

1 H.740

2 Introduced by Representatives Bissonnette of Winooski and Ellis of

3 Waterbury

4 Referred to Committee on

5 Date:

6 Subject: Conservation and development; land use; natural resources;

7 transportation; Act 250; access permits

8 Statement of purpose of bill as introduced: This bill proposes to authorize the  
9 District Commissions under 10 V.S.A. chapter 151 (Act 250) and the Agency  
10 of Transportation through highway access permits to assess fees to fund  
11 improvements to address the transportation impacts of development projects.

12 An act relating to transportation improvement fees

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

14 Sec. 1. FINDINGS AND INTENT

15 (a) The General Assembly finds that:

16 (1) To issue a land use permit under 10 V.S.A. chapter 151 (Act 250), a  
17 District Commission must make required findings, including that the proposed  
18 development and subdivision does not cause unreasonable traffic congestion or  
19 unsafe traffic conditions and does not materially interfere with or jeopardize

1 the function, safety, and efficiency of Vermont's public highway and  
2 transportation systems.

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

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

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

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

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

20 (1) to establish an alternative to "the last-one-in" approach that enables  
21 the costs to mitigate transportation impacts to be allocated proportionally

1 among the State and the development projects that have traffic impact and that  
2 will benefit from the mitigation;

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

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

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

13 Subchapter 5. Transportation Improvement Fees

14 § 6101. PURPOSE

15 The purpose of this subchapter is to provide a mechanism to allocate the  
16 costs to mitigate the impacts of land use projects to the State transportation  
17 system in a manner that is equitable and that supports the planning goals of  
18 24 V.S.A. § 4302.

19 § 6102. DEFINITIONS

20 As used in this subchapter:

21 (1) "Agency" means the Agency of Transportation.

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

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

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

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

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

11           (4) “Capital transportation project” means:

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

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

17                           (i) the State transportation system; and

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

19           (5) “District Commission” shall have the same meaning as under section  
20 6001 of this title except that the term also shall include the Board in exercising  
21 its authority to make findings of fact and conclusions of law.

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

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

5           (8) “Performance standards” means quantitative or qualitative indicia of  
6 the ability of transportation infrastructure to achieve an objective such as  
7 reducing major crashes or accommodating a volume of traffic at a specified  
8 average delay per vehicle. The term includes indicia that are specific to the  
9 area in which transportation infrastructure is or is to be located.

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

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

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

19           (12) “Transportation fee” means a fee that is assessed to a land use  
20 project as a condition of a permit issued under this chapter or a State highway

1 access permit under 19 V.S.A. § 1111 and is used to support any portion of the  
2 costs of a capital transportation project.

3 (13) “Transportation Improvement District” or “TID” means a defined  
4 geographic area that is served by one or more capital transportation projects  
5 included in the Capital Transportation Program and for which the Agency has  
6 established a transportation fee under this subchapter.

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

11 § 6103. AUTHORITY

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

14 § 6104. TRANSPORTATION FEE; DISTRICT COMMISSION

15 (a) A District Commission may require payment of a transportation fee in  
16 accordance with section 6106 of this title to fund, in whole or in part,  
17 improvements to mitigate the transportation impacts of a proposed  
18 development or subdivision. The Agency shall review the application and  
19 recommend to the District Commission whether to require mitigation of the  
20 transportation impacts of the development or subdivision. The District

1 Commission may require an applicant to pay the entire cost of a capital  
2 transportation project.

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

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

10 § 6105. TRANSPORTATION IMPROVEMENT DISTRICT AND FEE;

11 AGENCY OF TRANSPORTATION

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

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

20 (1) In preparing the proposal, the Agency shall consult with each  
21 regional planning commission in which the TID will be located on the

1 geographic extent of the TID, the land use assumptions to be used, and the  
2 consistency of the proposal with each applicable regional plan.

3 (2) The Agency's proposal shall identify the recommended geographic  
4 extent of the TID, the proposed performance standards within the TID, and the  
5 proposed transportation fee. The performance standard for a TID shall be  
6 suitable for the area in which the TID is located.

7 (3) On issuance of the proposal, the Agency shall provide notice of a  
8 public hearing on the proposal before the Secretary. The notice shall include  
9 the date and location of the hearing, a description of the TID including the  
10 transportation infrastructure project or projects, the TID's geographic extent,  
11 and the proposed transportation fee. The Agency shall provide the notice to  
12 each property owner within the TID, the municipal legislative body and  
13 municipal and regional planning commissions for the area in which the TID is  
14 located, and shall publish the notice on its web page and in a newspaper of  
15 general circulation in the geographic area of the TID. The date of the public  
16 hearing shall be not less than 30 days after issuance and publication of the  
17 notice.

