KENT COUNTY LEVY COURT
Dover, DE 19901 (302) 744-2300
www.kentcountyde.gov

Kent County Levy Court Workshop
Meeting Notice and Agenda
555 Bay Road, Dover, DE 19901
Caucus - Room 230
Tuesday, June 9, 2026

6:30 PM, WORKSHOP

Location: Caucus Room

The public is welcome to attend in person, via WebEx, or by phone.
to join via WebEx go to: https://kentcountyde.webex.com/kentcountyde/j.php?MTID=mb5be1b37cbbf8809edf94daf921c9a4b
or by phone: 1-408-418-9388; Meeting number (access code): 2342 429 6539; Meeting password: #

CALL TO ORDER

DETERMINATION OF QUORUM

WORKSHOP ITEMS:

1. FY 2026 Generator Replacements Award
2. Legislation - SB 23 - Housing and HB 450 re: ROADS Act

PUBLIC COMMENTS

COMMISSIONERS' COMMENTS

EXECUTIVE SESSION, if needed

Immediately following the Workshop,
Caucus Room
For preliminary discussion on site acquisition for a publicly funded capital improvement; legal strategy session regarding collective bargaining; pending or potential litigation; and personnel matters.
Pursuant to 29 Del.C. 10004(b)(2), (4), & (9)

ADJOURN

Posting Info:

Posted: 6/2/26
Revised:
Posted by: L. Tanaka
Time: 5PM
Take down: Upon Replacement or on 6/10/26

29 Del.C. §10004(e)(2). The Agenda items as listed may not be considered in sequence. This Agenda is subject to change to include additional items including Executive Sessions or the deletion of items including Executive Sessions, which arise at the time of the meeting.

Kent County
Department of Public Works

MEMORANDUM

DATE: June 9, 2026

TO: Levy Court Commissioners

VIA: Kevin Sipple, County Administrator

FROM: Sam Bautista, P.E., Public Works Director

RE: **FY2026 GENERATOR REPLACEMENTS AWARD**
FIDELITY POWER SYSTEMS $124,963.00

The FY 2026 Generator Replacements Project is for the replacement of emergency standby generators at two pumping stations (LS #4A and PS #26) and installation of one new generator (PS #45). These generators were identified as part of inventories and inspections provided to DNREC, as part of the Conciliation Agreement.

An "Invitation to Bid" for the purchase and delivery of three (3) emergency diesel generators including load bank testing and start-up services was advertised on April 24, 2026, and April 29, 2026, in the Delaware State News. Bid documents were requested by three (3) generator vendors and nine (9) contract monitoring services. No addendums were issued during this bid. Staff spoke with multiple vendors and were expecting to receive multiple bids. At the bid opening on May 21, 2026, only one (1) bid was received from Premium Power Services LLC, in the total amount of $124,963.00 to provide Kohler generators. (The bid includes an add alternate for a Transfer Switch for the new installation.) No bids were received from Cummins Power or Fidelity Power Systems.

These generators will be installed by the County electricians with assistance of the current General Labor and Equipment contractor. Other project expenses include crane rentals, electrical materials, and concrete pad replacement(s).

Based on the available funding, the Department of Public Works recommends the following motions:

1. **"Move to award the purchase of two (2) replacement generators and one (1) new generator w/transfer switch to Premium Power Services LLC in the amount of $124,963.00 using sewer fund contingency, AND**

2. **"Move to authorize issuance of the purchase order for the purchase."**

Reviewed and concurred:

Susan Durham, CPA, Finance Director

MEMORANDUM

KENT COUNTY DEPARTMENT OF
PLANNING SERVICES
555 BAY ROAD
DOVER, DELAWARE 19901

TO: Levy Court Commissioners

CC: Kevin Sipple, County Administrator

FROM: Sarah E. Keifer, Director, Department of Planning Services

DATE: June 8, 2026

SUBJECT: Senate Substitute 2 for Senate Bill 23 Senate
House Substitute for House Bill 450

Attached, please find Senate Substitute 2 for Senate Bill 23 and HB 450 plus draft substitute language for the bill. As of Monday morning, neither substitute has been filed.

In summary, SS 2 for SB 23 would:

1. Establish a goal for each local jurisdiction to make meaningful and measurable progress toward having 20% of all housing units qualify as affordable housing.
2. Require local jurisdictions to diversify the types of housing available, including affordable housing.
3. Require counties to rezone land in accordance with the future land use element of the comprehensive plan within 12 months after adoption of the plan or plan revision. If a county does not complete the rezoning within that period, a property-owner rezoning application that is substantially consistent with the future land use map and applicable implementing provisions of the comprehensive plan must be approved unless the county makes specific written findings for denial. The county must determine whether the application is complete within 10 days and take final action within 90 days after the application is deemed complete.
4. Provide that, for those plan-consistent rezonings, a public hearing held during the comprehensive plan adoption or revision process satisfies hearing and notice requirements otherwise required for zoning and rezoning.;

however, local governments are not prohibited from conducting hearings on the rezoning application.

