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Transportation 101

December 9, 2022 Chris Rupe, Senior Fiscal Analyst

Transportation Committee Primer (2023)

*This document provides a high-level introductory overview of the State of Vermont's transportation finance landscape and annual process for members of the legislative Transportation Committees. A glossary of common acronyms, definitions, and technical terms is included in the appendix**

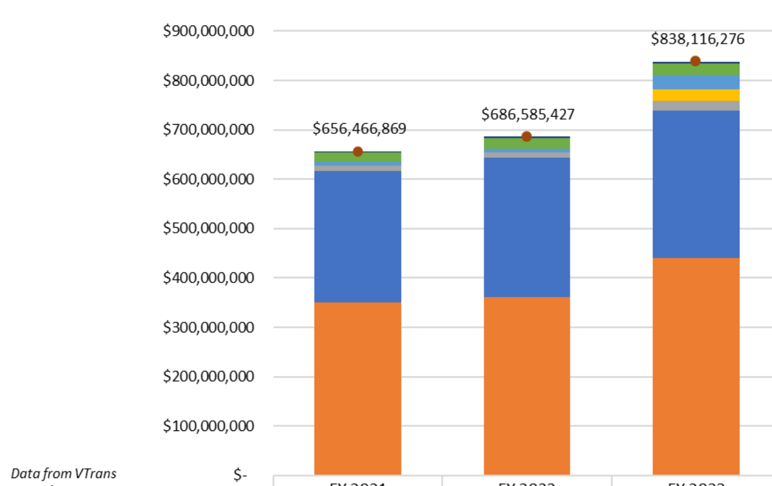
1. Vermont's Transportation Funding Structure

Like other states, Vermont supports its state transportation program using a mix of state and federal funding sources. Most of the state money used in the transportation budget comes from two statutory funds – the *Transportation Fund (T-Fund)* and the *Transportation Infrastructure Bond Fund (TIB Fund),* a sub-fund of the T-Fund. Funds are deposited into each account through dedicated revenue streams.

Transportation Fund (T-Fund)

Vermont has historically funded its transportation program mainly on a pay-as-you-go (or 'paygo') basis through annual appropriations and transfers, with minimal reliance on debt issuance. The Transportation Fund (T-Fund) is the primary source of state transportation funds, representing 35.7 percent of the FY 2023 AOT budget (see *Figure 1*).

Figure 1: **Vermont Agency of Transportation Appropriations**
(As Passed)



Data from VTrans capital programs.

	FY 2021	FY 2022	FY 2023
Interdepartmental Transfers	$1,661,970	$2,888,052	$3,597,177
Central Garage Internal Service Fund	$20,982,875	$22,202,720	$22,754,095
Local/Other Funds	$6,497,615	$6,360,316	$29,203,297
General Funds	$-	$-	$23,400,000
TIB Fund	$11,100,770	$11,397,637	$19,802,363
Transportation Fund	$265,580,308	$282,190,668	$299,059,743
Federal Funds	$350,643,331	$361,546,034	$440,299,601
All-Funds Total	$656,466,869	$686,585,427	$838,116,276

Revenue Sources

In FY 2023, T-Fund revenues are forecasted to be **$300.1 million**. Revenue into the T-Fund is generated from the following sources (see *Figure 2* on the following page):

1. A **gasoline tax** at a fixed rate per gallon sold. Consumers pay a total of 13.1 cents per gallon in state gasoline tax, with revenue distributed as follows:
   a. 11.345 cents to the T-Fund

* This committee primer document was first authored by Neil Schickner in JFO and has been revised and updated for the 2023-2024 legislative biennium.

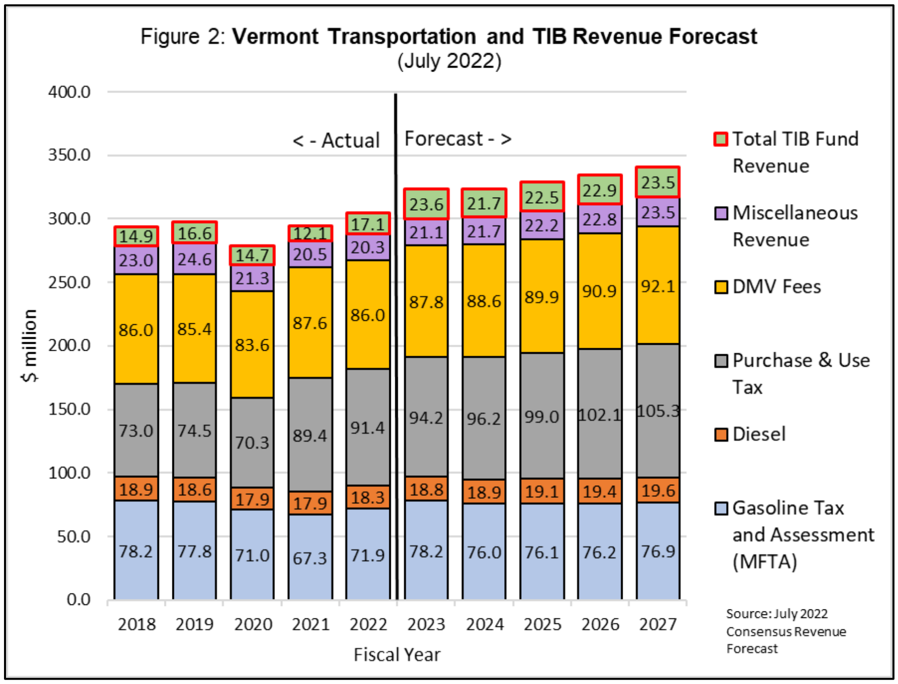
b. 0.380 cents to the DUI Enforcement Special Fund
c. 0.375 cents to the Fish and Wildlife Fund and the Department of Forests, Parks, and Recreation
d. 1 cent to the Petroleum Clean-Up Fund