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

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

5           (c) The boundaries of the TID shall include:

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

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

10          (d) The Agency may assess a transportation fee to each land use project  
11 within a TID for which a State highway access permit is required under  
12 19 V.S.A. § 1111. This subsection shall not apply to a development or  
13 subdivision requiring a permit under section 6081 of this title.

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

17          § 6106. TRANSPORTATION FEE; FORMULA

18          (a) When assessing a transportation fee to a land use project, the Secretary  
19 shall apply a formula that reflects the performance standards for the TID, and  
20 the District Commission shall apply a formula that reflects those performance  
21 standards or the mitigation that the Commission determines is required to

1 address the transportation impacts of the development or subdivision. In either  
2 case, the formula shall account for each of the following:

3 (1) the estimated vehicle trips generated by the land use project;

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

7 (3) the planning and administration costs related to administration of the  
8 transportation fee and, if established, the TID; and

9 (4) the capacity necessary to meet the performance standards under  
10 existing conditions, including background traffic not related to the land use  
11 project.

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

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

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

19 (3) TDM programs offered by the applicant that reduce vehicle trips;

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

4           (5) any other factor that the Agency or District Commission finds  
5           appropriate.

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

11           (d) An applicant may choose to fund the entire cost of a capital  
12           transportation project.

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

1     § 6107. TRANSPORTATION IMPROVEMENT DISTRICT FUND

2           (a) The Transportation Improvement District Fund is created as a special  
3     fund in the State treasury. The Agency shall deposit into the Fund each  
4     transportation fee it receives under this subchapter. The Agency shall  
5     administer the Fund.

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

11          (c) The Agency shall provide an annual accounting to the Treasurer of each  
12    transportation fee showing the source, amount collected, and each project that  
13    was funded or that will be funded with the fee. Within 15 years from the date  
14    of fee payment, the Agency shall spend the fee on the capital transportation  
15    project or projects in the appropriate TID or on the appropriate capital  
16    transportation project for which the fee was paid. If the Agency does not  
17    spend all or portion of the fee collected on the appropriate capital  
18    transportation project or projects, the applicant or its successors may apply to  
19    the Agency for a refund of the proportionate share of that fee within one year  
20    of the date on which the applicant's right to claim the refund accrued.

1     § 6108. PAYMENT OF FEES

2           (a) An applicant shall pay a transportation fee assessed under this  
3     subchapter shall be paid to the Agency, except that a District Commission may  
4     direct an applicant to pay a transportation fee to another fund if the impacts of  
5     the applicant's development or subdivision impacts are limited to municipal  
6     highways and rights-of-way or other municipal transportation facilities. The  
7     Agency may require payment of a transportation fee prior to issuance of a State  
8     highway access permit under 19 V.S.A. § 1111. A District Commission may  
9     require payment of a transportation fee prior to issuance of a land use permit  
10    under this chapter.

11          (b) A District Commission or the Agency respectively may authorize the  
12    payment of a transportation fee on installment at the rate of interest established  
13    pursuant to 9 V.S.A. § 41a or such other rate as the Treasurer may approve.

14          (c) A District Commission or the Agency respectively may require a letter  
15    of credit or other security to guarantee future payment of a transportation fee or  
16    otherwise guarantee the construction of a capital transportation project.

17    § 6109. UNUSED PORTION REFUNDED

18          The Agency shall proportionally refund the unexpended portion of  
19    transportation fees collected for a capital transportation project within one year  
20    of the completion of the project's construction if the actual expense incurred

1 by the State on the capital transportation project is less than the fees collected  
2 for the project.

3 § 6110. APPEALS

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

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

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

12 § 6111. RULEMAKING

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

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

16 (a) Permits. Permits must be obtained by anyone or any corporation  
17 wishing to use as described in this section any part of the highway right-of-way  
18 on either the ~~state~~ State or town system. Notwithstanding any other statutory  
19 requirement, a permit shall be required for any use of any highway  
20 right-of-way, consistent with the provisions of this section. In issuing a permit  
21 under this section for a use of a State highway right-of-way, the Secretary may

1 require a transportation fee in accordance with 10 V.S.A. chapter 151,  
2 subchapter 5. ~~The~~ Except for this transportation fee authority of the Secretary,  
3 the authority given to the ~~board~~ Board, the ~~secretary~~ Secretary, and the  
4 ~~attorney general~~ Attorney General under this section shall also apply to the  
5 legislative bodies of towns, or their designees.

