development or subdivision. The Agency shall review the application and recommend to the District Commission whether to require mitigation of the transportation impacts of the development or subdivision. The District Commission may require an applicant to pay the entire cost of a capital transportation project and may provide for reimbursement of the applicant by developments and subdivisions subsequently receiving permits or amended permits under this chapter that benefit from the capital transportation project. The period for reimbursement shall expire when the associated capital transportation project ceases to provide additional capacity.

(b) A District Commission may require an applicant for a development or subdivision within a TID to pay the transportation impact fee established by the Secretary if the Commission determines that the fee will fund, in whole or in part, improvements to mitigate transportation impacts of the development or subdivision.

(c) This subchapter shall apply to the exercise of authority by a District Commission under any permit condition issued pursuant to subdivision 6086(a)(5) of this title in which the District Commission has reserved the right

to conduct proceedings that may result in assessment and collection of impact fees to support transportation improvements.

(d) The authority granted to the District Commissions under this subchapter is in addition to their other authority.

§ 6105. TRANSPORTATION IMPROVEMENT DISTRICT AND FEE;

AGENCY OF TRANSPORTATION

(a) The Secretary may establish a TID and transportation impact fee in accordance with this section and section 6106 of this title if one or more capital transportation projects in the most recent Capital Transportation Program will provide capacity that benefits one or more future land use projects within a discrete geographic area or will provide capacity for future land use projects identified by a regional planning commission or municipality within a discrete geographic area.

(b) To establish a TID and transportation impact fee, the Secretary shall cause the Agency to issue a proposed TID and transportation impact fee.

(1) In preparing the proposal, the Agency shall consult with each regional planning commission, municipality, and the public in which the TID will be located on the geographic extent of the TID, the land use assumptions to be used, the performance standards and the consistency of the proposal with each applicable municipal and regional plan.

(2) The Agency shall prepare a transportation infrastructure plan for the capital transportation project that identifies highway, transit, bicycle, and pedestrian infrastructure needs of a proposed TID. The Agency's proposal shall identify the recommended geographic extent of the TID, the proposed performance standards within the TID, and the proposed transportation impact fee in accordance with section 6106 of this title.

(A) The infrastructure plan shall follow generally accepted planning and engineering standards.

(B) The performance standard for a TID shall be suitable for the area in which the TID is located.

(C) The proposed fee shall reflect a rational nexus between the needs that the transportation infrastructure plan is designed to meet and the benefits that will be provided or the impacts attributable to the proposed land use projects to which the fee will be assessed and shall be roughly proportional to those benefits or impacts.

(3) On issuance of the proposal, the Agency shall provide notice of a public hearing on the proposal before the Secretary. The notice shall include the date and location of the hearing, a description of the TID including the capital transportation project or projects, the TID's geographic extent, and the proposed transportation impact fee. The Agency shall provide the notice to each property owner within the TID, the municipal legislative body and municipal and regional planning commissions for the area in which the TID is

located, and shall publish the notice on its web page and in a newspaper of general circulation in the geographic area of the TID. The date of the public hearing shall be not less than 30 days after issuance and publication of the notice.

(4) The Secretary shall hold a public hearing and take testimony on the Agency's proposal. The Secretary shall provide an opportunity for members of the public and affected property owners to testify.

(5) After completing the public hearing, the Secretary may approve, approve with revisions, or deny the Agency's proposal. The Secretary's approval shall establish the proposed TID and transportation impact fee, with any revisions required by the Secretary.

(c) The Secretary shall consider the following to establish the boundaries of a TID:

(1) the existing and planned pattern of development as set forth in the municipal or regional plans;

(2) the future land use projects to be served by the capital transportation projects that the TID will fund; and

(3) each land use project having transportation impacts that are mitigated by a capital transportation project to serve the TID.

(d) The Agency may assess a transportation impact fee to each land use project within a TID for which a State highway access permit is required under 19 V.S.A. § 1111. This subsection shall not apply to a development or subdivision requiring a permit under section 6081 of this title.

(e) The TID and transportation impact fee shall expire after the Secretary determines that the associated capital transportation project or projects no longer meet the approved performance standards.

§ 6106. TRANSPORTATION IMPACT FEE; FORMULA

(a) When assessing a transportation impact fee to a land use project, the Secretary shall apply a formula that reflects the performance standards for the TID, and the District Commission shall apply a formula that reflects those performance standards or the mitigation that the Commission determines is required to address the transportation impacts of the development or subdivision. In either case, the formula shall account for each of the following:

(1) the vehicle trips generated by the land use project estimated pursuant to a generally accepted methodology;

(2) the capital costs of highway infrastructure, pedestrian and bicycle facilities, public transportation, and other transportation infrastructure that benefit or mitigate the transportation impacts of the land use project;

(3) conditions not attributable to the transportation impacts of the land use project including forecasted growth in background traffic and existing infrastructure and capacity deficiencies;

(4) the proportional share of the capital costs of transportation infrastructure that provides benefit to or is attributable to the transportation impacts of the land use project and determined pursuant to a reasonably accepted methodology; and

(5) other funding sources available to finance the capital transportation project.