2. The **Motor Fuel Tax Assessment (MFTA).** A gasoline assessment of 4 percent on the average retail price of gasoline during the prior quarter, excluding state and federal taxes, fees, and assessments of any kind. The 4 percent gasoline assessment has a minimum of 13.4 cents per gallon and a maximum of 18 cents per gallon. Generally, the minimum applies when the average quarterly retail price falls below $3.87 per gallon and the maximum applies when the average quarterly retail price exceeds $5.08.

3. A **diesel tax** fixed at 28 cents per gallon is deposited into the T-Fund, with an additional cent per gallon deposited into the Petroleum Clean-Up Fund.

4. Two-thirds of the **Motor Vehicle Purchase & Use Tax** revenue, which is comprised of a 6 percent tax on initial vehicle registrations and purchases and a 9 percent tax on short-term vehicle rentals. The remaining third is deposited in the Education Fund.

5. **Fees for driver's licenses and vehicle registrations,** which are periodically revised by the Legislature through "Fee Bills" – the most recent adjustment took effect in FY 2017.



6. **Miscellaneous revenue** from many smaller sources, including but not limited to:
   a. Sales and use tax on aviation jet fuel and on natural gas used to propel a motor vehicle
   b. A portion (30 percent) of a local option tax on the sale of aviation jet fuel
   c. Receipts from pilot and aircraft license fees
   d. Penalties and fines imposed under Titles 5, 19, and 23.
   e. Leases for property at State-owned airports and railroads, proceeds from the sale of surplus property and recycled materials, and other miscellaneous sources.

The Department of Motor Vehicles collects these funds and reports their totals monthly.

To reduce the effects of revenue variations on the transportation budget, the Legislature created a **Transportation Budget Stabilization Reserve** in 32 V.S.A. § 308a. Any undesignated T-Fund surpluses are to be deposited into the stabilization reserve at the close of each fiscal year, provided that the stabilization reserve balance does not exceed 5 percent of the appropriations from the T-Fund for the *prior* fiscal year. Statute permits the Commissioner of Finance and Management to draw upon the stabilization reserve to offset T-Fund deficits. Any undesignated T-Fund surplus remaining after the stabilization reserve has been brought to its 5 percent maximum is reserved within in the T-Fund and available for future appropriation by the Legislature, per 32 V.S.A. § 308c(c). The T-Fund Stabilization Reserve is typically maintained at its 5 percent statutory maximum (**$13,925,423 in FY 2022**).

Appropriations and Transfers

The annual "Big Bill" typically appropriates Transportation Funds to support the Agency of Transportation, Department of Buildings and General Services (for the operation of information centers), and Department of Public Safety (for State Police). The Big Bill also typically appropriates T-Funds for transportation-related debt service costs and Pay Act funding requirements, and in recent years has included an annual transfer to the Downtown Transportation and Related Capital Improvement Fund created by 24 V.S.A. § 2796. The Big Bill or Budget Adjustment Act may also include other transfers to or from the T-Fund that are not of a recurring nature (see *Table 1*).

In addition to these appropriations, several transfers occur annually between the T-Fund and other funds based on statutory requirements:

- A transfer to the Central Garage Fund indexed to the Consumer Price Index per 19 V.S.A. § 13(c)(1)(B).
- A flat $370,000 transfer to the Recreational Trails Fund per 10 V.S.A. § 446.
- Transfers to or from the Transportation Budget Stabilization Reserve to comply with its 5 percent statutory maximum.
- 12 percent of Motorboat Registration Fund revenues are transferred into the T-Fund per 23 V.S.A. § 3319(b)(6).
- Other transfers may also occur occasionally with the TIB Fund or other special funds.

