SPONSOR: Rep. Bush & Rep. Snyder-Hall & Rep. Wilson-Anton & Rep. Michael Smith & Rep. Hilovsky & Sen. Walsh & Sen. Hoffner
Reps. K. Johnson, Morrison, Osienski, Neal, Berry, Harris, Griffith, Phillips; Sens. Poore, Hansen, Lockman, Seigfried, Townsend

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 450

AN ACT TO AMEND TITLE 9, TITLE 17, TITLE 22, AND TITLE 29 OF THE DELAWARE CODE RELATING TO LAND USE.

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

Section 1. Amend § 146, Title 17 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 146. Access to state-maintained highways.

(a)(1)~~The~~ Subject to paragraph (a)(2) of this section, the Department ~~is authorized to adopt standards and regulations~~ shall adopt standards, regulations, and fees for the location, design, construction, reconstruction, maintenance, ~~use~~ use, and control of vehicular and pedestrian access to and from any state-maintained highway in order to protect public safety, to maintain smooth traffic flow, to maintain highway right-of-way drainage, to regulate drainage from property leading into or carried by the highway drainage ~~system~~ system, and any other public purpose, as determined by the Department.

(2) The standards and regulations adopted by the Department under paragraph (a)(1) of this section must include the following:

a. That the Department's threshold for determining if a traffic impact study is required for a proposed land use change or development, or new access for an existing land use, with access to and from any state-maintained highway, must be based on peak-hour trips, not vehicle trips per day, and must at least meet the following:

1. For a residential development, 500 peak-hour trips.

2. For all other development, 500 peak-hour trips, excluding pass-by trips.

b. That if a proposed land use change or development, or new access for an existing land use, with access to and from any state-maintained highway requires a traffic impact study under standards and regulations adopted by the Department, any required off-site improvement must be credited against the transportation impact fee required under § 507(b) of this title.

c. That a traffic impact study is not required for a proposed land use change or development, or new access for an existing land use, with access to and from any state-maintained highway in a Downtown Development District or Downtown Development Corridor, as defined under § 1902 of Title 22.

Section 2. Amend § 2662, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2662. Highway ~~capacity.~~ capacity; traffic impact study requirements.

(a) ~~The~~ Subject to subsection (b) of this section, the County Council shall not approve any proposed change in the zoning classification for land (i.e., any "rezoning ~~request")~~ request"), a new roadway access associated with site development, or for any other purpose without first complying with either the procedures contained in paragraphs (a)(1)a. through (a)(1)d. of this section or the procedures contained in paragraphs (a)(2)a. through (a)(2)c. of this section:

(1)a. As soon as possible, but in any event no later than ~~June 30, 1988,~~ June 30, 2027, the County Council, through its designated planning agency, shall establish an agreement with the Department of Transportation to provide a procedure for analysis by the Department of Transportation of the effects on traffic of each rezoning application.

b. Each agreement under paragraph (a)(1)a. of this section shall be approved by a resolution or ordinance, consistent with County procedures, and shall establish traffic level of service suitable to the County and the Department of Transportation.

c. The purpose of the agreement under paragraph (a)(1)a. of this section shall be to ensure that traffic analyses are conducted as part of the zoning reclassification process within the ~~County.~~ County and to allow for analysis to assess whether the County's approval of a change in the zoning classifications for land, a new roadway access associated with site development, or for any other purpose will create a new financial or infrastructure obligation to this State that is not consistent with the current edition of the Strategies for State Policies and Spending.

d. The agreement under paragraph (a)(1)a. of this section shall provide for the review of traffic impacts according to nationally recognized traffic criteria and shall, at a minimum, consider the effects of existing traffic, projected traffic growth in areas surrounding a proposed zoning reclassification, and the projected traffic generated by the proposed site development for which the zoning reclassification is sought.

(2)a. The County Council, through its local planning agency, shall establish an agreement with the Department of Transportation to designate a Complete Community Enterprise District as described in §§ 2103 and 2104 of Title 2.

b. The local planning agency shall hold at least 1 public hearing on the proposed agreement created under paragraph (a)(2)a. of this section and public comment must be permitted at the public hearing.

c. The local planning agency shall provide due public notice of the public hearing required by paragraph (a)(2)b. of this section at least twice, the first notice at least 60 days prior to the public hearing and the second notice at least 30 days prior to the public hearing.