5. Require each local jurisdiction with a population greater than 2,000 to include an affordable housing plan in its comprehensive plan in collaboration with the Delaware State Housing Authority.
6. Require affordable housing plans to include certain mandatory elements including:
   a. Increases in maximum permitted residential density, including increases in dwelling units per acre, to facilitate an affordable and diverse housing stock.
   b. Authorization for a mix of housing types, including single-family detached, single-family attached, duplexes, triplexes, multifamily dwellings, accessory dwelling units, cottage housing developments, and manufactured housing without the need for a conditional use permit or special exception.
   c. Revision of bulk standards, including minimum lot sizes, maximum lot widths, minimum setbacks, minimum unit size, maximum lot coverage, maximum building heights, and dedicated open space requirements, if the jurisdiction's housing inventory consists of less than 20% affordable housing units.
7. Require each local jurisdiction to include at least five of the following ten housing production strategies in its affordable housing plan:
   a. Density bonuses or other incentives for affordable housing in residential and mixed-use developments.
   b. Transit-oriented development zoning with increased density along fixed transportation routes.
   c. Expedited or accelerated review for residential developments that include affordable housing units.
   d. Fee waivers, reductions, or deferrals for residential developments that include affordable housing.
   e. Reduction or waiver of local impact fees for affordable housing units.
   f. Form-based codes or other alternative development standards in areas designated for growth in the comprehensive plan.
   g. Single-room occupancy housing as a permitted use in at least one residential zone.
   h. Transitional housing, emergency housing shelters, group homes, recovery homes, or other supportive housing as a permitted use in at least one residential zone.
   i. Conversion of commercial, office, and retail spaces into mixed-use or residential use.
   j. At least one residential zone where multifamily housing is permitted by-right, or a substantial increase in land zoned to allow multifamily housing by-right.
8. Eliminate public hearings, although not public meetings, for by-right residential uses.

In summary, the substitute for House Bill 450 would:

1. Require DelDOT to establish a statewide transportation impact fee by January 1, 2027.
2. Require counties and municipalities that impose traffic impact study requirements to use standards consistent with DelDOT's standards.
3. Define "growth area" as 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.
4. Require the county to adopt residential density requirements for growth areas by June 1, 2027 that do the following:
    a. Establish a minimum density of 4 units per acre for single family development and increase minimum density for other housing types.
    b. Allow varying densities within different portions of the growth areas.
    c. Encourage compact, infrastructure-efficient, and housing-supportive development patterns.
5. If the county or municipality does not adopt compliant traffic impact study requirements and residential density requirements by June 1, 2027, DelDOT may use transportation impact fees collected in that jurisdiction for improvements as determined solely by DelDOT.
6. Require such ordinances be developed in consultation with the State Housing Authority, Department of Transportation, Office of State Planning Coordination, League of Local Governments, and the Governor.
7. Require the Delaware State Housing Authority to develop guidance for local governments.

These items are scheduled for discussion at the June 9, 2026 workshop. Please feel free to contact me with any questions in advance of the meeting.

Thank you.



SPONSOR: Sen. Huxtable & Rep. K. Johnson
Sens. Hoffner, Lockman, Sokola, Sturgeon, Townsend;
Reps. Berry, Morrison

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE SUBSTITUTE
FOR
SENATE BILL NO. 23

AN ACT TO AMEND TITLE 9, TITLE 22, AND TITLE 29 OF THE DELAWARE CODE RELATING TO HOUSING SUPPLY AND HOUSING AFFORDABILITY.

WHEREAS, Delawareans of all income levels deserve to have access to housing they can afford; and

WHEREAS, the 2023 Delaware State Housing Authority's Statewide Housing Needs Assessment concluded that 50% of Delaware renters and 21% of Delaware homeowners are "cost burdened", meaning rent or mortgage payments consume 30% or more of the household's gross income; and

WHEREAS, Delaware lacks sufficient affordable housing to meet the needs of its residents, with an estimated shortage of nearly 20,000 affordable units to meet the needs of renters with incomes of less than 50% of the Area Median Income; and

WHEREAS, municipalities and counties in this State are required to engage in an comprehensive planning process that takes housing into account, but the process can fall short when it comes to actually increasing the supply of housing, particularly affordable housing, for Delaware residents; and

WHEREAS, zoning codes play a critical role in shaping housing supply and affordability, and can be used to support a range of policy goals related to housing, including an increased supply of affordable housing and more diversity in the types of housing available; and

WHEREAS, zoning codes can also impede strategic growth and development in the housing realm if they are not consistent with best practices; and

WHEREAS, the April 2025 Affordable Housing Production Task Force Final Report identified local zoning reform as essential to increasing housing supply and diversity, stating that "changes are needed at the local level to enable more diverse housing types", and recommending the creation of a legislative framework for such changes; and

WHEREAS, Senate Joint Resolution No. 8 from the 153rd General Assembly created a technical assistance pilot aimed at helping local jurisdictions modify their zoning ordinances to better support development, including housing development, in this State; and

WHEREAS, while several local jurisdictions have taken advantage of the resources afforded by Senate Joint Resolution No. 8 to modernize their zoning codes, addressing housing supply and affordability require a comprehensive, statewide approach that goes beyond voluntary participation and technical assistance; and

WHEREAS, requiring local jurisdictions to take zoning-related measures to increase the supply and diversity of housing, particularly affordable housing, while providing them with flexibility as to method, is a reasonable and measured approach to closing this State's housing gaps.

NOW, THEREFORE:

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 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:

Subchapter II. The Quality of Life Act

§ 2652. Definitions.

For the purposes of this subchapter:

(2) "Comprehensive plan" or "comprehensive development plan" shall mean, from and after the respective dates by which the counties must be in compliance with this subchapter, a plan that meets the requirements of this ~~subchapter.~~ subchapter and that is reviewed and certified in accordance with § 9103 of Title 29. Wherever in this subchapter land use regulations are required to be in accordance with the comprehensive plan, such requirements shall mean only that such regulations must be in conformity with the applicable maps or map series of the comprehensive plan. Whenever in this subchapter land use orders, permits or zoning district changes are required to be in accordance with the comprehensive plan, such requirements shall mean only that such orders, permits and changes must be in conformity with the map or map series of the comprehensive plan and county land use regulations enacted to implement the other elements of the adopted comprehensive plan.

§ 2656. Required and optional elements of comprehensive plan; studies and surveys [Effective until Nov. 15, 2026].

(f) The comprehensive plan and its elements shall contain policy recommendations and a timeline for the implementation of the plan and its elements.

(g) The comprehensive plan shall include:

(6) A housing element that is consistent with county housing plans, standards and principles. Such housing plans shall be in accordance with state and federal rules and regulations and the housing plan or housing element of the comprehensive plan shall include the following:

h. An affordable housing plan that complies with Subchapter III of Chapter 92 of Title 29.

