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MEMORANDUM

To: House Transportation Committee

From: David G. White

Date: February 18, 2014

Re: H 740 – Notes of Testimony on Feb. 5, 2014

Per your request, here is a rough outline of the testimony I gave on February 5, 2014 regarding H-740, with some additions.

Introduction

1) I support the concept, but it must be done right. The devil is in the details. And in this legislation in particular, if the details aren't right, it could be a disaster.
2) Development community's big fear: it will turn into an added cost with no off-setting savings. That is, we will be required to do most of the same traffic improvements and pay a fee. Paying twice is not fair and will slow economic development.
3) There are many issues regarding this concept. My testimony is focused on the big picture, not the details. There is much more I could say beyond what is included in this.

Key Concepts

1) "Fair Share" – Developments that will be assessed a TID impact fee must only pay for the costs attributable to their direct impact. New developments in a TID that pay a TID impact fee are not responsible for (and should not pay for):
    a. pre-existing problems caused by existing traffic;
    b. impacts inside the TID caused by projected (or actual) new development located outside the TID;

c. impacts inside the TID caused by projected (or actual) new development located inside the TID that is not subject to the fee due to not triggering the need for Act 250 or Section 1111 permits.

2) Trip Generation – Developments should only pay based on new trips.
   a. Any pre-existing trips on the site (whether previously permitted or "grandfathered" from before current permit systems) should be credited against the total trips to be generated by the new project.
   b. All "pass-by" trips should be credited against the total trips.

3) Credits for improvements constructed by the developer – If a developer constructs improvements within the TID, the full cost of those improvements (including soft costs, such as design, permitting, etc) should be credited against the developer's TID impact fee.

   This credit should apply whether or not the constructed improvements are in the capital plan for the TID. That's because the TID's capital plan is likely to be based more on governmental budget constraints than on what ideally would be built if the government could afford it. If the developer is constructing improvements that are not in the plan due to such budget constraints, but are still desirable, they should be credited.

4) Concurrency – It is a core element of the TID concept that concurrency is not required. Developments must be allowed to proceed regardless of when the VTrans constructs the improvements.

TID Impact Fee Formula

Presumably the fee will be based on a total budget for the estimated costs of the planned improvements. These costs will be allocated proportionally among the various categories of traffic, including:

a. Existing trips and existing problems with the road (fixing some of which may be in the plan, others not);
b. Development in the TID that will trigger Act 250 and/or Section 1111 permit;
c. Development in the TID that will not trigger Act 250 and/or Section 1111 permit;
d. Development outside the TID

This raises a number of issues:

a. Because new developments being assessed a TID Impact Fee will only pay for their proportionate share of costs, and there is no identified mechanism to obtain impact fees from projects located outside the TID or inside the TID that do not trigger Act 250 or Section 1111, it effectively means the state will pick up the costs for these two categories as well as for pre-existing traffic. Of course, the state picks up much (all?) of these costs today anyway, so that may not be a problem.

b. What methodology will be used to estimate future growth in categories b., c., and d., above? If growth is underestimated the fee will be too high, if future growth is overestimated the fee will be too low.
c. What is the time period over which growth will be projected? 5 years? 10? 15? 20? Why select that period?
d. Does the fee adjust over time (annually?) with inflation or some other factor?
e. Is the fee based on PM peak hour trips? AM peak hour trips? Saturday peak hour trips? Average daily trips? Annual trips? Is the same metric used in every TID? Why or why not?
f. If a project creates mostly off-peak trips should it pay the same per-trip fee as one that has mostly peak hour trips?
g. If more growth occurs than projected at the time the fee was developed, it wouldn't be fair to stop assessing fees simply because enough money had been collected. Later developers shouldn't get a free ride. Yet if VTrans collects extra funds, what happens to the money? It certainly shouldn't go into unrelated projects outside the TID. Do early developers get proportionate rebates?
h. Conversely, if less development occurs than projected, it's not fair to retroactively assess extra fees to early projects. They have proceeded with their projects based on a budget that includes the original fee. Does VTrans go ahead and build the improvement and hope to assess fees in the future to other developments as they occur and eventually recoup the portion originally allocated to new developments in the TID?

<u>Other Comments</u>

1) Previously installed improvements – VTrans proposes to continue to assess TID impact fees so long as there is remaining capacity resulting from improvements it has installed. VTrans indicated that to the extent VTrans pays up-front a portion of the costs allocated to future development in the TID district it will in effect be a "loan" that VTrans will expect to be repaid through TID Impact Fees from future development. This raises a number of questions:
    a. Collecting TID Impact Fees after the fact will require each TID district (and perhaps each TID project, in the event there are multiple projects within a single TID district) to have separate accounting that will be maintained for years until all fees are collected and the portion allocated to new development in the TID is fully paid. How will this be done?
    b. What if the total portion of the costs allocated to projects in the TID is collected while capacity remains? I presume VTrans will then cease collecting fees, since the sole justification for the fees is to pay for direct impacts from projects, not to make a profit.
2) TID size – TIDs should be relatively small. In the vast majority of circumstances, development projects have diminishing traffic impacts the further away from the project a problem section of road is located. For example, a project that generates 200 trips in the PM peak hour may have a large impact (say, 150 of those trips) through an intersection located 500 feet away, but a much smaller impact (say 50 trips) at an intersection 3,000 feet away as vehicles turn off the road onto side

streets, and a tiny impact even further away. It is not fair to assess a fee to a project based on minor remote impacts that might be included in a large TID, unless there was a complex formula that assessed a different impact fee for each improvement within the TID based on trips at the location of each planned improvement, rather than a single overall TID impact fee rate. At first blush such a formula seems impractical. Of course, the downside of small TIDs is that fewer development projects will be included and the state will have to pick up the share of costs allocable to those projects outside the TID.