(b) If the County Council enacts an ordinance, or a county agency adopts a regulation, that imposes a traffic impact study for a proposed change in the zoning classification for land, a new roadway access associated with site development, or for any other purpose, the ordinance or regulation must at least provide the following:

(1) That the threshold for determining if a traffic impact study is required must be based on peak hour trips, not vehicle trips per day, and the threshold must at least meet the following:

a. For a residential development, 500 peak-hour trips.

b. For all other development, 500 peak-hour trips, excluding pass-by trips.

(2) That the traffic impact study is not required in a Downtown Development District or Downtown Development Corridor, as defined under § 1902 of Title 22.

Section 3. Amend Subchapter II, Chapter 26, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2663. Residential density requirements.

(a) For purposes of this section, "growth area" means an area designated within a county comprehensive plan as a growth area and also consistent with areas identified by the Strategies for State Policies and Spending for growth as Investment Levels 1 and 2, or any successor classifications adopted by this State.

(b) Notwithstanding § 2601(a) of this title, this subchapter, or any provision of this Code to the contrary, and subject to subsection (c) of this section, a county government shall adopt zoning ordinances and land development regulations within a growth area that do all of the following:

(1) Permit a variety of housing types, including townhouses, multifamily dwellings, stacked flats, apartments, and mixed-use residential developments.

(2) Establish bulk, dimensional, and design standards that reasonably accommodate the housing types permitted under paragraph (b)(1) of this section at densities established in paragraph (c)(2) of this section.

(3) Encourage development patterns that reduce vehicular trips, increase pedestrian connectivity, support transit-oriented development, and promote mixed-use development consistent with guidance issued by the Department of Transportation.

(c) By June 1, 2027, by regulation, or in the county's comprehensive plan if due that same year, and thereafter at least once every 10 years in the county's comprehensive plan, a county government shall adopt residential growth area density requirements to do all of the following:

(1) Based on the guidance under subsection (e) of this section, develop and periodically update residential density requirements applicable to growth areas throughout the county, beginning with a minimum density threshold of 4 units per acre for single family homes and increasing minimum density thresholds for other housing types.

(2) Require residential development meet density requirements while recognizing that varying development densities may be appropriate within different portions of a designated growth area of the county.

(3) Encourage compact, infrastructure-efficient, and housing-supportive development patterns within growth areas of the county.

(d) Each time the comprehensive plan adopted under subsection (c) of this section is approved, the county government shall issue updated regulations or ordinances effectuating the residential growth area density requirements, which must be developed in consultation with the following, or a designee of the following:

(1) The Director of the State Housing Authority.

(2) The Secretary of the Department of Transportation.

(3) The Director of the Office of State Planning Coordination.

(4) The President of the Delaware League of Local Governments.

(5) The Governor.

(e) The Delaware State Housing Authority shall develop guidance for residential density requirements applicable to growth areas throughout this State starting with a minimum density threshold of 4 units per acre for single family homes and increasing minimum density thresholds for other housing types. The guidance must include all of the following:

(1) Recommendations for permitting a variety of housing types, including townhouses, multifamily dwellings, stacked flats, apartments, and mixed-use residential development.

(2) Recommendations for establishing bulk, dimensional, and design standards that reasonably accommodate the housing types permitted under paragraph (e)(1) of this section.

(3) Recommendations, developed in consultation with the Department of Transportation, for development patterns that reduce vehicular trips, increase pedestrian connectivity, support transit-oriented development, and promote mixed-use development.

Section 4. Amend § 4962, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4962. Highway ~~capacity.~~ capacity; traffic impact study requirements.