§ 2656. Required and optional elements of comprehensive plan; studies and surveys [Effective Nov. 15, 2026].

(f) The comprehensive plan and its elements shall contain policy recommendations and a timeline for the implementation of the plan and its elements.

(g) The comprehensive plan shall include:

(6) A housing element that is consistent with county housing plans, standards and principles. Such housing plans shall be in accordance with state and federal rules and regulations and the housing plan or housing element of the comprehensive plan shall include the following:

h. An affordable housing plan that complies with Subchapter III of Chapter 92 of Title 29.

§ 2658. Evaluation and appraisal of comprehensive plan.

(b) The State shall not be obligated to provide state financial assistance or infrastructure improvements to support land use or development actions by the County where the County's adopted comprehensive plan or portions thereof are determined to be substantially inconsistent with state development ~~policies.~~ policies, including policies related to affordable housing.

§ 2660. County comprehensive plan.

(e) Within ~~18~~ 12 months of the date of adoption of the county comprehensive plan or revisions thereof, New Castle County shall amend its official zoning map or maps to rezone all lands in accordance with the uses and intensities of uses provided for in the future land use element for the County.

(1) In the event that the County does not complete the rezoning required under this subsection (e) within the required 12-month period, a rezoning application filed by a property owner shall be approved if the requested zoning classification is substantially consistent with the future land use map or map series and applicable implementing provisions of the comprehensive plan, unless the County makes specific written findings, based on substantial evidence in the record, that one or more of the following apply:

a, The requested zoning classification is inconsistent with the future land use map or map series or applicable implementing provisions of the comprehensive plan.

b. The application fails to satisfy applicable procedural or submission requirements.

(2) The County shall determine whether a rezoning application filed by a property owner under paragraph (e)(1) of this section is complete within 10 days of submission. If the County does not issue a written completeness determination within 10 days, the application is deemed complete.

(3) The County shall take final action on the rezoning application within 90 days after the application is deemed complete, unless the applicant agrees in writing to an extension.

(4) If the County denies a rezoning application under this subsection (e), the denial must be in writing and must identify the specific future land use map designation or statutory standard upon which the denial is based.

(5) If a public hearing was held in connection with adoption of the comprehensive plan or revision of the comprehensive plan, that hearing shall satisfy all hearing and notice requirements otherwise required under this title. This provision does not prevent a local land use agency from adopting hearing and notice requirements.

(f) In the event that the comprehensive plan includes provisions governing the rate of growth of particular planning districts or sub-areas of the County, the County's zoning district regulations shall be amended to reflect the timing elements of the comprehensive plan.

Section 2. 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:

Subchapter II. The Quality of Life Act

§ 4952. Definitions.

For the purposes of this subchapter:

(2) "Comprehensive plan" or "comprehensive development plan" shall mean, from and after the respective dates by which the counties must be in compliance with this subchapter, a plan that meets the requirements of this ~~subchapter.~~ subchapter and that is reviewed and certified in accordance with § 9103 of Title 29. Wherever in this subchapter land use regulations are required to be in accordance with the comprehensive plan, such requirements shall mean only that such regulations must be in conformity with the applicable maps or map series of the comprehensive plan. Whenever in this subchapter land use orders, permits or zoning district changes are required to be in accordance with the comprehensive plan, such requirements shall mean only that such orders, permits and changes must be in conformity with the map or map series of the comprehensive plan and county land use regulations enacted to implement the other elements of the adopted comprehensive plan.

§ 4956. Required and optional elements of comprehensive plan; studies and surveys [Effective until Nov. 15, 2026].

(f) The comprehensive plan and its elements shall contain policy recommendations and a timeline for the implementation of the plan and its elements.

(g) The comprehensive plan shall include:

(6) A housing element that is consistent with county housing plans, standards and principles. Such housing plans shall be in accordance with state and federal rules and regulations and the housing plan or housing element of the comprehensive plan shall include the following:

h. An affordable housing plan that complies with Subchapter III of Chapter 92 of Title 29.

§ 4956. Required and optional elements of comprehensive plan; studies and surveys [Effective Nov. 15, 2026].

(f) The comprehensive plan and its elements shall contain policy recommendations and a timeline for the implementation of the plan and its elements.

(g) The comprehensive plan shall include:

(6) A housing element that is consistent with county housing plans, standards and principles. Such housing plans shall be in accordance with state and federal rules and regulations and the housing plan or housing element of the comprehensive plan shall include the following:

h. An affordable housing plan that complies with Subchapter III of Chapter 92 of Title 29.

§ 4958. Evaluation and appraisal of comprehensive plan.

(b) The State shall not be obligated to provide state financial assistance or infrastructure improvements to support land use or development actions by the county where the County's adopted comprehensive plan or portions thereof are determined to be substantially inconsistent with State development ~~policies.~~ policies, including policies related to affordable housing.

§ 4960. County comprehensive plan.

(e) Within ~~18~~ 12 months of the date of adoption of the county comprehensive plan or revision thereof, Kent County shall amend its official zoning map(s) to rezone all lands in accordance with the uses and intensities of uses provided for in the future land use element for the County.

(1) In the event that the County does not complete the rezoning required under this subsection (e) within the required 12-month period, a rezoning application filed by a property owner shall be approved if the requested zoning classification is substantially consistent with the future land use map or map series and applicable implementing provisions of the comprehensive plan, unless the County makes specific written findings, based on substantial evidence in the record, that one or more of the following apply:

a, The requested zoning classification is inconsistent with the future land use map or map series or applicable implementing provisions of the comprehensive plan.

b. The application fails to satisfy applicable procedural or submission requirements.

(2) The County shall determine whether a rezoning application filed by a property owner under paragraph (e)(1) of this section is complete within 10 days of submission. If the County does not issue a written completeness determination within 10 days, the application is deemed complete.

(3) The County shall take final action on the rezoning application within 90 days after the application is deemed complete, unless the applicant agrees in writing to an extension.

