

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

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

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

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

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

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

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

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

13 (d) The Agency may assess a transportation fee to each land use project
14 within a TID for which a State highway access permit is required under
15 19 V.S.A. § 1111. This subsection shall not apply to a development or
16 subdivision requiring a permit under section 6081 of this title.

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

20 § 6106. TRANSPORTATION FEE; FORMULA

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

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

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

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

13 (4) the capacity necessary to meet the performance standards under
14 existing conditions, including background traffic not related to the land use
15 project.

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

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

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

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

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

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

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

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

16 (e) In assessing a transportation fee to an applicant under this subchapter,
17 the Agency or District Commission shall require the applicant to pay the
18 transportation fee prior to commencement of construction of the applicant's
19 land use project and shall not require the applicant to delay commencement of
20 construction of that project until construction of each capital transportation
21 project for which the fee was assessed, unless the Agency or District

1 Commission determines that the capital transportation project must first be
2 built to address a transportation safety issue caused or exacerbated by the land
3 use project.

4 § 6107. TRANSPORTATION IMPROVEMENT DISTRICT FUND

5 (a) There is created a special fund within the transportation fund known as the
6 Transportation Improvement District Fund.~~The Transportation Improvement~~
7 ~~District Fund is created as a special fund in the State treasury.~~ The Agency
8 shall deposit into the Fund each transportation fee it receives under this
9 subchapter. The Agency shall administer the Fund.

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

15 (c) The Agency shall provide an annual accounting to the Treasurer of each
16 transportation fee showing the source, amount collected, and each project that
17 was funded or that will be funded with the fee. Within 15 years from the date
18 of fee payment, the Agency shall spend the fee on the capital transportation
19 project or projects in the appropriate TID or on the appropriate capital
20 transportation project for which the fee was paid. If the Agency does not
21 spend all or portion of the fee collected on the appropriate capital

1 transportation project or projects, the applicant or its successors may apply to
2 the Agency for a refund of the proportionate share of that fee within one year
3 of the date on which the applicant's right to claim the refund accrued.

4 § 6108. PAYMENT OF FEES

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

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

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

20 ~~§ 6109. UNUSED PORTION REFUNDED~~

1 ~~The Agency shall proportionally refund the unexpended portion of~~
2 ~~transportation fees collected for a capital transportation project within one year~~
3 ~~of the completion of the project's construction if the actual expense incurred~~
4 ~~by the State on the capital transportation project is less than the fees collected~~
5 ~~for the project.~~

6 § 6110. APPEALS

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

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

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

15 § 6111. RULEMAKING

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

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

19 (a) Permits. Permits must be obtained by anyone or any corporation
20 wishing to use as described in this section any part of the highway right-of-way
21 on either the ~~state~~ State or town system. Notwithstanding any other statutory

1 requirement, a permit shall be required for any use of any highway
2 right-of-way, consistent with the provisions of this section. In issuing a permit
3 under this section for a use of a State highway right-of-way, the Secretary may
4 require a transportation fee in accordance with 10 V.S.A. chapter 151,
5 subchapter 5. The ~~Except for this transportation fee authority of the Secretary,~~
6 the authority given to the ~~board~~ Board, the ~~secretary~~ Secretary, and the
7 ~~attorney general~~ Attorney General under this section shall also apply to the
8 legislative bodies of towns, or their designees.

9 ~~Sec. 4. STUDY; TRANSPORTATION IMPROVEMENT DISTRICTS;~~

10 ~~—REPORT~~

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

16 ~~(b) Membership. The Working Group shall be composed of the following~~

17 ~~15 members:~~

18 ~~(1) the Secretary of Transportation or designee, who shall chair the~~
19 ~~committee;~~

20 ~~(2) the Secretary of Commerce and Community Development or~~
21 ~~designee;~~

1 ~~(3) the Commissioner of the Department of Housing and Community~~
2 ~~Development or designee;~~
3 ~~(4) the Chair of the Natural Resources Board or designee;~~
4 ~~(5) two members of the Vermont Planning and Development~~
5 ~~Association appointed by the Association;~~
6 ~~(6) a member designated by the Vermont League of Cities and Towns;~~
7 ~~(7) two current members of the House of Representatives appointed by~~
8 ~~the Speaker of the House;~~
9 ~~(8) two current members of the Senate appointed by the Committee on~~
10 ~~Committees;~~
11 ~~(9) two persons engaged in the business of land development appointed~~
12 ~~by the Governor;~~
13 ~~(10) one member appointed by the Governor to represent environmental~~
14 ~~and smart growth organizations; and~~
15 ~~(11) one member designated by the Vermont Chamber of Commerce.~~
16 ~~(c) Powers and duties. The Working Group shall study the role of RPCs in~~
17 ~~establishing TIDs and associated transportation performance standards and~~
18 ~~transportation fees and other issues related to TIDs, including each of the~~
19 ~~following:~~
20 ~~(1) the statutes applicable to RPCs and the administrative~~
21 ~~responsibilities and technical capabilities of RPCs in relation to the planning~~

1 ~~and administrative requirements necessary to establish and manage a TID and~~
2 ~~associated transportation fees;~~

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

7 ~~(3) the appropriate scale, size, and performance standards for TIDs; and~~
8 ~~(4) potential incentives to encourage development in a TID in~~
9 ~~accordance with the goals of 24 V.S.A. § 4302.~~

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

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

1 ~~transportation fees and any additional capabilities, resources, and statutory~~
2 ~~changes the Working Group concludes would be necessary to support the~~
3 ~~recommended role.~~

4 ~~(f) Meetings.~~

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

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

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

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

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

14 ~~(g) Reimbursement.~~

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

19 ~~(2) Other members of the Working Group who are not employees of the~~
20 ~~State of Vermont and who are not otherwise compensated or reimbursed for~~
21 ~~their attendance shall be entitled to per diem compensation and reimbursement~~

1 ~~of expenses pursuant to 32 V.S.A. § 1010 for no more than four meetings. The~~
2 ~~costs of compensation and reimbursement under this subdivision (2) shall be~~
3 ~~allocated equally to the Agencies of Transportation and of Commerce and~~
4 ~~Community Development and of the Natural Resources Board.~~

5 Sec. 5. EFFECTIVE DATES

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

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