(a) The county government shall not approve any proposed change in the zoning classification for land (i.e., any "rezoning ~~request")~~ request"), a new roadway access associated with site development, or for any other purpose without first complying with either the procedures contained in paragraphs (a)(1)a. through (a)(1)d. of this section or the procedures contained in paragraphs (a)(2)a. through (a)(2)c. of this section:

(1) a. As soon as possible, but in any event no later than ~~June 30, 1988,~~ June 30, 2027, the county government, through its designated planning agency, shall establish an agreement with the Department of Transportation to provide a procedure for analysis by the Department of Transportation of the effects on traffic of each rezoning application.

b. Each agreement under paragraph (a)(1)a. of this section shall be approved by a resolution or ordinance, consistent with county procedures, and shall establish traffic level of service suitable to the County and the Department of Transportation.

c. The purpose of the agreement under paragraph (a)(1)a. of this section shall be to ensure that traffic analyses are conducted as part of the zoning reclassification process within the ~~County.~~ County and to allow for analysis to assess whether the County's approval of a change to the zoning classifications for land, a new roadway access associated with site development, or for any other purpose will create a new financial or infrastructure obligation to this State that is not consistent with the current edition of the Strategies for State Policies and Spending.

d. The agreement under paragraph (a)(1)a. of this section shall provide for the review of traffic impacts according to nationally recognized traffic criteria and shall, at a minimum, consider the effects of existing traffic, projected traffic growth in areas surrounding a proposed zoning reclassification, and the projected traffic generated by the proposed site development for which the zoning reclassification is sought.

(2) a. The Levy Court, through its local planning agency, shall establish an agreement with the Department of Transportation to designate a Complete Community Enterprise District as described in §§ 2103 and 2104 of Title 2.

b. The local planning agency shall hold at least 1 public hearing on the proposed agreement created under paragraph (a)(2)a. of this section and public comment must be permitted at the public hearing.

c. The local planning agency shall provide due public notice of the public hearing required by paragraph (a)(2)b. of this section at least twice, the first notice at least 60 days prior to the public hearing and the second notice at least 30 days prior to the public hearing.

(b) If the Levy Court enacts an ordinance, or a county agency adopts a regulation, that imposes a traffic impact study for a proposed change in the zoning classification for land, a new roadway access associated with site development, or for any other purpose, the ordinance or regulation must at least provide the following:

(1) That the threshold for determining if a traffic impact study is required must be based on peak hour trips, not vehicle trips per day, and the threshold must at least meet the following:

a. For a residential development, 500 peak-hour trips.

b. For a commercial development, 500 peak-hour trips, excluding pass-by trips.

(2) That the traffic impact study is not required in a Downtown Development District or Downtown Development Corridor, as defined under § 1902 of Title 22.

Section 5. Amend Subchapter II, Chapter 49, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4963. Residential density requirements.

(a) For purposes of this section, "growth area" means an area designated within a county comprehensive plan as a growth area and also consistent with areas identified by the Strategies for State Policies and Spending for growth as Investment Levels 1 and 2, or any successor classifications adopted by this State.

(b) Notwithstanding § 4901(a) of this title, this subchapter, or any provision of this Code to the contrary, and subject to subsection (c) of this section, a county government shall adopt zoning ordinances and land development regulations within a growth area that do all of the following:

(1) Permit a variety of housing types, including townhouses, multifamily dwellings, stacked flats, apartments, and mixed-use residential developments.

(2) Establish bulk, dimensional, and design standards that reasonably accommodate the housing types permitted under paragraph (b)(1) of this section at densities established in paragraph (c)(2) of this section.

(3) Encourage development patterns that reduce vehicular trips, increase pedestrian connectivity, support transit-oriented development, and promote mixed-use development consistent with guidance issued by the Department of Transportation.

(c) By June 1, 2027, by regulation, or in the county's comprehensive plan if due that same year, and thereafter at least once every 10 years in the county's comprehensive plan, a county government shall adopt residential growth area density requirements to do all of the following:

(1) Based on the guidance under subsection (e) of this section, develop and periodically update residential density requirements applicable to growth areas throughout the county, beginning with a minimum density threshold of 4 units per acre for single family homes and increasing minimum density thresholds for other housing types.

(2) Require residential development meet density requirements while recognizing that varying development densities may be appropriate within different portions of a designated growth area of the county.

(3) Encourage compact, infrastructure-efficient, and housing-supportive development patterns within growth areas of the county.

(d) Each time the comprehensive plan adopted under subsection (c) of this section is approved, the county government shall issue updated regulations or ordinances effectuating the residential growth area density requirements, which must be developed in consultation with the following, or a designee of the following:

(1) The Director of the State Housing Authority.

(2) The Secretary of the Department of Transportation.

(3) The Director of the Office of State Planning Coordination.