(4) If the County denies a rezoning application under this subsection (e), the denial must be in writing and must identify the specific future land use map designation or statutory standard upon which the denial is based.

(5) If a public hearing was held in connection with adoption of the comprehensive plan or revision of the comprehensive plan, that hearing shall satisfy all hearing and notice requirements otherwise required under this title. This provision does not prevent a local land use agency from adopting hearing and notice requirements.

(f) In the event that the comprehensive plan includes provisions governing the rate of growth of particular planning districts or sub-areas of the County, the County's zoning district regulations shall be amended to reflect the timing elements of the comprehensive plan.

Section 3. 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:

Subchapter II. The Quality of Life Act

§ 6952. Definitions.

For the purposes of this subchapter:

(2) "Comprehensive plan" or "comprehensive development plan" shall mean, from and after the respective dates by which the counties must be in compliance with this subchapter, a plan that meets the requirements of this ~~subchapter.~~ subchapter and that is reviewed and certified in accordance with § 9103 of Title 29. Wherever in this subchapter land use regulations are required to be in accordance with the comprehensive plan, such requirements shall mean only that such regulations must be in conformity with the applicable maps or map series of the comprehensive plan. Whenever in this subchapter land use orders, permits or zoning district changes are required to be in accordance with the comprehensive plan, such requirements shall mean only that such orders, permits and changes must be in conformity with the map or map series of the comprehensive plan and county land use regulations enacted to implement the other elements of the adopted comprehensive plan.

§ 6956. Required and optional elements of comprehensive plan; studies and surveys [Effective until Nov. 15, 2026].

(f) The comprehensive plan and its elements shall contain policy recommendations and a timeline for the implementation of the plan and its elements.

(g) The comprehensive plan shall include:

(6) A housing element that is consistent with county housing plans, standards and principles. Such housing plans shall be in accordance with state and federal rules and regulations and the housing plan or housing element of the comprehensive plan shall include the following:

h. An affordable housing plan that complies with Subchapter III of Chapter 92 of Title 29.

§ 6956. Required and optional elements of comprehensive plan; studies and surveys [Effective Nov. 15, 2026].

(f) The comprehensive plan and its elements shall contain policy recommendations and a timeline for the implementation of the plan and its elements.

(g) The comprehensive plan shall include:

(6) A housing element that is consistent with county housing plans, standards and principles. Such housing plans shall be in accordance with state and federal rules and regulations and the housing plan or housing element of the comprehensive plan shall include the following:

h. An affordable housing plan that complies with Subchapter III of Chapter 92 of Title 29.

§ 6958. Evaluation and appraisal of comprehensive plan.

(b) The State shall not be obligated to provide state financial assistance or infrastructure improvements to support land use or development actions by the county where the county's adopted comprehensive plan or portions thereof are determined to be substantially inconsistent with State development ~~policies.~~ policies, including policies related to affordable housing.

§ 6960. County comprehensive plan.

(e) Within ~~18~~ 12 months of the date of adoption of the county comprehensive plan or revisions thereof, Sussex County shall amend its official zoning map or maps to rezone all lands in accordance with the uses and intensities of uses provided for in the future land use element for the County.

(1) In the event that the County does not complete the rezoning required under this subsection (e) within the required 12-month period, a rezoning application filed by a property owner shall be approved if the requested zoning classification is substantially consistent with the future land use map or map series and applicable implementing

provisions of the comprehensive plan, unless the County makes specific written findings, based on substantial evidence in the record, that one or more of the following apply:

a, The requested zoning classification is inconsistent with the future land use map or map series or applicable implementing provisions of the comprehensive plan.

b. The application fails to satisfy applicable procedural or submission requirements.

(2) The County shall determine whether a rezoning application filed by a property owner under paragraph (e)(1) of this section is complete within 10 days of submission. If the County does not issue a written completeness determination within 10 days, the application is deemed complete.

(3) The County shall take final action on the rezoning application within 90 days after the application is deemed complete, unless the applicant agrees in writing to an extension.

(4) If the County denies a rezoning application under this subsection (e), the denial must be in writing and must identify the specific future land use map designation or statutory standard upon which the denial is based.

(5) If a public hearing was held in connection with adoption of the comprehensive plan or revision of the comprehensive plan, that hearing shall satisfy all hearing and notice requirements otherwise required under this title. This provision does not prevent a local land use agency from adopting hearing and notice requirements.

(f) In the event that the comprehensive plan includes provisions governing the rate of growth of particular planning districts or sub-areas of the County, the County's zoning district regulations shall be amended to reflect the timing elements of the comprehensive plan.

Section 4. Amend § 702, Title 22 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 702. Comprehensive development plan [Effective until Nov. 15, 2026].

(b) Comprehensive plan means a document in text and maps, containing at a minimum, a municipal development strategy setting forth the jurisdiction's position on population and housing growth within the jurisdiction, expansion of its boundaries, development of adjacent areas, redevelopment potential, community character, and the general uses of land within the community, and critical community development and infrastructure issues. The comprehensive planning process shall demonstrate coordination with other municipalities, the county and the State during plan ~~preparation.~~ preparation and comprehensive plans must be reviewed and certified by the State under § 9103 of Title 29. The comprehensive plan for municipalities of greater than 2,000 population shall also contain, as appropriate to the size and character of the jurisdiction, a description of the physical, demographic and economic conditions of the jurisdiction; as well as policies, statements, goals and planning components for public and private uses of land, transportation, economic development, affordable

housing, community facilities, open spaces and recreation, protection of sensitive areas, community design, adequate water and wastewater systems, protection of historic and cultural resources, annexation and such other elements which in accordance with present and future needs, in the judgment of the municipality, best promotes the health, safety, prosperity and general public welfare of the jurisdiction's residents. The comprehensive plan for municipalities of greater than 2,000 population must also include an affordable housing plan consistent with Subchapter III of Chapter 92 of Title 29.

