SPONSOR: Rep. Bush & Rep. Michael Smith & Sen. Walsh
Reps. K. Johnson, Lambert, Longhurst, Osienski, Schwartzkopf, D. Short, K. Williams, Wilson-Anton, Yearick; Sens. Buckson, Mantzavinos, Paradee, Pettyjohn, Poore

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 103

AN ACT TO AMEND TITLE 17 OF THE DELAWARE CODE RELATING TO TRAFFIC IMPACTS OF DEVELOPMENT.

WHEREAS, § 131, Title 17 of the Delaware Code places many of Delaware's public roadways under the absolute care, management and control of the Delaware Department of Transportation (DelDOT), including an obligation to bring said roadways up to proper standards with due consideration of the immediate needs of certain areas; and

WHEREAS, many existing roadways do not meet the current functional classification standards and do not include proper pedestrian, traffic signal and intersection facilities; and

WHEREAS, the Delaware Strategies for State Policies and Spending identifies various Investment levels to help prioritize State infrastructure finding, with Investment Levels 1 and 2 representing areas of highest priority; and

WHEREAS, § 507, Title 17 of the Delaware Code authorizes DelDOT to enact rules and regulations to coordinate improvements to the transportation network, including acquisition of additional rights-of-way; and

WHEREAS, a statewide transportation impact fee furthers the objective of bringing public transportation infrastructure up to State standards in areas where State infrastructure investment is prioritized by providing DelDOT with additional resources to utilize, plan, and implement roadway improvements in a more comprehensive, coordinated way; and

WHEREAS, a statewide transportation impact fee encourages growth within areas prioritized for development; and

WHEREAS, a statewide transportation impact fee provides predictability by identifying upfront costs that are known at the inception of a development project; and

WHEREAS, a statewide transportation impact fee ensures that development contributes a reasonable, responsible share of the transportation impact.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend § 507, Title 17 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 507. Coordinating new development with local transportation improvements.

(a) Legislative findings. — (1) Under Chapters 1 and 5 of this title, the Department of Transportation reviews and approves entrance design and internal transportation network requirements for new and existing real property developments. This review process ~~often identifies~~ can identify necessary additional improvements to the local transportation system to accommodate the predicted impact of the new development. Under normal conditions, the new development may not in and of itself cause the need for new local transportation improvements, but instead acts as a triggering event in combination with preexisting traffic growth patterns in the area. The Department of Transportation is best-positioned to assess statewide transportation improvements that will be needed based on existing and projected growth patterns.

(b) Implementation. — The Department of Transportation is authorized and directed to enact rules and regulations to complement its existing authority under Chapters 1 and 5 of this title relating to new developments and their impacts on the local transportation network, as follows:

(1) By January 1, 2024, the Department shall establish a transportation impact fee to apply within areas of the State designated in the Strategies for State Policies and Spending as an Investment Level 1 or 2 Area and that are not located within an established local or regional Transportation Improvement District.

a. The Department shall determine the transportation impact fee based on the reasonable proportionate share of new development of the projected total costs to bring applicable transportation infrastructure up to State standards. The fee shall be assessed on a net per trip basis in accordance with the Trip Generation Manual published by the Institute of Transportation Engineers, latest edition (Trip Generation Manual). The Department may utilize deductive or inductive methodologies in determination of the impact fee. The Department shall publish the formula used to calculate the transportation impact fee under this paragraph and shall reevaluate the formula every 5 years.

b. The transportation impact fee is intended to fund off-site improvements related to bringing existing transportation infrastructure, including deficient pedestrian facilities and substandard signal and intersection facilities, up to current State standards, including acquisition of applicable rights-of-way and easements. The Department must use any transportation impact fee collected to fund improvements in the same county as the development paying the fee. A development remains responsible for access and entrance improvements directly to

its site, including auxiliary lanes as required by the Department. The Department will acquire any necessary right-of-way and easements required under this section.

c. A development that generates less than 3,000 net vehicle trips per day under the Trip Generation Manual or as approved by the Department of Transportation and that is located within an area described in paragraph (b)(1) of this section may not be required by the Department to perform a traffic impact study but must pay the transportation impact fee.

d. A development that performs a traffic impact study and implements off-site improvements beyond the direct site access and applicable auxiliary lanes may credit the design, construction, right-of-way acquisition costs, and traffic impact study costs against the required transportation impact fee.

(2) The regulations must outline the procedures for the Department's acquisition of rights-of-way and easements necessary to bring transportation infrastructure within an area described in paragraph (b)(1) of this section up to State standards. The Department's timing in acquiring rights-of-way and easements under this subsection may not delay or prevent a development.

~~(1)~~ (3) If the predicted impact of ~~a~~ new development ~~creates~~ indicates a need for additional improvements within the local transportation ~~network~~ network, beyond improvements necessary to bring transportation infrastructure up to State standards, and for which additional rights-of-way must be acquired, the regulations shall outline the procedures for the use of the Department's powers under § 137 of this title for this purpose, using contributed funds from the entity triggering the need. Any rights-of-way and easements required to bring transportation infrastructure up to State standards will be acquired by the Department.

~~(2)~~ a. In using this authority, such additional improvements shall be limited to those that do not implicate the State's ability to comply with the air quality conformity regulations of the federal Clean Air Act [42 U.S.C. § 7401 et seq.].

~~(3)~~ b. ~~Furthermore, the~~ The use of the authority granted pursuant to this section is limited to those geographic areas defined by the State's land use policies as appropriate for the type and extent of the proposed development.

(4) As part of the approval process for projects built pursuant to this ~~authority,~~ section, the Department shall consult with state and local governmental representatives in the area of the proposed improvements. The Department shall also establish procedures for public notice and comment on the potential impacts of the development and the proposed changes to the local transportation network.

(5) The regulations shall ~~also~~ provide for 2 alternative methods of constructing the necessary improvements.

a. ~~The preferred alternative shall be~~ The Department may enter into an agreement with the entity seeking development approval to assume direct responsibility for planning, design, inspection, and construction of the improvements. At a minimum, the agreement shall also include terms giving the Department appropriate provisions for quality assurance and quality control of the construction of the additional local improvements.

b. If the development is eligible for and pays a transportation impact fee, the Department ~~determines in its discretion that such an agreement is not feasible and practical under the circumstances, it may instead~~ may assume responsibility for the scheduling, planning, design, construction, and inspection of ~~the off-site~~ improvements as ~~a regular Department project, to be wholly funded by the entity seeking development approval.~~ part of a comprehensive statewide plan for highway improvements.

SYNOPSIS

Transportation infrastructure is critical to the safe and efficient movement of people as well as goods and services throughout the State. The Delaware Strategies and Spending identifies various investment levels to help prioritize State infrastructure funding, with investment levels 1 and 2 representing the areas of highest priority. However, there are many transportation facilities within these areas which do not meet the current standards and rely on development projects to construct improvements resulting in unpredictable costs and fragmented infrastructure. This act creates a transportation impact fee for areas within state strategies and spending levels 1 and 2 that are not currently within an approved Transportation Improvement District. The impact fee ensures that development contributes a reasonable, responsible share of the transportation impact to fund off-site improvements including but not limited to bringing substandard roads to current standards, improving pedestrian facilities, and upgrading deficient intersections while allowing the Department of Transportation to implement the improvements in a more cohesive way. The fees are to be utilized within the counties where they are collected.