(4) The President of the Delaware League of Local Governments.

(5) The Governor.

(e) The Delaware State Housing Authority shall develop guidance for residential density requirements applicable to growth areas throughout this State starting with a minimum density threshold of 4 units per acre for single family homes and increasing minimum density thresholds for other housing types. The guidance must include all of the following:

(1) Recommendations for permitting a variety of housing types, including townhouses, multifamily dwellings, stacked flats, apartments, and mixed-use residential development.

(2) Recommendations for establishing bulk, dimensional, and design standards that reasonably accommodate the housing types permitted under paragraph (e)(1) of this section.

(3) Recommendations, developed in consultation with the Department of Transportation, for development patterns that reduce vehicular trips, increase pedestrian connectivity, support transit-oriented development, and promote mixed-use development.

Section 6. Amend § 6962, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6962. Highway ~~capacity.~~ capacity; traffic impact study requirements.

(a) ~~The~~ Subject to subsection (b) of this section, the county government shall not approve any proposed change in the zoning classification for land (i.e., any "rezoning ~~request")~~ request"), a new roadway access associated with site development, or for any other purpose without first complying with either the procedures contained in paragraphs (a)(1)a. through (a)(1)d. of this section or the procedures contained in paragraphs (a)(2)a. through (a)(2)c. of this section:

(1) a. As soon as possible, but in any event no later than ~~June 30, 1988,~~ June 30, 2027, the county government, through its designated planning agency, shall establish an agreement with the Department of Transportation to provide a procedure for analysis by the Department of Transportation of the effects on traffic of each rezoning application.

b. Each agreement under paragraph (a)(1)a. of this section shall be approved by a resolution or ordinance, consistent with county procedures, and shall establish traffic level of service suitable to the County and the Department of Transportation.

c. The purpose of the agreement under paragraph (a)(1)a. of this section shall be to ensure that traffic analyses are conducted as part of the zoning reclassification process within the ~~County.~~ County and to allow for analysis to assess whether the County's approval of a change to the zoning classifications for land, a new roadway access associated with site development, or for any other purpose will create a new financial or infrastructure obligation to this State that is not consistent with the current edition of the Strategies for State Policies and Spending.

d. The agreement under paragraph (a)(1)a. of this section shall provide for the review of traffic impacts according to nationally recognized traffic criteria and shall, at a minimum, consider the effects of existing traffic, projected traffic growth in areas surrounding a proposed zoning reclassification, and the projected traffic generated by the proposed site development for which the zoning reclassification is sought.

(2) a. The County Council, through its designated planning agency, shall establish an agreement with the Department of Transportation to designate a Complete Community Enterprise District as described in §§ 2103 and 2104 of Title 2.

b. The local planning agency shall hold at least 1 public hearing on the proposed agreement created under paragraph (a)(2)a. of this section and public comment must be permitted at the public hearing.

c. The local planning agency shall provide due public notice of the public hearing required by paragraph (a)(2)b. of this section at least twice, the first notice at least 60 days prior to the public hearing and the second notice at least 30 days prior to the public hearing.

(b) If the county government enacts an ordinance, or a county agency adopts a regulation, that requires a traffic impact study for a proposed change in the zoning classification for land, a new roadway access associated with site development, or for any other purpose, the ordinance or regulation must at least provide the following:

(1) That the threshold for determining if a traffic impact study is required must be based on peak hour trips, not vehicle trips per day, and the threshold must at least meet the following:

a. For a residential development, 500 peak-hour trips.

b. For a commercial development, 500 peak-hour trips, excluding pass-by trips.

(2) That the traffic impact study is not required in a Downtown Development District or Downtown Development Corridor, as defined under § 1902 of Title 22.

Section 7. Amend Subchapter II, Chapter 69, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6963. Residential density requirements.

(a) For purposes of this section, "growth area" means an area designated within a county comprehensive plan as a growth area and also consistent with areas identified by the Strategies for State Policies and Spending for growth as Investment Levels 1 and 2, or any successor classifications adopted by this State.

(b) Notwithstanding § 6902(a) of this title, this subchapter, or any provision of this Code to the contrary, and subject to subsection (c) of this section, a county government shall adopt zoning ordinances and land development regulations within a growth area that do all of the following:

(1) Permit a variety of housing types, including townhouses, multifamily dwellings, stacked flats, apartments, and mixed-use residential developments.