(h) The State shall not be obligated to provide state financial assistance or infrastructure improvements to support land use or development actions by the municipality where the municipality's adopted comprehensive plan or portions thereof are determined to be substantially inconsistent with State development policies, including policies related to affordable housing.

§ 702. Comprehensive development plan [Effective Nov. 15, 2026].

(b) Comprehensive plan means a document in text and maps, containing at a minimum, a municipal development strategy setting forth the jurisdiction's position on population and housing growth within the jurisdiction, expansion of its boundaries, development of adjacent areas, redevelopment potential, community character, and the general uses of land within the community, and critical community development and infrastructure issues. The comprehensive planning process shall demonstrate coordination with other municipalities, the county and the State during plan ~~preparation.~~ preparation and comprehensive plans must be reviewed and certified by the State under § 9103 of Title 29. The comprehensive plan for municipalities of greater than 2,000 population shall also contain, as appropriate to the size and character of the jurisdiction, a description of the physical, demographic and economic conditions of the jurisdiction; as well as policies, statements, goals and planning components for public and private uses of land, transportation, economic development, affordable housing, community facilities, open spaces and recreation, protection of sensitive areas, climate change and resiliency, community design, adequate water and wastewater systems, protection of historic and cultural resources, annexation and such other elements which in accordance with present and future needs, in the judgment of the municipality, best promotes the health, safety, prosperity and general public welfare of the jurisdiction's residents. The comprehensive plan for municipalities of greater than 2,000 population must also include an affordable housing plan consistent with Subchapter III of Chapter 92 of Title 29.

(h) The State shall not be obligated to provide state financial assistance or infrastructure improvements to support land use or development actions by the municipality where the municipality's adopted comprehensive plan or portions thereof are determined to be substantially inconsistent with State development policies, including policies related to affordable housing.

Section 5. Amend § 9103, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9103. Comprehensive Plan Review and Certification Process.

(f) Within 20 days of receipt of the findings and recommendations from the Cabinet Committee, the Governor shall certify the comprehensive ~~plan or return the comprehensive plan to the municipality or county for revision. The municipality or county shall have the right to accept or reject any or all of the recommendations. The final decision on the adoption of the comprehensive plan is that of the municipality or county.~~ plan if the plan is consistent with all comprehensive plan requirements under Title 9 for counties or Title 22 for municipalities, as applicable, and demonstrates consideration of State development policies. If the Governor determines a plan is inconsistent with the statutory requirements for comprehensive plans or with State development policies, the Governor shall return the plan to the municipality or county for further revision in accordance with this section. If a plan is returned to a municipality or county for revisions, the municipality or county has 45 days to make the necessary revisions and return the plan to the Governor.

Section 6. Amend § 9202, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 9202. Definitions.

For the purpose of this chapter:

(1) "Affordable housing" means housing that is affordable to households making up to 80% of the AMI for rental units and up to 120% of the AMI income for homeownership units.

(3) "Area median income" or "AMI" means the median income for households based on household size and geographic area as established annually by the U.S. Department of Housing and Urban Development.

Section 7. Amend Chapter 92, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter III. Affordable Housing Act

§ 9220. Purpose.

The purpose of this subchapter is to increase the supply and diversity of housing in this State for all income levels by supporting local jurisdictions in their efforts to close housing supply gaps, including affordable housing supply gaps, through measures such as rezoning to allow for higher-density development and more diverse housing types.

§ 9221. Affordable housing plans.

(a) A local jurisdiction that has a population greater than 2,000 and that is required to adopt a comprehensive plan under Title 9, Title 22, or this title must include an affordable housing plan consistent with this subchapter as part of its

comprehensive plan. The affordable housing plan must establish a concrete strategy with clearly defined and measurable goals and outcomes to accomplish the following objectives:

(1) Make meaningful and measurable progress towards a strategic goal of having 20% of all housing units in the local jurisdiction qualify as affordable housing.

(2) Diversify the types of housing, including affordable housing, available in the local jurisdiction.

(b) An affordable housing plan developed under this subchapter must be developed in collaboration with the Delaware State Housing Authority. Once an affordable housing plan is adopted, it becomes incorporated into the local jurisdiction's comprehensive plan.

(c) Except as provided under subsection (d) of this section, a local jurisdiction must adopt its initial affordable housing plan concurrently with its next comprehensive plan due after June 30, 2026. Thereafter, an affordable housing plan must be included in every comprehensive plan.

(d) Notwithstanding the timeframe provided for under subsection (c) of this section, a local jurisdiction that will be adopting its next comprehensive plan before February 1, 2027, is not required to adopt its first affordable housing plan or comply with the requirements under § 9222 of this title until its next 5-year comprehensive plan review.

(e) An affordable housing plan must be developed through an open and inclusive process, which must take place concurrently with the comprehensive plan development process.

(f) At the request of a local jurisdiction, the Delaware State Housing Authority shall provide technical assistance in implementing the local jurisdiction's affordable housing plan.

§ 9222. Required and optional elements of affordable housing plans.

(a) An affordable housing plan developed under this subchapter must do all of the following:

(1) Clearly state the local jurisdiction's goals, policies, and objectives for increasing the housing supply for all income levels, including how the local jurisdiction will achieve the requirement under paragraph § 9221 (a)(1) of this title.

(2) Describe existing or planned efforts for the development of affordable housing, or, if such efforts do not exist, efforts that the local jurisdiction will undertake to increase or improve affordable housing.

(3) Provide a timeline showing how the local jurisdiction will achieve the affordable housing objectives established in the affordable housing plan.

(b) An affordable housing plan must include all of the following elements for increasing housing diversity and production, including for affordable housing, in the local jurisdiction:

(1) Increases in maximum permitted residential density, including increases in the number of dwelling units permitted per acre in order to facilitate an affordable and diverse housing stock.