Table 1: **Transportation Fund Operating Statement (FY 2022)**

Revenue	FY 2022
Current Law Revenues	287,846,728
Prior Year Refund of Expenditures	530,210
Federal Indirect Reimbursements	18,081,251
Total FY2022 Revenue	306,458,188
Carryforward from Prior Year	28,594,984
Total Available State Revenue	**335,053,172**
Appropriations	
AOT Appropriations	282,190,668
BGS – Information Centers	3,911,594
DPS – JTOC Appropriation	20,250,000
Transportation Debt Service	521,606
Pay Act	4,250,000
Current Yr Reversions/Rescissions	(3,933,027)
Total Appropriations	**307,190,841**
Pre-Transfer Balance	**27,862,331**
Transfers	
(To)/From Downtown Fund	(4,023,966)
(To)/From Central Garage Fund	(1,428,431)
(To)/From Recreational Trail Fund	(370,000)
(To)/From Stabilization Reserve	(1,988,675)
(To)/From Other Funds	(4,708,271)
Total Transfers	**(12,519,343)**
Ending Balance	**15,342,989**

Transportation Infrastructure Bond (TIB) Fund

The Transportation Infrastructure Bond Fund (TIB Fund) created in 2009 by 19 V.S.A. § 11f is a sub-fund of the T-Fund dedicated to funding capital improvements to transportation infrastructure that result in a relatively long remaining useful life. These investments can occur either directly through appropriations on a 'paygo' basis or via debt service on special obligation Transportation Infrastructure Bonds (TIB Bonds). The primary purpose of the TIB Fund is to create a dedicated funding stream to pay for the debt service costs associated with issuing TIB Bonds. In the past, three series' of TIB bonds were issued (in 2010, 2012, and 2013) totaling $36.385 million. **All outstanding TIB bonds have been refunded as of June 2022, resulting in no continuing debt service obligations.** Therefore, capacity exists to fund any future TIB bond issuances the Legislature may authorize.

Revenue Sources

In FY 2023, TIB Fund revenues are forecasted to be **$23.6 million** from the following sources (19 V.S.A. § 11f):

1. A gasoline assessment (Motor Fuel Transportation Infrastructure Assessment) at a variable 2 percent of the tax-adjusted price during the prior quarter, with a 3.96 cent minimum and no maximum. The minimum generally applies when average retail prices are below $2.48. In FY 2023, the TIB gas assessment is forecasted to generate $21.6 million – 91.5 percent of the TIB Fund's total revenue.

2. A diesel fuel transportation infrastructure assessment at a fixed 3 cents per gallon, which is forecasted

to generate \$2.0 million in FY 2023 – 8.5 percent of the TIB Fund's total revenue.

Statute prohibits these assessment rates from being reduced below the rates in effect at the time of issuing any TIB bonds until the TIB bonds have been fully repaid (19 V.S.A. §11f(f)).

The proceeds of TIB bonds may only be used for the design and construction of certain long-lived transportation capital assets (e.g. bridges, culverts, roads, railroads, airports, and buildings). TIB Fund revenue is dedicated to pay the debt service on outstanding TIB bonds. Once those costs are fully satisfied for a given fiscal year, the excess revenue is available for similar transportation projects on a paygo basis.

Internal Service Funds

Certain components of the transportation budget are accounted for through internal service funds - primarily the Central Garage Fund, which funds the work of managing and replacing the VTrans statewide equipment fleet. Each year, in addition to a statutory transfer from the T-Fund, the Central Garage Fund collects "rents" from the users of the equipment within the Agency. For example, the budget of the Maintenance Division includes funds for it to pay the Central Garage Fund based on the number and types of vehicles in service and the costs associated with maintaining and replacing them. To get an accurate, "unduplicated" picture of the transportation budget total, it is important to exclude internal service funds like the Central Garage Fund and interdepartmental transfers from the total because they represent funds that are already reflected in the underlying appropriations to the "client" agencies. However, using internal service funds generally provides a more transparent view into the true costs of performing a centralized activity and reflects those costs at the program level within the overall Agency.

Federal Funds

Federal funds are the largest component of Vermont's annual transportation budget - \$440.3 million in FY 2023. Most of these funds are from the U.S. Department of Transportation (U.S. DOT) via the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA).

Federal funds typically require a non-federal match, and the State typically meets this match with T-Funds and TIB Funds (although other non-federal funds can be used, as well). Typically, the federal government will pay for 80 percent of an eligible project cost, with the State and/or municipality paying the remainder. While 80 percent is a helpful "rule of thumb," other match requirements exist. For example, certain safety activities may be funded at up to 100 percent federal share, and work on the interstate highways and airports is typically funded 90 percent federally. Match requirements are specific to the type of project and its federal funding source.

