

**H.740 – An Act Relating to Transportation Improvement Fees**

Aaron Adler, Legislative Counsel, April 23, 2014

page 1

§	<b>Bill as Passed House with Senate Transportation amendments noted in italics</b>
1	<p>This section proposes findings that summarize the transportation-related determinations that must be made to issue a permit under 10 V.S.A. chapter 151 (Act 250) and state that the case-by-case nature of Act 250 can result in an applicant’s paying the entire cost of traffic improvements that may be needed not only because of the applicant’s project but also due to background traffic or other projects.</p> <p>The section also states an intent to establish a mechanism under which the costs to mitigate transportation impacts can be allocated proportionally.</p>
2	<p>This section would add a new subchapter 5 to Act 250, entitled “Transportation Impact Fees,” summarized as follows:</p> <p>§ 6101 – States a purpose to provide a mechanism to allocate the costs to mitigate the impact of land use projects to the transportation system in a manner that is equitable and supports statutory land use planning goals.</p> <p>§ 6102 – Proposes definitions for the subchapter. Among the definitions:</p> <ul style="list-style-type: none"><li>• “Capital Transportation Program” – the multiyear transportation state transportation program approved by the General Assembly.</li><li>• “Capital transportation project” – a physical improvement to the State or municipal transportation system, including a highway, right-of-way, or transportation facility, and a study or survey relating to same.</li><li>• “Land use project” – activities requiring a land use permit under Act 250 or a highway access permit.</li><li>• “Transportation impact fee” – a fee assessed to a land use project as a condition of an Act 250 permit or State highway access permit used to support all or part of capital transportation project that will benefit or is attributable to the land use project.</li><li>• “Transportation Improvement District” or “TID” – a discrete geographic area that includes and will benefit from one or more capital transportation projects in the Capital Transportation Program and for which the Agency of Transportation (AOT) has established a transportation impact fee under the subchapter.</li></ul> <p>§ 6103 – Authorizes the Act 250 District Commissions or AOT to assess a transportation impact fee.</p> <p>§ 6104 – Proposes specific provisions on the assessment of a transportation impact fee by a District Commission.</p> <ul style="list-style-type: none"><li>• The Commission may assess such a fee to fund capital improvements needed to mitigate the impacts of a proposed project.</li><li>• AOT is to review the application and make recommendations to the Commission.</li><li>• The Commission may require an applicant to pay the entire cost of a capital transportation project and to provide for reimbursement of the applicant by subsequent Act 250 projects.</li></ul>

**H.740 – An Act Relating to Transportation Improvement Fees**

Aaron Adler, Legislative Counsel, April 23, 2014

page 2

§	<b>Bill as Passed House with Senate Transportation amendments noted in italics</b>
	<ul style="list-style-type: none"><li>• The Commission may require an Act 250 applicant within a TID to pay the impact fee established by AOT under § 6105.</li><li>• This subchapter on transportation impact fees will apply to existing permit conditions under which a District Commission has reserved continuing jurisdiction to conduct proceedings that may result in assessment and collection of impact fees to support transportation improvements.</li><li>• This authority is in addition to the District Commissions' other authority.</li></ul> <p><b>§ 6105</b> – Proposes specific provisions on the establishment of a TID and transportation impact by AOT.</p> <ul style="list-style-type: none"><li>• AOT may establish a TID and transportation impact fee if one or more capital transportation projects in the Capital Transportation Program will provide capacity that benefits one or more future land use projects within a discrete geographic area.</li><li>• In establishing a TID and associated fee, AOT must employ a public process that includes the following:<ul style="list-style-type: none"><li>○ Preparation of the proposed TID and associated fee in consultation with the regional planning commission, the municipality, and members of the public in the area of the proposed TID.</li><li>○ Preparation of a transportation infrastructure plan for the capital transportation project that identifies the vehicular and non-vehicular transportation needs of the proposed TID.</li><li>○ Issuance of a proposal that identifies the TID's recommended area, the proposed performance standards within the TID, and the proposed transportation impact fee. The fee must reflect a rational nexus between the needs that the transportation infrastructure plan is designed to meet and the benefits provided or impacts attributable to the land use projects that will pay the fee.</li><li>○ Notice and conduct of a public hearing not less than 30 days after publication of the notice.</li><li>○ After the hearing, the Secretary of Transportation may approve, approve with revisions, or deny the TID proposal. Approval will establish the TID and associated impact fee.</li></ul></li><li>• In establishing the TID, AOT must consider existing and planned development patterns, future land use projects to be served by the capital transportation project, and each land use project with traffic impacts mitigated by that transportation project.</li><li>• AOT may assess the transportation impact fee to each land use project within a TID for which a State highway access permit is required, except that, if the project is under Act 250, the transportation impact fee would be assessed by the District Commission.</li></ul> <p><b>§ 6106</b> – Requires the use of a formula to determine a transportation impact fee under the subchapter.</p> <ul style="list-style-type: none"><li>• The proposed statute does not state the formula but requires that the formula include the following elements:<ul style="list-style-type: none"><li>○ the vehicle trips to be generated by a land use project;</li><li>○ the capital costs of the transportation infrastructure that will benefit or is needed to mitigate the transportation impacts of the</li></ul></li></ul>