(2) Authorization for a mix of housing types, including single-family detached, single-family attached, duplexes, triplexes, multifamily dwellings, accessory dwelling units, cottage housing developments, and manufactured housing without the need for a conditional use permit or special exception.

(3) If the total housing inventory consists of less than 20% of affordable housing units, revision of bulk standards, including minimum lot sizes, maximum lot widths, minimum setbacks, minimum unit size, maximum lot coverage, maximum building heights, and dedicated open space requirements.

(4) Implementation of the provisions of § 9223 of this title.

(c) An affordable housing plan must include at least 5 of the following elements for increasing housing production, including affordable housing production, in the local jurisdiction:

(1) Provision of density bonuses or other incentives for including affordable housing units in residential and mixed-use developments, which may include additional permitted dwelling units per acre, additional building height, reduced parking requirements, or reduced open space requirements.

(2) Creation of transit-oriented development zoning designations with significant increases in density along fixed transportation routes, including buses, trains, and other means of public transportation. Transit-oriented development zoning designations must include the reduction or elimination of minimum parking requirements for residential developments located within any of the following areas:

a. ¼ mile of a transit stop.

b. A designated town center.

c. A mixed-use zoning district.

(3) Creation of expedited or accelerated permit review and approval timelines for residential development units that include affordable housing units.

(4) Provision of fee waivers, reductions, or deferrals for residential development units that include affordable housing.

(5) Reduction or waiver of local impact fees for any affordable housing unit.

(6) Facilitation of diverse housing types at different price points by adopting form-based codes or other alternative development standards in areas designated for growth in the comprehensive plan.

(7) Amendment of land use regulations to allow single-room occupancy housing as a permitted use in at least 1 residential zone.

(8) Amendment of land use regulations to allow transitional housing, emergency housing shelters, group homes, recovery homes, or other supportive housing as a permitted use in at least 1 residential zone.

(9) Amendment of land use regulations to allow as a permitted use the conversion of commercial, office, and retail spaces into mixed-use and residential use without burdensome bulk and area standards or conditions such as parking requirements, setbacks, height restrictions, or open space requirements.

(10) Designation of at least 1 residential zone where multifamily housing is a permitted use by right, or if such zoning already exists, allowing for a substantial increase, through zoning or rezoning, in the amount of land zoned to allow additional multifamily housing as a permitted use by right.

(d) Any elements included in this section that a local jurisdiction has completed or made significant and measurable progress towards completing on or after July 15, 2024, may be counted towards satisfying the requirements of this section.

§ 9223. By-right residential uses.

(a) For purposes of this section, "objective standards" means standards that are measurable, uniformly applicable, and not subject to discretionary personal judgment.

(b) A residential development application or a mixed-use development application with a significant residential component for a use that is permitted by-right under the zoning ordinance of a county or local jurisdiction shall be reviewed through an administrative review and approval process if the application complies with all applicable objective standards and does not require a variance, special use permit, conditional use approval, special exception, rezoning, or other discretionary approval.

(c) Nothing in this section prohibits a local jurisdiction from requiring review or approval by a planning commission, planning board, or other administrative body, provided the review is limited to determining compliance with applicable objective standards and does not authorize denial based on discretionary criteria.

(d) A local jurisdiction may hold a public meeting for a residential development application described in subsection (b) of this section, provided that the public meeting is not a public hearing and does not create a discretionary approval requirement.

(e) This section supersedes any inconsistent public hearing requirements applicable to a residential development application described in subsection (b) of this section, including § 4811, § 6811, and § 6812 of Title 9.

§ 9224. Reporting requirements.

(a) The Delaware State Housing Authority shall coordinate with the Office of State Planning Coordination to gather information from local jurisdictions regarding their compliance with the affordable housing plans developed under this subchapter.

(b) The Delaware State Housing Authority shall coordinate with the Office of State Planning to develop an annual report showing each local jurisdiction's progress toward meeting the goals identified in its affordable housing plan.

(c) The Delaware State Housing Authority shall publish the reports required under this section on its website no later than May 15th of each year, beginning in 2028.

Section 8. This Act may be cited as "The Housing for Every Delawarean Act".

Ssynopsis

This Act aims to increase this State's supply of housing. Despite rapid development, Delaware is facing a significant and growing shortage of affordable housing. Senate Joint Resolution No. 8 of the 1st session of the 153rd General Assembly created a pilot program designed to encourage local zoning reform efforts that would help increase affordable housing. While several local jurisdictions have taken advantage of the assistance offered by Senate Joint Resolution 8, the scope of the problem is statewide, and it will take more than isolated local reform to scale up housing production, particularly affordable housing production, to the degree necessary to meet this State's needs. This Act seeks to address those needs by increasing access to housing for all income levels while allowing local jurisdictions the flexibility to develop their own strategies for doing so.

This Act is a second Senate substitute for Senate Bill No. 23 and differs from the first Senate substitute for Senate Bill No. 23 as follows:

(1) Senate Substitute No. 2 refines the process that occurs if a County fails to rezone in accordance with its comprehensive plan within 12 months. Like Senate Substitute No. 1, it provides that if rezoning does not occur as required, a property owner's application must be approved if the requested zoning classification is substantially consistent with future land use map or map series and implementing provisions of the comprehensive plan. Senate Substitute No. 2 adds that denial can only occur if the County makes specific written findings that the requested zoning classification is inconsistent with the future land use map or map series or implementing provisions of the comprehensive plan, or that the application fails to satisfy procedural or submission requirements. If neither of these apply, the application must be approved within 90 days, unless the applicant agrees in writing to an extension.

(2) Senate Bill No. 23 required a minimum of 4 mandatory elements of an affordable housing plan. Senate Substitute No. 1 increased the number of required elements of the affordable housing plan from 4 to 5 by moving an element from optional to mandatory. That element was that an affordable housing plan for a jurisdiction with greater than 10,000 population must include the identification of 1 or more zoning designations that allow and are suitable for residential uses where emergency shelters, group homes, recovery homes, or other supportive housing are allowed as a permitted use without a conditional use or other discretionary permit required. Senate Substitute No. 2 removes this as a mandatory element and changes the newly optional element to read, "the amendment of land use regulations to allow transitional housing, emergency housing shelters, group homes, recovery homes, or other supportive housing as a permitted use in at least 1 residential zone." It also removes the 10,000 population cap, making the element an option for all local jurisdictions, regardless of population size.