Federal funds are typically distributed on a reimbursement basis – the State first incurs the cost and is then reimbursed by the federal government for its share. *See Section 4 beginning on page 10 for more details.*

Special Funds and Other Funds

Vermont's transportation budget also includes special funds, primarily from the Clean Water Fund. Clean Water Funds support efforts to control erosion and improve water quality from municipal transportation infrastructure. Transportation technology projects may also be funded via the Technology Modernization Special Fund created in Act 185 (2022). Occasionally, funds from the General Fund may support specific elements of the transportation budget, such as one-time investments in electric vehicle incentives and charging infrastructure. Capital Funds may also support specific transportation projects that are authorized in the Capital Bill and funded with general obligation bond proceeds, though this occurs infrequently.

2. Consensus Revenue Forecasts and Budget Process

Revenue Forecasting

Like the overall State budget, the transportation budget is based on a **consensus revenue forecast** agreed to by an economist working for the Administration and an economist working for the Legislature. Typically, two consensus forecasts are prepared each year – one in January and one in July. The revenue forecasts are adopted by the Emergency Board, which is comprised of the Governor and the four legislative "money chairs."

Schedule 2 revenue reports track actual collections and are released by the Administration monthly. Discussion of revenue reports is often framed in terms of being above or below forecast or projections, meaning higher or lower than the revenue projected in the most recent consensus forecast. Note that if revenue is reported as above or below forecast, that does not necessarily mean that revenue is growing or declining. If the forecast is based on overly optimistic projections, a below-forecast result could mean that revenue is growing but not as quickly as the economists assumed. The reverse is also true – if the consensus forecast is based on overly pessimistic assumptions, an above-forecast result could still mean that revenue is declining but not as severely as economists had assumed.

The forecasts and monthly revenue updates reflecting actual collections are available on the JFO website.

Budget Process

In a typical year, AOT will begin work on its proposed budget approximately nine months ahead of time – work begins in September for the upcoming fiscal year beginning in July. Thus, when AOT presents its proposed budget to the Legislature in January for the fiscal year that begins in July, that budget proposal is typically based on the consensus revenue forecast released in the preceding July. This means that when a new consensus forecast is released in January, the AOT proposed budget could be out of alignment with the new forecast. In that case, AOT will make recommendations to the legislative committees on how to balance its proposed budget for the upcoming year with the new forecast.

The annual transportation bill (T-Bill) enacted for the fiscal year beginning July 1 is typically based on the consensus forecast released in January. The consensus forecast is updated again mid-July, and if the revenue forecast is downgraded the Administration may be required to implement, or propose to the Joint Fiscal Committee, rescissions to the budget that was just enacted (32 V.S.A. § 704).

One of the Legislature's first tasks each session is to consider the Governor's proposed budget adjustment for the current fiscal year. After December 31, the Administration completes the December Schedule 2 revenue reports so the economists can compare six months of actual collections to the consensus forecast from the prior July. The economists agree on a new forecast and in mid-January, the Emergency Board convenes to review and approve it. To further expedite the process, the Administration typically presents to the House its proposed budget adjustment very early in the session based on its analysis of revenue trends in consultation with its economist as to the likely result of the new consensus forecast. The budget adjustment must conform spending authority and appropriations to the new January consensus forecast. Depending on the timing the House may pass a budget adjustment prior to the release of the consensus forecast in which event any difference must be addressed in the Senate and then in conference with the House.

The budget adjustment aligns spending authority and appropriations with the new January consensus forecast of full fiscal year revenue. Invariably, however, actual revenue deviates from the January forecast. If revenue comes in higher than projected in the consensus forecast and thus higher than is authorized and appropriated, AOT has no authority to spend the surplus funds (absent a "waterfall" or "contingent spending" provision in the transportation bill or Big Bill). Absent such a provision, any surplus revenue simply flows into the Transportation Fund or TIB Fund to produce a positive year-end balance in the fund(s) to be available for appropriation in the following fiscal year.

If actual revenue falls short of the January consensus forecast, AOT's typical practice is to cover the deficit by not carrying forward unexpended appropriations authority. By convention, the annual budget adjustment bill includes a provision which gives the Administration the discretion to carry forward unexpended appropriations authority into the next fiscal year. Because of project delays for various reasons, AOT typically ends the fiscal year with unexpended appropriations that can range from $8 to $20 million. If actual revenues are on or above target – meaning the cash is actually in the bank to be drawn on – and a project has not been unduly delayed, at the close of the fiscal year AOT will typically carry forward the unspent current year appropriations into the next fiscal year.

On the other hand, when actual revenues fall short of the consensus forecast, by not carrying forward its unspent appropriations authority AOT aligns spending with actual revenue. When AOT covers a budget deficit this way, depending on the nature of the delays involved in the different affected projects and the consensus forecast for the next fiscal year, the Agency may have to modify its proposed spending on the project in the next fiscal year. If money is flush the next fiscal year and activity on the project can be accelerated, additional spending may be proposed. If money next year is tight, the completion date for the project may simply be extended.

Typical timeline of a transportation budget:

- **July:** One month after the close of the prior State FY and two weeks into the current FY, the July consensus revenue forecast is released.