(2) Establish bulk, dimensional, and design standards that reasonably accommodate the housing types permitted under paragraph (b)(1) of this section at densities established in paragraph (c)(2) of this section.

(3) Encourage development patterns that reduce vehicular trips, increase pedestrian connectivity, support transit-oriented development, and promote mixed-use development consistent with guidance issued by the Department of Transportation.

(c) By June 1, 2027, by regulation, or in the county's comprehensive plan if due that same year, and thereafter at least once every 10 years in the county's comprehensive plan, a county government shall adopt residential growth area density requirements to do all of the following:

(1) Based on the guidance under subsection (e) of this section, develop and periodically update residential density requirements applicable to growth areas throughout the county, beginning with a minimum density threshold of 4 units per acre for single family homes and increasing minimum density thresholds for other housing types.

(2) Require residential development meet density requirements while recognizing that varying development densities may be appropriate within different portions of a designated growth area of the county.

(3) Encourage compact, infrastructure-efficient, and housing-supportive development patterns within growth areas of the county.

(d) Each time the comprehensive plan adopted under subsection (c) of this section is approved, the county government shall issue updated regulations or ordinances effectuating the residential growth area density requirements, which must be developed in consultation with the following, or a designee of the following:

(1) The Director of the State Housing Authority.

(2) The Secretary of the Department of Transportation.

(3) The Director of the Office of State Planning Coordination.

(4) The President of the Delaware League of Local Governments.

(5) The Governor.

(e) The Delaware State Housing Authority shall develop guidance for residential density requirements applicable to growth areas throughout this State starting with a minimum density threshold of 4 units per acre for single family homes and increasing minimum density thresholds for other housing types. The guidance must include all of the following:

(1) Recommendations for permitting a variety of housing types, including townhouses, multifamily dwellings, stacked flats, apartments, and mixed-use residential development.

(2) Recommendations for establishing bulk, dimensional, and design standards that reasonably accommodate the housing types permitted under paragraph (e)(1) of this section.

(3) Recommendations, developed in consultation with the Department of Transportation, for development patterns that reduce vehicular trips, increase pedestrian connectivity, support transit-oriented development, and promote mixed-use development.

Section 8. Amend Subchapter I, Chapter 3, Title 22 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 313. Traffic impact study requirements.

If the legislative body of a municipality enacts an ordinance, or a municipal agency adopts a regulation, that imposes a traffic impact study for a proposed change in the zoning classification for land, a new roadway access associated with site development, or for any other purpose, the ordinance or regulation must at least provide the following:

(1) That the threshold for determining if a traffic impact study is required must be based on peak hour trips, not vehicle trips per day, and the threshold must at least meet the following:

a. For a residential development, 500 peak-hour trips.

b. For a commercial development, 500 peak-hour trips, excluding pass-by trips.

(2) That the traffic impact study is not required in a Downtown Development District or Downtown Development Corridor, as defined under § 1902 of this title.

§ 314. Residential density requirements.

(a) For purposes of this section, "growth area" means an area designated within a municipal comprehensive plan as a growth area and also consistent with areas identified by the Strategies for State Policies and Spending for growth as Investment Levels 1 and 2, or any successor classifications adopted by this State.

(b) Notwithstanding § 301 of this title or any provision of this Code to the contrary, and subject to subsection (c) of this section, the legislative body of a municipality shall adopt zoning ordinances and land development regulations within a growth area that do all of the following:

(1) Permit a variety of housing types, including townhouses, multifamily dwellings, stacked flats, apartments, and mixed-use residential developments.

(2) Establish bulk, dimensional, and design standards that reasonably accommodate the housing types permitted under paragraph (b)(1) of this section at densities established in paragraph (c)(2) of this section.

(3) Encourage development patterns that reduce vehicular trips, increase pedestrian connectivity, support transit-oriented development, and promote mixed-use development consistent with guidance issued by the Department of Transportation.

(c) By June 1, 2027, by regulation, or in the municipality's comprehensive plan if due that same year, and thereafter at least once every 10 years in the municipality's comprehensive plan, the legislative body of a municipality shall adopt residential growth area density requirements to do all of the following:

(1) Based on the guidance under subsection (e) of this section, develop and periodically update residential density requirements applicable to growth areas throughout the municipality, beginning with a minimum density threshold of 4 units per acre for single family homes and increasing minimum density thresholds for other housing types.