**H.740 – An Act Relating to Transportation Improvement Fees**

Aaron Adler, Legislative Counsel, April 23, 2014

page 3

§	<b>Bill as Passed House with Senate Transportation amendments noted in italics</b>
	<ul style="list-style-type: none"><li>land use project;<ul style="list-style-type: none"><li>○ conditions not attributable to the land use project, including background traffic and existing infrastructure deficiencies;</li><li>○ the proportionate share of the costs of transportation infrastructure that benefits or is attributable to the land use project; and</li><li>○ other funding sources available to finance the capital transportation project.</li></ul></li><li>• The result of the formula may be adjusted by several factors listed in the proposed statute, such as a traffic allocation for the land use project set by a prior permit; municipal traffic impact fees paid by the applicant; the siting of the land use project in a designated area under 24 V.S.A. 76A (e.g., designated downtown or growth center); and others.</li><li>• The proposed statute requires payment of the fee before building the land use project but the land use project itself is not to be delayed until the transportation infrastructure is built, unless such a delay is necessary because of transportation safety.</li></ul> <p>§ 6107 – Establishes a Transportation Improvement District Fund within the Transportation Fund, administered by AOT.</p> <ul style="list-style-type: none"><li>• AOT must deposit each fee it receives into the TID Fund.</li><li>• Balances may be used only for the purposes of subchapter 5 (transportation impact fees) and not for the general obligations of the State. Balances at the end of a fiscal year are carried forward. Interest earned is deposited into the TID Fund.</li><li>• AOT is to provide annual accounting of the TID Fund to the Treasurer. <i>Senate Transportation’s first proposal amendment clarifies the language so that the accounting is provided to the State Treasurer and does not imply that there is a treasurer for each TID.</i></li></ul> <p>§ 6108 – Requires applicants to pay transportation impact fees to AOT, except that a District Commission may direct an applicant to pay an impact fee to a municipality if the impacts of the applicant’s project are limited to municipal transportation facilities. <i>Senate Transportation’s second proposal of amendment would require the municipality to place such a fee into a separate account, with balances carried forward from year to year. The municipality would provide the voters with an annual accounting.</i></p> <p>§ 6109 – Provides for refunds of unspent fee amounts after 15 years with the interest earned on the unspent fee amount. <i>Senate Transportation’s third proposal of amendment would remove the requirement to include interest in the refund.</i></p> <p>§ 6110 – Provides for appeals as follows:</p> <ul style="list-style-type: none"><li>• An AOT decision to establish a TID and associated impact fee is appealable to the Civil Division of the Superior Court.</li><li>• AOT’s assessment of a transportation impact fee in a highway access permit is appealable under the existing avenue for appeal of the access permit, which is first to the Transportation Board and then to the Civil Division.</li></ul>

**H.740 – An Act Relating to Transportation Improvement Fees**

Aaron Adler, Legislative Counsel, April 23, 2014

page 4

§	<b>Bill as Passed House</b> <i>with Senate Transportation amendments noted in italics</i>
	<ul style="list-style-type: none"><li>• A District Commission’s assessment of a transportation impact fee in an Act 250 permit is appealable to the Environmental Division of the Superior Court.</li></ul> <p>§ <b>6111</b> – Authorizes the Natural Resources Board and AOT to adopt rules to implement the subchapter.</p>
3	The section amends the statute under which AOT issues highway access permits to state that, in issuing such a permit for a use of a State highway right-of-way, AOT may require a transportation impact fee in accordance with the new subchapter added in Sec. 2.
4	The act would take effect on July 1, 2014 and would be retitled “An act relating to transportation impact fees.”