- **September:** AOT starts work on its proposed budget for the next FY based on the July consensus forecast.

- **Early January:** AOT delivers its proposed Transportation Program to the Legislature for the upcoming FY that begins in July. Total proposed spending is based on the prior July consensus forecast of "current law" revenues.

- **January:** The new consensus forecast is released. During the following weeks AOT may propose changes in its budget proposal to align spending with the new forecast. Since the State's annual Transportation Program consists of AOT's proposed plan as amended by the Legislature, all changes in spending authority are specified in the transportation bill.

- **April/May:** The Legislature passes the transportation bill. Total spending in the bill is based on the January consensus forecast of the then-current law revenues.

- **July:** Shortly after the close of the prior FY and several weeks into the new FY, the July consensus revenue forecast is released.

- **September:** If the July consensus forecast had downgraded revenue by 1% or more, under 32 V.S.A. § 704, AOT would present a rescission plan to align spending with the new revenue estimates to the Joint Fiscal Committee for approval.

- **January:** Six months into the FY, AOT will submit to the Legislature its proposed budget adjustment for the current FY based on its analysis of revenue trends since July and input from the Administration's economist as to the likely impact of the new January consensus forecast.

- **Mid-January:** The new January consensus forecast is released.

- **February – March:** The Legislature with AOT's input passes a budget adjustment act ("BAA") that aligns current year appropriations with the new forecast.

- **February – June**: AOT monitors actual monthly revenues relative to the spending authorized in the budget adjustment act. AOT must limit its full fiscal year spending to the lesser of (1) the spending authorized by the BAA or (2) actual revenues. If January-June actual revenues come in higher than the January consensus forecast, the excess accrues to the bottom line of the Transportation or TIB funds and will be available for spending in the next FY budget. If January-June revenues come in lower than the January consensus forecast, AOT will typically cover the deficit by not carrying forward unexpended spending authority or by slowing down other spending.

3. The Transportation Bill (T-Bill) and White Book

The annual Transportation Bill (T-Bill) is considered one of the "must pass" pieces of legislation each session (although its substance could also be reflected in the main budget bill, rather than in a stand-alone bill). The T-Bill formally adopts, often with amendments, the budget and program for the Agency of Transportation for the upcoming fiscal year (the "white book").

By adopting the "white book," the T-Bill establishes the authorized expenditure amounts by program, and the list of projects to be undertaken. Additionally, the T-Bill often contains policy provisions detailing how specific funds are to be spent, as well as changes to statute that pertain to transportation.

The T-Bill authorizes expenditures but does not provide appropriations authority. The appropriations needed to fund those authorizations are contained the budget bill (the "Big Bill"). A project or initiative authorized in the T-Bill is subject to the appropriations occurring in the Big Bill to pay for. Extensive work is done at the end of the legislative process to align both bills. While the "white book" reflects projects authorized for four future fiscal years, the appropriations in the Big Bill only fund the upcoming fiscal year – and the "white book" is revised each year. By convention, the T-Bill adopts the Governor's recommended transportation plan except as modified elsewhere by the bill itself. In practice, this means that the T-Bill language focuses on changes made to particular sections of the Governor's recommendation. The T-Bill, therefore, does not contain details about every single project – those details are instead reflected in the "white book."

Work on the T-Bill begins in the House in January, shortly after the Governor's budget proposal is released. The Governor will recommend the Agency's capital program for the upcoming fiscal year (the "white book"), along with policy-oriented language or amendments to statute that they seek for inclusion in the bill. The House Transportation Committee then hears extensive testimony on the proposals and marks up the bill. Once the Transportation Committee votes out the bill, it is typically referred to the Appropriations Committee (and sometimes to other committees if the bill contains language relevant to their areas of jurisdiction). The bill is then typically voted out of the House and sent to the Senate in mid-March.

The Senate, meanwhile, also begins the session by hearing testimony on the Agency's proposals. The Senate Transportation Committee also typically begins work on the Miscellaneous Motor Vehicle bill while the House works on the T-Bill, and both bills "cross over" to the other body by mid-March. Once the Senate and its respective committees hear testimony and recommend amendments to the House's T-Bill, it passes the bill back to the House where differences are reconciled either through a committee of conference or further proposals of amendment. The budget bill ("Big Bill") containing the appropriations to fund the T-Bill for the upcoming fiscal year moves through the process in parallel.

The White Book

The "white book" is a four-year spending plan covering the same number of years as the federally required Statewide Transportation Improvement Program (STIP). All projects in the state transportation plan as eventually approved by the Legislature can be described as being in one of three categories. Chronologically, the typical project proceeds from:

(1) **Candidate** status: Waiting in the queue for preliminary funding, to proceed to…

(2) **Development and Evaluation (D&E)**: Projects in D&E receive funding for alternatives analysis (including geological and engineering analysis required to assess alternatives) and then once an alternative is decided upon, preliminary engineering and design work, to proceed to…

(3) **Front of the Book**: This category includes (a) projects which are ready to go out to bid and start construction in the fiscal year of the bill; (b) projects which are already under construction (i.e. approved for construction in a prior bill and under construction pursuant to a multi-year contract) and (c) projects that are anticipated to begin construction in the next four fiscal years (within the timeframe of the multi-year STIP). Front-of-the-Book status is important because construction spending is typically the largest component of a project's total cost.