(2) Require residential development meet density requirements while recognizing that varying development densities may be appropriate within different portions of a designated growth area of the municipality.

(3) Encourage compact, infrastructure-efficient, and housing-supportive development patterns within growth areas of the municipality.

(d) Each time the comprehensive plan adopted under subsection (c) of this section is approved, the legislative body of a municipality shall issue updated regulations or ordinances effectuating the residential growth area density requirements, which must be developed in consultation with the following, or a designee of the following:

(1) The Director of the State Housing Authority.

(2) The Secretary of the Department of Transportation.

(3) The Director of the Office of State Planning Coordination.

(4) The President of the Delaware League of Local Governments.

(5) The Governor.

(e) The Delaware State Housing Authority shall develop guidance for residential density requirements applicable to growth areas throughout this State starting with a minimum density threshold of 4 units per acre for single family homes and increasing minimum density thresholds for other housing types. The guidance must include all of the following:

(1) Recommendations for permitting a variety of housing types, including townhouses, multifamily dwellings, stacked flats, apartments, and mixed-use residential development.

(2) Recommendations for establishing bulk, dimensional, and design standards that reasonably accommodate the housing types permitted under paragraph (e)(1) of this section.

(3) Recommendations, developed in consultation with the Department of Transportation, for development patterns that reduce vehicular trips, increase pedestrian connectivity, support transit-oriented development, and promote mixed-use development.

Section 9. Amend § 132, Title 17 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 132. General powers and duties.

(i)(1) The Department shall deploy, operate, and maintain technological systems for the automated monitoring, analysis, and management of transportation infrastructure and traffic operations, including the continued operation of the Delaware Public Crash Database.

(2) The technological systems required under paragraph (i)(1) of this section may include intelligent transportation systems, automated traffic monitoring devices, roadway condition sensors, digital imaging systems,

artificial intelligence–based analytical tools, and other technologies designed to improve the efficiency, safety, and performance of the transportation network.

Section 10. Amend § 141, Title 17 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 141. Regulation of traffic; exceptions.

(c)(1) ~~Pursuant to~~ Under this section, the Department ~~is authorized to~~ may perform all engineering studies and traffic investigations necessary to implement this section and Chapter 41 of Title 21, and to install, maintain, ~~operate~~ operate, and remove all traffic control devices necessary to implement Chapter 41 of Title 21 and regulations adopted ~~thereunder.~~ under Chapter 41 of Title 21.

(2) An engineering study or traffic investigation conducted by the Department under paragraph (c)(1) of this section may include automated or continuous data collection systems, remote sensing technologies, digital imaging, algorithmic analysis of traffic patterns, and other technological methods used to evaluate roadway safety, traffic operations, and infrastructure conditions.

Section 11. 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 is best-positioned to assess statewide and county- and municipal-specific transportation improvements that will be needed based on safety and existing and projected growth patterns as indicated by a county or municipality in a certified comprehensive plan.

(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)a. By January 1, 2027, the Department shall establish a transportation impact fee applicable to each of the following:

1. Areas of this State that are designated in the Strategies for State Policies and Spending as an area designated for growth as indicated by a county or municipality in a certified comprehensive plan and that are not located within an established local or regional Transportation Improvement District.

2. Areas of this State that are outside of areas of this State that are designated in the Strategies for State Policies and Spending as an area designated for growth as indicated by a county or municipality in a certified comprehensive plan and that are not located within an established local or regional Transportation Improvement District. The transportation impact fee established by the Department under this paragraph (b)(1)a.2. may be greater than the transportation impact fee established by the Department under paragraph (b)(1)a.1. of this section to encourage development in areas of this State designated in the Strategies for State Policies and Spending as an Investment Level 1 or 2 Area.

b. The Department shall determine the transportation impact fees for each county based on the reasonable proportionate share of new development of the projected total costs to bring applicable transportation infrastructure up to State standards.

1. The Department may adopt a different transportation impact fee for each county.

2. The Department shall adopt a transportation impact fee for each county that establishes a rational nexus between new development and required costs and demonstrates proportionality between the fee and the impacts generated.