(3) Senate Bill No. 23 and Senate Substitute No. 1 for Senate Bill No. 23 required the Director of the Delaware State Housing Authority to approve all affordable housing plans. Senate Substitute No. 2 shifts the role of Delaware State Housing Authority to a more collaborative one by requiring local jurisdictions to work with the Delaware State Housing Authority to develop its plan.

(4) Senate Substitute No. 2 gives local jurisdictions credit for measures they are already taking to increase affordable housing. Any elements of affordable housing plans adopted on or after July 15, 2024, count toward meeting the requirements of the plan. This avoids duplication of efforts and recognizes the meaningful affordable housing work that many local jurisdictions are already doing.

(5) Senate Substitute No. 2 recognizes that some jurisdictions are very close to completing their comprehensive plans by exempting jurisdictions from some provisions of the Affordable Housing Act if they will be adopting their next comprehensive plan before February 1, 2027. If a local jurisdiction falls into that category, it does not need to comply with the provisions of § 9222 of the Act prior to the next 5-year review of its comprehensive plan.

(6) Senate Substitute No. 2 creates a new section addressing by-right residential uses and mixed-use uses with a significant residential component. The language around by-right review and approval previously included in the mandatory elements of an affordable housing plan section is replaced with a reference to the newly created section. Under that section, a residential development application or a mixed-use application with a significant residential component for a use that is permitted by-right under the zoning ordinance of a county or local jurisdiction will be reviewed through an administrative review and approval process, provided the application complies with objective standards, as defined in the bill, and does not require any type of discretionary approval. A local jurisdiction may still require review or approval by a planning commission, planning board, or other administrative body as long as the review is limited to determining compliance with objective standards and does not authorize denial based on discretionary criteria.

(7) Senate Bill No. 23 and Senate Substitute No. 1 for Senate Bill No. 23 stated that the Governor's review and certification of comprehensive plans would focus in part on consistency with State development policies. Senate Substitute No. 2 modifies this slightly to require plans to "demonstrate consideration of State development policies." The goal of this change is to avoid limiting local jurisdictions to simply mirroring the contents of State development polices like State Spending Strategies, while still requiring that they consider such policies in developing their comprehensive plans.

Like the first substitute for Senate Bill No. 23, Senate Substitute No. 2 differs from Senate Bill No. 23 as follows:

(1) Both substitutes remove a provision that would have given County comprehensive plans the force of law. Current law, where only the land use map or map series component of the comprehensive plan has the force of law, remains in place.

(2) Both substitutes reduce the amount of time a County has to rezone to conform land use with its comprehensive plan from 18 to 12 months.

(3) Senate Bill No. 23 gave local jurisdictions 20 days to complete revisions to comprehensive plans that were returned by the Governor for further revision. Both substitutes increase that period to 45 days and add additional details regarding the revision and certification process.

(4) The requirements for the affordable housing plan under newly created Subchapter III of Chapter 92 of Title 29 were reduced in Senate Substitute No. 1 to reflect the fact that local jurisdictions already include some of the information required under Senate Bill No. 23 in their comprehensive plans. Senate Substitute No. 2 retains these changes.

(5) Senate Substitute No. 1 and Senate Substitute No. 2 both remove some of the reporting requirements included in Senate Bill 23 to simplify the process for local jurisdictions. Reporting is still mandatory, and the Delaware State Housing Authority and the Office of State Planning Coordination are still required to publish reported information on the Housing Authority website on an annual basis so that the public can see how local jurisdictions are meeting their obligations under this Act.

(6) Senate Bill No. 23 included technical corrections intended to make current code consistent with the standards of the Delaware Legislative Drafting Manual. Senate Substitute No. 1 removed those technical corrections to avoid confusion over which changes were technical, and which were substantive. Senate Substitute No. 2 also removes those technical corrections for the same reason.

Under § 1 of Article IX of the Delaware Constitution, this Act requires a two-thirds majority vote because the amendments it makes to Title 22 of the Delaware Code would indirectly amend the charter of one or more incorporated municipalities.

Author: Senator Huxtable

§ 2663. Residential density requirements.

(a) For purposes of this section, growth area means an area within a municipality or 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 the 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 or local municipality shall adopt zoning ordinances and land development regulations within growth areas that provide opportunities that do all of the following:

1. Permit a variety of housing types, including townhouses, multifamily dwellings, stacked flats, apartments, and mixed-use residential development.
2. Establish bulk, dimensional, and design standards that reasonably accommodate the housing types authorized within b(1) of this section.
3. Encourage development patterns that reduce vehicular trips, increase pedestrian connectivity, support transit-oriented development, or promote mixed-use development consistent with guidance issued by the Department of Transportation.

(c) By June 1, 2027 by regulation and there after At least once every ten years in the County or Municipal Comprehensive Plan, each county or local municipality shall address or update residential growth zone density requirements that does all of the following:

1. Based on guidance in (d), develop and periodically update residential density requirements applicable to growth areas throughout the county or municipality starting with a minimum density threshold of 4 units per acre for single family homes and increasing density requirements up for other housing types.
2. Require residential development meet density requirements while recognizing that varying development intensities may be appropriate within different portions of a designated growth areas of the county or local municipality.
3. Issue regulations intended to drive compact, infrastructure-efficient, and housing-supportive development patterns within growth areas.