In the Governor's recommended transportation plan, projects are presented in reverse order under each program area tab with Front of the Book projects described in detail.

Construction Estimates, Multi-Year Contracts and Annual Spending Authority

The T-Bill provides spending authority for all AOT activities approved and scheduled to occur during the fiscal year in question. Many construction projects, however, cannot be completed in one construction season (paving is the major exception).

When a multi-year project is initially proposed for Front-of-the-Book status, the project's description will include AOT's estimate of the project's total construction cost. This represents the Agency's estimate of what the winning bid will be if the project is approved for construction and the construction contract is put out to bid. The description will also include (1) AOT's estimate of how the construction costs will be spread out over the multiple fiscal years during which the work is done and (2) AOT's estimate of the project's total cost (all D&E plus construction).

Even though construction will be spread over several fiscal years, however, the annual bill only approves and provides spending authority for AOT's estimate of the cost of the work that will be incurred during the fiscal year in question. In other words, when a three-year, $10 million construction project is initially approved, the bill does not set aside or reserve $10 million to cover the project's entire cost, and the Agency's estimate of contract costs in succeeding fiscal years does not constitute spending authority in those future fiscal years.

The fact that many construction contracts involve a multi-year contract, however, has obvious budget implications – namely, the amount of money that is available in any fiscal year to start new construction is always limited by the State's existing contractual obligations for projects that were initially approved in prior fiscal years and are still under construction.

AOT Flexibility

The Governor's recommended state transportation plan as modified and approved by the Legislature represents the State's best estimate of what work can be done by AOT during the fiscal year and what that work will cost. As with any projection of revenue and costs, however, new and changing circumstances invariably arise which require an adjustment to the plan. These include:

(1) Unanticipated ROW (right-of-way), Act 250 or environmental permitting issues which delay (and usually increase the cost of completing) these tasks as well as pushing into the future the starting date of follow-on tasks;

(2) On projects which affect a town, unanticipated problems in securing town agreement on which

project alternative to pursue or on the design of a project;

(3) A winning contract bid which exceeds AOT's cost estimate. When the Legislature initially approves a project to go to construction, the approval is not strictly tied to and limited by AOT's estimate of the construction cost. The Legislature could certainly qualify project approval with the proviso that the construction contract does not exceed *$x*; but construction projects are so complex with costs constantly changing due to market forces and inflation that such an approach would result in projects being delayed for at least a year until the Legislature reconvenes (absent an out-of-session approval procedure);

(4) Cost overruns due to contract modifications;

(5) Faster than anticipated contract progress payments. Construction contracts typically provide for progress payments at certain milestones, and on a fairly regular basis contractors are able to complete work ahead of schedule. Because the fiscal year changes in the middle of the construction season, this can create problems (e.g., a contractor completes a phase and is entitled to a progress payment in June when the budget assumed the work would not be done until August and thus in the next fiscal year). This is a welcome problem to have since no higher costs are involved, but AOT still needs to take spending authority from somewhere else to make the payment.

Aside on construction cost estimates: AOT's construction cost estimates are based on a rolling multi-year average of the winning bids of the different per-unit costs of the detailed components involved in the project. This approach has the benefit of being objective, but it lags decisive shifts in commodity price or inflation trends. For example, around 2005, China started importing huge quantities of commodities and caught the markets by surprise. Steel prices, and AOT's costs, skyrocketed. Later the 2008-09 "Great Recession" reversed the commodity boom, but because AOT's cost estimates are based on a multi-year rolling average, there was a lag in capturing the effect so for several years there was a tendency for winning bids to come in below AOT's cost estimates. Similarly, fluctuations in oil prices can impact costs, particularly in paving projects. To deal with this complexity, under current law AOT has the discretion to award a contract even though the winning bid exceeds the contract cost estimate. More precisely, AOT is legally bound to accept the lowest bid of a qualified bidder absent sound reasons for rejecting the bid and re-opening the bidding process. When AOT accepts an above-cost estimate bid, the effect on AOT's spending authority for the project in that fiscal year depends on how the cost projections in the winning bid are incorporated in the awarded contract. Sometimes the higher costs are up front and AOT will need more money to cover the contract in the fiscal year of the transportation bill, and sometimes the higher costs are in the back end and will be reflected in higher estimates of the cash flow needs of the project in future fiscal years.