3. The Department may use deductive or inductive methodologies to determine each transportation impact fee.

4. The Department shall publish the formula used to calculate each transportation impact fee and shall reevaluate the formula every 5 years. Any increase in a transportation impact fee is capped at the increase in the United States Consumer Price Index plus 2%.

5. The transportation impact fee must be assessed on a land use basis in accordance with the Department's current required edition of the Trip Generation Manual published by the Institute of Transportation Engineers (Trip Generation Manual).

c.1. The Transportation Impact Fee Fund is established to receive moneys collected by the Department from the transportation impact fees required to be established under paragraph (b)(1)a. of this section.

2. The Department shall deposit into the Transportation Impact Fee Fund established under paragraph (b)(1)c.1. of this section the moneys collected from the transportation impact fees.

d. The transportation impact fee is intended to fund the Department's planning, designing, engineering, and construction of improvements related to upgrading existing transportation infrastructure, including deficient pedestrian facilities and substandard signal and intersection facilities, acquisition of applicable rights-of-way and easements, and the Department's funding of necessary administrative costs to staff and otherwise administer this section.

1.A. Except as provided by paragraph (b)(1)d.1.B. of this section, the Department shall, in consultation with the applicable county and municipal government, use any transportation impact fee collected to fund improvements in the same county as the development paying the transportation impact fee.

B. If a county or municipality fails to do all of the following by June 1, 2027, the Department shall use transportation impact fees collected in that county or municipality to fund improvements as determined solely by the Department:

I. Enact an ordinance or regulation regarding traffic impact studies that is consistent with § 2662(b), § 4962(b), or § 6962(b) of Title 9 or § 313 of Title 22, as applicable.

II. Enact an ordinance or regulation regarding residential density requirements that is consistent with § 2663, § 4963, or § 6963 of Title 9 or § 314 of Title 22, as applicable.

2. A development remains responsible for access and entrance improvements directly to the development's site, including auxiliary lanes as required by the Department. The Department may require changes to entrance locations or frontage with identified safety issues and any work required will be at the cost of the development.

3. The Department shall acquire any necessary right-of-way and easements required under this section.

e. Except as provided by paragraph (b)(1)f. and (b)(1)i. of this section and for Capital Transportation Program projects that require developer contributions, the Department shall require all new development that generates new vehicle trips to pay the transportation impact fee.

f. The Secretary of the Department shall waive or reduce the transportation impact fee for a residential development that is financed in whole, or in part, by the Delaware State Housing Authority.

g. A development shall pay the transportation impact fee before the issuance of a building permit.

h.1. In addition to the transportation impact fee, the Department shall assess and collect a surcharge in the amount of 2% of the transportation impact fee due under paragraph (b)(1)a. of this section.

2. The Department shall, on a quarterly basis, deposit the moneys collected from the surcharge under paragraph (b)(1)h.1. of this section with the Office of Management and Budget, which shall, at the direction of the Governor, in consultation with the Director of the Office of Management and Budget and the Controller General, divide the moneys between the following:

A. The Delaware Farmland Preservation Fund established under § 905 of Title 3.

B. The Delaware Land and Water Conservation Trust Fund established and maintained under subchapter II of Chapter 54 of Title 30, for exclusive use by the Open Space Program established under Chapter 75 of Title 7.

C. The Department of Natural Resources and Environmental Control's Shoreline and Waterway Management Section, for use in programs dedicated to coastal resilience.

D. The Department of Transportation's programs for sidewalks to bicycle pathways.

E. The Brownfields Development Program established under subchapter II of Chapter 91 of Title 7.

i. A development that performs a traffic impact study that requires off-site improvements beyond the direct site access and applicable auxiliary lanes, and the costs are in excess of the transportation impact fee, shall pay the additional cost of the design, construction, right-of-way acquisition costs, and traffic impact study costs, less the required transportation impact fee, to the Department.

(2) The regulations required under paragraph (b)(1) of this section ("regulations") must outline the procedures for the Department's acquisition of rights-of-way and easements necessary for transportation infrastructure within an area described in paragraph (b)(1) of this section.

~~(1)~~(3) If the predicted impact of ~~a~~ new development ~~creates~~ necessitates 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~~ must 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 may be acquired by the Department, if deemed by the Department, in its reasonable and sole discretion, to be appropriate in the given circumstances.