Once the comprehensive plan is approved, each county or local municipality shall issue updated regulations or ordinances effectuating the residential growth zone density requirements that must be developed in consultation with the following or their designee(s):

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. One (1) representative appointed by the Delaware League of Local Governments.
5. The Office of the Governor

(d) DSHA shall develop guidance for County or municipality residential density requirements applicable to growth areas throughout the state starting with a minimum density threshold of 4 units per acre for single family homes and increasing density requirements up for other housing types. The guidance must include all of the following:

1. Provide recommendation to 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 authorized within b(1) of this section.

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

SPONSOR: Rep. Bush & Rep. Snyder-Hall & Rep. Michael Smith & Rep. Hilovsky & Sen. Walsh & Sen. Hoffner Rep. K. Johnson; Sen. Poore

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

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 if the Department imposes a traffic impact study 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, the Department's threshold for determining if a traffic impact study is required 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, 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) When 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 of the State identified as an area for expansion or growth in the County's comprehensive plan as investment levels 1 or 2, or successor identifiers in future editions of the Strategies for State Policies and Spending.

(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, when the County Council enacts an ordinance, or a county agency adopts a regulation, that establishes a density requirement for residential developments in a growth area, the ordinance, or regulation, must do all of the following:

(1) Require the residential development to have a minimum density of 4 dwelling units per acre.

(2) Permit the residential development to have unit types which include multifamily options, including townhomes, apartments, and stacked flats.

(3) Require the residential development to have bulk standards which reasonably permit the construction of the unit types authorized under paragraph (b)(2) of this section.

(4) Encourage development that reduces vehicular trips, increases pedestrian trips, promotes transit-oriented development, or promotes mixed-use development based on guidance from the Department of Transportation.

(c)(1) The minimum number of dwelling units per acre under subsection (a) of this section is increased whenever the Delaware State Housing Authority, by regulation, increases the density requirement to greater than 4 dwelling units per acre.

(2) Action by the County Council, or county agency, is not required each time the Delaware State Housing Authority adopts a density requirement under paragraph (c)(1) of this section.

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, 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 county government 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 of this State identified as an area for expansion or growth in the County's comprehensive plan as investment levels 1 or 2, or success identifiers in future editions of the Strategies for State Policies and Spending.

(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, when the county government enacts an ordinance, or county agency adopts a regulation, that establishes a density requirement for residential developments in a growth area, the ordinance, or regulation, must do all of the following:

(1) Require the residential development to have a minimum density of 4 dwelling units per acre.

(2) Permit the residential development to have unit types which include multifamily options, including townhomes, apartments, and stacked flats.

(3) Require the residential development to have bulk standards which reasonably permit the construction of the unit types authorized under paragraph (b)(2) of this section.

(c)(1) The minimum number of dwelling units per acre under subsection (a) of this section is increased whenever the Delaware State Housing Authority, by regulation, increases the density requirement to greater than 4 dwelling units per acre.

(2) Action by the county government, or county agency, is not required each time the Delaware State Housing Authority adopts a density requirement under paragraph (c)(1) of this section.

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, 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 of this State identified as an area for expansion or growth in the County's comprehensive plan as investment level 1 or 2, or successor identifiers in future editions of the Strategies for State Policies and Spending.

(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, when the county government enacts an ordinance, or county agency adopts a regulation, that establishes a density requirement for residential developments in a growth area, the ordinance, or regulation, must do all of the following:

(1) Require the residential development to have a minimum density of 4 dwelling units per acre.

(2) Permit the residential development to have unit types which include multifamily options, including townhomes, apartments, and stacked flats.

(3) Require the residential development to have bulk standards which reasonably permit the construction of the unit types authorized under paragraph (b)(2) of this section.

(c)(1) The minimum number of dwelling units per acre under subsection (a) of this section is increased whenever the Delaware State Housing Authority, by regulation, increases the density requirement to greater than 4 dwelling units per acre.

(2) Action by the county government, or county agency, is not required each time the Delaware State Housing Authority adopts a density requirement under paragraph (c)(1) of this section.

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.

When 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 of this State identified as an area for expansion or growth in a municipality's comprehensive plan as investment levels 1 or 2, or successor identifiers in future editions of the Strategies for State Policies and Spending.

(b) Notwithstanding § 301 of this title or any provision of this Code to the contrary, and subject to subsection (c) of this section, when the legislative body of a municipality enacts an ordinance, or a municipal agency adopts a regulation, that establishes that establishes a density requirement for residential developments in a growth area, the ordinance or regulation must do all of the following:

(1) Require the residential development to have a minimum density of 4 dwelling units per acre.

(2) Permit the residential development to have unit types which include multifamily options, including townhomes, apartments, and stacked flats.

(3) Require the residential development to have bulk standards which reasonably permit the construction of the unit types authorized under paragraph (b)(2) of this section.

(c)(1) The minimum number of dwelling units per acre under subsection (a) of this section is increased whenever the Delaware State Housing Authority, by regulation, increases the density requirement to greater than 4 dwelling units per acre.

(2) Action by the legislative body of the municipality, or municipal agency, is not required each time the Delaware State Housing Authority adopts a density requirement under paragraph (c)(1) of this section.

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 of Transportation 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 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 fee 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 the transportation impact fee.

4. The Department shall publish the formula used to calculate the transportation impact fee and shall reevaluate the formula every 5 years. Any increase in the 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 fee 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 fee.

d. The transportation impact fee is intended to fund the Department's planning, designing, engineering, and construction of improvements related to improving 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 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 1% 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.

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.

SYNOPSIS

This Act is to be known as the Reforming Opportunities and Accelerated Development for Delaware Act ("ROAD-DE Act"). This Act 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 Act does all of the following:

(1) Section 1 of this 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 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 Act require the counties and municipalities to establish residential density requirements of at least 4 dwelling units per acre, unless the Delaware State Housing Authority, by regulation, establishes a density requirement of more than 4 dwelling units per acre.

(4) Section 9 of this 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 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 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. Finally, this Section requires DelDOT to assess and collect a surcharge in the amount of 1% of the required transportation impact fee for the benefit of open space preservation, farmland preservation, and coastal restoration.

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