Note that the same point applies in reverse to winning bids that come in below AOT's cost estimates. Sometimes the lower costs are realized up front and AOT will need less money to cover the contract in the fiscal year of the transportation bill and sometimes the lower costs are in the back end and will be reflected in lower estimates of the cash flow needs of the project in future fiscal years. More bluntly, just because a winning bid comes in below the project cost estimate does not mean that the difference between the bid and cost estimate is a cost saving that all is available to be spent in the fiscal year the contract is awarded. It is definitely a cost saving, but the saving is usually spread over several fiscal years.

To provide for these kinds of contingencies, 19 V.S.A. § 10g gives AOT flexibility to adjust scheduled spending. AOT has the authority to:

(1) Reallocate spending authority as required to deal with emergencies;

(2) Reallocate spending authority from projects that have been delayed to cover higher costs in other projects, to expand project D&E work, or to start D&E on candidate projects;

(3) Reallocate project spending authority that will not be needed because the project has generated

savings to other needs as described in (2), and;

(4) If a project has contractual costs that are higher than budgeted and spending authority from delayed projects or project savings is not available, AOT is authorized to reallocate spending authority from on-schedule projects subject to certain notice requirements.

Structure of the Transportation Budget in the Big Bill

The transportation budget is primarily reflected in the B.900 sections of the annual appropriations bill (the "Big Bill") and consists of a number of specific line items and then one massive catch-all line item for something called "Program Development." The reason why is because by statute, even if an agency is authorized to transfer funds from one activity to another, no transfer of funds between appropriation line items is allowed in excess of $50,000 (32 V.S.A. § 706). This rule allows the Legislature to protect certain funding and is why the town structures, class 2 and annual town aid programs are each a separate appropriation line item. When AOT needs to reallocate spending authority to cover an emergency or a cost overrun under 19 V.S.A. § 10g, the town programs cannot be touched except for a maximum of $50,000 from each.

The appropriation line item for Program Development, on the other hand, is so large precisely because AOT needs a large pot of money to go to when it has to adjust spending schedules to changing circumstances.

Project Prioritization

19 V.S.A. § 10g(l) and (m) establish a system for evaluating, ranking and prioritizing projects on the basis of neutral, objective criteria. Prior to the implementation of this system, there was no consistent, structured and system wide information about projects that provided a basis for comparing one project to another. The prioritization system was intended to fill that void and has been a useful tool – particularly for legislators. When a town official asks why a particular project seems to be going nowhere, your first question should be whether the Regional Planning Commission (RPC) and Transportation Advisory Committee (TAC) have given the project a high priority ranking. If the RPC considers other local projects to have a higher priority, it is difficult for the Legislature to second guess their judgment.

4. Federal Funding

Vermont receives federal transportation funds from the following agencies, all of which are part of the federal U.S. Department of Transportation:

FHWA –Federal Highway Administration
FTA –Federal Transit Administration
FAA – Federal Aviation Administration
FRA – Federal Railroad Administration
FMCSA – Federal Motor Carrier Safety Administration
NHTSA – the National Highway Traffic and Safety Administration is a special case. NHTSA funding supports traffic safety education programs and may also be used for FHWA-approved safety projects. By federal statute, if a state wants to receive NHTSA funding it must set up a "Governor's Highway Safety Council" which Vermont has done. Federal law also provides that if a state fails to comply with certain conditions (e.g. a primary seat belt law or a federally compliant DUI enforcement law), then a portion of the state's FHWA formula funds is reallocated to the Governor's Highway Safety Council.

Federal Spending Authority vs. Appropriations Authority

Federal transportation funding requires two, usually separate, acts of Congress:

Reauthorization act: Transportation spending authority is usually defined in a multi-year "reauthorization act." By laying out what each state will receive each year over a period of years in so-called "contract authority" the reauthorization act allows states to plan their spending efficiently. The current incarnation of the reauthorization act is the **Infrastructure Investment and Jobs Act (2021)** (IIJA, or Bipartisan Infrastructure Law), which runs from Federal Fiscal Years 2022 through 2026.[1] Recent prior iterations of the reauthorization act included the FAST Act (2015), MAP-21 (2012), SAFETEA-LU (2005), TEA-21 (1998), National Highway System Designation Act (1995), and ISTEA (1991).

Appropriations act: A supposedly annual appropriations act provides the funding for federal DOT program spending authority. When Congress passes a transportation appropriation bill, there can be a difference between the amount appropriated and the reauthorization act's spending authority – in such cases the amount appropriated is almost always less than the spending authority. For many years, the federal Highway Trust Fund has not kept up with authorized and appropriated funding levels, which has required Congress to appropriate general funds to supplement trust funds. General funds now account for over 20 percent of federal surface transportation funding but are not available for expenditure without an appropriations act. The growing reliance on general fund transfers has heightened the importance of the appropriations process for fully funding transportation.