~~(2)~~ a. In using this authority, such additional improvements ~~shall~~ must 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,~~ under this 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.~~ improvements, as follows:

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 entity seeking development approval 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.~~ improvements.

Section 12. This Act is to be known as the Reforming Opportunities and Accelerated Development for Delaware Act ("ROAD-DE Act").

Ssynopsis

This Act is a Substitute for House Bill No. 450. Like House Bill No. 450, this Substitute Act is to be known as the Reforming Opportunities and Accelerated Development for Delaware Act ("ROAD-DE Act") and will make significant changes to Delaware's land use permitting process by building on Governor Meyer's Executive Order No. 18, which created the Permitting Accelerator to reform policies, processes, and procedures that have accumulated over decades and are holding back jobs, housing, and other critical infrastructure statewide.

In 2019, a study of Delaware's permitting process was undertaken. The study concluded that Delaware's permitting process was significantly longer and more challenging than those of surrounding states in the region. In 2025, this State began digitizing permitting processes. During the initial stages of that effort, more than 52 hours of interviews with 57 stakeholders were conducted across state agencies, local governments, developers, and technical experts. Those interviews revealed that statewide delays are not driven by isolated performance issues. Rather, they stem from structural misalignment, sequential review processes, incentive distortions, and capacity constraints that compound across agencies.

Delaware's permitting process can stretch beyond 24 months, placing this State at a distinct economic development disadvantage when it comes to attracting and growing businesses. In the region, Delaware's competitors, including Maryland and Pennsylvania, can achieve substantially faster permit approvals, making them more attractive locations for economic development and affordable housing.

The 2019 and 2025 studies resulted in recommendations that the permitting process be streamlined and modified to improve accountability and eliminate redundancies within various government agencies, particularly within the Delaware Department of Transportation ("DelDOT"). To implement these recommendations, this Substitute Act, like House Bill No. 450, does all of the following:

(1) Section 1 of this Substitute Act requires DelDOT to base the threshold for determining if a traffic impact study is required on peak-hour trips, not vehicle trips per day, and set the minimum peak hour trips threshold at 500 peak-hour trips for residential developments and 500 peak-hour trips, excluding pass-by trips, for all other development types.

(2) Sections 2, 4, 6, and 8 of this Substitute Act require the counties and municipalities to base their threshold for determining if a traffic impact study is required on the same requirements as required for DelDOT in Section 1 of this Act.

(3) Sections 3, 5, 7, and 8 of this Substitute Act provide for certain residential density requirements.

(4) Section 9 of this Substitute Act requires DelDOT to deploy, operate, and maintain technological systems for the automated monitoring, analysis, and management of transportation infrastructure and traffic operations.

(5) Section 10 of this Substitute Act provides that engineering studies or traffic investigations conducted by DelDOT may include automated or continuous data collection systems, remote sensing technologies, digital imaging, algorithmic analysis of traffic patterns, and other technological methods used to evaluate roadway safety, traffic operations, and infrastructure conditions.

(6) Section 11 of this Substitute Act requires DelDOT to establish and collect transportation impact fees throughout this State and to use the moneys collected to fund off-site improvements to bring existing transportation infrastructure up to current State standards. Additionally, this Section requires DelDOT to use the moneys collected in the county in which the transportation impact fee was collected unless the county or the municipalities within the county fail to adopt the traffic impact study and residential density requirements under Sections 2 through 8 of this Act.

This Substitute Act differs from House Bill No. 450 as follows:

(1) Changes the residential density requirements provision contained in Sections 3, 5, 7, and 8 of this Substitute Act for the original Act.

(2) Requires DelDOT to consult with the applicable municipal government on how to spend the money collected from the transportation impact fee.

(3) Increases the amount of the surcharge DelDOT must assess on the transportation impact fee from 1% to 2%.

(4) Adds the Brownfield Development Program as 1 of the programs to receive money from the surcharge assessed on the transportation impact fee by DelDOT.

This Substitute Act requires a greater than majority vote for passage because § 1 of Article IX of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend a municipal charter, whether directly, by amendment to a specific municipality's charter, or, as in this Act, indirectly, by a general law.

This Substitute Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.