(b) When determining a transportation impact fee under this section for a land use project, the Secretary or the District Commission may adjust the result of the formula to account for one or more of the following:

(1) a traffic allocation, if any, set for the land use project by a prior permit;

(2) the net change in vehicle trip generation of a proposed land use project considering pass-by-trips and the amount of traffic already generated by the tract of land on which the land use project is to be located;

(3) municipal traffic impact fees paid by the applicant to the extent that those fees fund improvements on which the transportation impact fee is based;

(4) the fair market value of dedications of land, interests in land or transportation infrastructure improvements provided by the developer to mitigate offsite traffic impacts;

(5) TDM programs offered by the applicant that reduce vehicle trips; and

(6) the siting of a proposed land use project in a downtown, village center, new town center, growth center, Vermont neighborhood, or neighborhood development area designated under 24 V.S.A. chapter 76A.

(c) A transportation impact fee for one or more capital transportation projects in a TID shall not exceed the portion of the cost of each capital transportation project that is required to mitigate the transportation impacts of the land use project and shall not include costs attributable to the operation, administration, or maintenance of the capital transportation project.

(d) An applicant may choose to fund the entire cost of a capital transportation project. An applicant for a permit under this chapter who chooses to fund the entire cost of a capital transportation project may request and the District Commission may authorize reimbursement in accordance with subsection 6104(a) of this title.

(e) In assessing a transportation impact fee to an applicant under this subchapter, the Agency or District Commission shall require the applicant to pay the transportation impact fee prior to commencement of construction of the applicant's land use project and shall not require the applicant to delay commencement of construction of that project until construction of each capital transportation project for which the fee was assessed, unless the Agency or District Commission determines that the capital transportation project must first be built to address a transportation safety issue caused or exacerbated by the land use project. If a land use project is to be constructed in

stages, the Agency or District Commission may approve payment of a proportionate amount of the fee prior to commencement of construction on each stage.

§ 6107. TRANSPORTATION IMPROVEMENT DISTRICT FUND

(a) There is created a special fund within the transportation fund known as the Transportation Improvement District Fund. The Agency shall deposit into the Fund each transportation impact fee it receives under this subchapter. The Agency shall administer the Fund.

(b) Balances in the Fund shall be expended only for the purposes authorized in this subchapter and shall not be used for the general obligations of government. All balances in the Fund at the end of any fiscal year shall be carried forward and remain within the Fund. Interest earned by the Fund shall be deposited in the Fund.

(c) The Agency shall provide to the Treasurer an annual accounting of each TID and associated transportation impact fee for that district showing the source, the amount collected, each project that was funded or that will be funded with the fee, and the amount expended.

§ 6108. PAYMENT OF FEES

(a) An applicant shall pay a transportation impact fee assessed under this subchapter to the Agency, except that a District Commission may direct an applicant to pay a transportation impact fee to a municipality if the impacts of

the applicant's development or subdivision are limited to municipal highways and rights-of-way or other municipal transportation facilities.

(b) A municipality receiving a transportation impact fee under this subchapter shall place the fee into a separate account, with balances in the account carried forward from year to year and remaining within the account. Interest earned by the account shall be deposited into the account. The municipality shall provide to the voters an annual accounting of each fee received under this subchapter showing the source, the amount of each fee received, and each project that was funded or will be funded with the fee.

§ 6109. UNSPENT FEE AMOUNTS; REFUNDS

Within 15 years from the date of payment, a fee assessed under this subchapter shall be spent on the capital transportation project or projects in the appropriate TID or on the appropriate capital transportation project for which the fee was paid. If the Agency or municipality to which the fee was paid does not spend all or portion of the fee collected on the appropriate capital transportation project or projects, the applicant or its successors may apply to the Agency or municipality for a refund of the proportionate share of that fee within one year of the date on which the applicant's right to claim the refund accrued.

§ 6110. APPEALS

(a) A person aggrieved by a decision of the Secretary regarding the establishment of a TID or the transportation impact fee for the TID may appeal to the Civil Division of the Superior Court under Rule 74 of the Vermont Rules of Civil Procedure.

(b) A permit issued by the Agency under 19 V.S.A. § 1111 may be appealed in accordance with 19 V.S.A. § 5.

(c) Appeal of an act or decision of a District Commission under this subchapter shall be pursuant to section 6089 of this title.

§ 6111. RULEMAKING

The Board and the Agency may adopt rules to implement the provisions of this subchapter.

Sec. 3. 19 V.S.A. § 1111(a) is amended to read:

(a) Permits. Permits must be obtained by anyone or any corporation wishing to use as described in this section any part of the highway right-of-way on either the ~~state~~ State or town system. Notwithstanding any other statutory requirement, a permit shall be required for any use of any highway right-of-way, consistent with the provisions of this section. In issuing a permit under this section for a use of a State highway right-of-way, the Secretary may require a transportation impact fee in accordance with 10 V.S.A. chapter 151, subchapter 5. ~~The~~ Except for this transportation impact fee authority of the Secretary, the authority given to the board Board, the ~~secretary~~ Secretary, and

the ~~attorney general~~ Attorney General under this section shall also apply to the legislative bodies of towns, or their designees.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

Date Governor signed bill: May 27, 2014