6 Sec. 4. STUDY; TRANSPORTATION IMPROVEMENT DISTRICTS;

7 REPORT

8 (a) Creation. The Working Group on Transportation Improvement Districts  
9 (the Working Group) is created to study and report to the General Assembly on  
10 the role of regional planning commissions (RPC) in the establishment of  
11 transportation improvement districts (TID) and on other issues related to TIDs  
12 as set forth in this section.

13 (b) Membership. The Working Group shall be composed of the following  
14 15 members:

15 (1) the Secretary of Transportation or designee, who shall chair the  
16 committee;

17 (2) the Secretary of Commerce and Community Development or  
18 designee;

19 (3) the Commissioner of the Department of Housing and Community  
20 Development or designee;

21 (4) the Chair of the Natural Resources Board or designee;

1           (5) two members of the Vermont Planning and Development  
2           Association appointed by the Association;

3           (6) a member designated by the Vermont League of Cities and Towns;

4           (7) two current members of the House of Representatives appointed by  
5           the Speaker of the House;

6           (8) two current members of the Senate appointed by the Committee on  
7           Committees;

8           (9) two persons engaged in the business of land development appointed  
9           by the Governor;

10           (10) one member appointed by the Governor to represent environmental  
11           and smart-growth organizations; and

12           (11) one member designated by the Vermont Chamber of Commerce.

13           (c) Powers and duties. The Working Group shall study the role of RPCs in  
14           establishing TIDs and associated transportation performance standards and  
15           transportation fees and other issues related to TIDs, including each of the  
16           following:

17           (1) the statutes applicable to RPCs and the administrative  
18           responsibilities and technical capabilities of RPCs in relation to the planning  
19           and administrative requirements necessary to establish and manage a TID and  
20           associated transportation fees;

1           (2) the requirements and procedures associated with municipal  
2           development review and impact fees under 24 V.S.A. chapters 117 and 153  
3           and how RPCs could assist with coordinating between these local land use  
4           permitting activities and the establishment of TIDs by the State;

5           (3) the appropriate scale, size, and performance standards for TIDs; and

6           (4) potential incentives to encourage development in a TID in  
7           accordance with the goals of 24 V.S.A. § 4302.

8           (d) Assistance. The Working Group shall have the administrative,  
9           technical, and legal assistance of the Agencies of Transportation and of  
10           Commerce and Community Development and of the Natural Resources Board.

11           (e) Report. On or before December 1, 2014, the Working Group shall  
12           submit a written report to the House Committees on Commerce and Economic  
13           Development, on Natural Resources and Energy, and on Transportation, and  
14           the Senate Committees on Economic Development, Housing, and General  
15           Affairs, on Natural Resources and Energy, and on Transportation with the  
16           Working Group's findings and any recommendations for legislative action.  
17           This report shall include recommendations for consideration by the General  
18           Assembly on the role of RPCs and municipalities in the planning and  
19           establishment of TIDs and associated transportation performance standards and  
20           transportation fees and any additional capabilities, resources, and statutory

1 changes the Working Group concludes would be necessary to support the  
2 recommended role.

3 (f) Meetings.

4 (1) The Secretary of Transportation shall call the first meeting of the  
5 Working Group to occur on or before July 1, 2014.

6 (2)(A) A majority of the members of the Working Group shall be  
7 physically present at the same location to constitute a quorum.

8 (B) A member may vote only if physically present at the meeting  
9 location.

10 (C) Action shall be taken only if there is both a quorum and a  
11 majority vote of the members physically present and voting.

12 (3) The Working Group shall cease to exist on February 15, 2015.

13 (g) Reimbursement.

14 (1) For attendance at meetings during adjournment of the General  
15 Assembly, legislative members of the Working Group shall be entitled to per  
16 diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406  
17 for no more than four meetings.

18 (2) Other members of the Working Group who are not employees of the  
19 State of Vermont and who are not otherwise compensated or reimbursed for  
20 their attendance shall be entitled to per diem compensation and reimbursement  
21 of expenses pursuant to 32 V.S.A. § 1010 for no more than four meetings. The

1 costs of compensation and reimbursement under this subdivision (2) shall be  
2 allocated equally to the Agencies of Transportation and of Commerce and  
3 Community Development and of the Natural Resources Board.

4 Sec. 5. EFFECTIVE DATES

5 (a) This section and Sec. 4 (study; regional planning commissions;  
6 transportation improvement districts; report) shall take effect on passage.

7 (b) The remainder of this act shall take effect on July 1, 2014.