Even when a federal appropriation matches the reauthorization act spending authority, for decades the federal appropriation has taken a haircut off the spending authority through the "**obligation limitation**" system. In short, whenever a news story reports, for example, that Vermont will be getting $100 million of federal transportation funds, after the working of the obligation limitation system the net amount actually made available to the State will be in the range between $90 and $92 million. In planning its budget, AOT uses this 90-92% average to calculate what federal funds will actually be available so the fed haircut is reflected in AOT's recommended budget.

Table 2: **Vermont Anticipated Federal Highway Formula Apportionments Under IIJA** *($ millions)*

Core Highway Trust Fund Formula Programs	FAST Act (FFY2016-2020)	IIJA (FFY2022-2026)	Difference
National Highway Performance Program	602.6	756.9	154.3
Surface Transportation Block Grant	301.7	368.2	66.5
Highway Safety Improvement Program	60.2	79.7	19.6
Rail-Highway Grade Crossing Program	5.9	6.1	0.3
Congestion Mitigation & Air Quality Program	61.4	67.2	5.7
Metropolitan Planning	10.9	14.4	3.5
National Highway Freight Program	32.3	36.6	4.3
Carbon Reduction Program	0	32.8	32.8
PROTECT Program	0	37.3	37.3
	1,074.9	**1,399.2**	**324.3**
General Fund Supplemental Programs			
Bridge Formula Program	0	225.0	225.0
National Electric Vehicle Infrastructure	0	21.2	21.2
GRAND TOTAL	**1,074.9**	**1,645.5**	**570.5**

Note: FAST Act operated under 1-year extension in FFY2021.

When a reauthorization act expires without a new act in place, Congress typically extends the expiring reauthorization act, usually with only minor changes or no changes, for a fixed period of time. That provides the federal DOT with spending authority – but no funding. Funding, in turn, is usually provided through a series of "continuing resolutions" which extend for a fixed time a previously passed appropriations bill.

Types of Federal Transportation Funds

There are three general categories of federal transportation funds:

(1) Formula funds (a.k.a. annual apportionment funds): Formula funds are specified in the governing reauthorization act and represent the largest pot of federal money to states. Formula funds are typically tied to particular programs and allowable uses, although there is considerable flexibility to move funds around (see *Table 2*). One flexibility Vermont has used extensively over the years is the ability to shift highway

[1] The Federal Fiscal Year runs from October 1 through September 30.

funds to support public transit operating costs.

(2) Competitive Grants: Congress has created pools of funds for particular purposes from which federal agencies are authorized to make grants to states in a competitive application process. AOT has actively – and successfully – pursued these funding opportunities, particularly with respect to rail, aviation, and public transit investments.

(3) Earmarks: Federal "earmarks" are Congressionally directed spending tied to a specific project and cannot be used for any other purpose (and can only be changed by another act of Congress). In the past, earmarks were a significant and controversial proportion of federal transportation funding. Earmarks were essentially eliminated around the early 2010s, but have recently resurfaced.

Match Requirement

Federal funds typically require a non-federal match, and federal agencies ensure that the match is paid by only releasing federal funds on a reimbursement basis.

For example, the typical match is 80-20 (federal-nonfederal). Interstate projects at 90-10 are the major exception, although others exist. When the State makes a progress payment on an 80-20 state highway project, the State pays the contractor with 100 percent State dollars, processes the paperwork with FHWA verifying the payment, and the FHWA wires the federal 80 percent share to the State. Since the eligibility of the project for federal funding and the contract itself have been pre-approved by FHWA, the procedure has a reasonably quick turn-around.

Under federal law, Vermont typically makes available the use of some of the State's federal formula funds for eligible town projects. Few town projects, however, are eligible for federal funds – the town bridge program (town bridges over 20' in length) and Transportation Alternatives grants are the major exceptions. In such cases, State law requires the town to cover all or a portion of the non-federal match and AOT collects that money up front.

"Obligation" of Federal Formula Funds

Federal law imposes a use-it-or-lose-it rule on the annual appropriation (subject to the obligation limitation) of formula funds. To avoid losing formula funds, a state must "obligate" the formula funds made available that fiscal year to a federally eligible project within a certain time period. Under the IIJA, most formula funds must be obligated within three federal fiscal years after the year in which they are first apportioned (a four-year period overall). To successfully obligate funds to a project, the state must basically present a project description and cost estimates of sufficient detail to satisfy FHWA that the project is for real and qualifies for federal funding under the relevant program criteria.

Once federal funds are obligated to a project, FHWA is flexible about when the funds must be drawn down and expended on the project. FHWA's annual apportionment of formula funds to Vermont is like a conditional IOU. When AOT successfully obligates the funds, FHWA in effect credits the total amount in a Vermont "checking account" at FHWA. Once credited to the account, the money can be drawn out at any time over a period of years. This means when AOT presents its recommended budget and identifies the federal funds to be used with respect to each project, those federal funds could be from Vermont's prior federal fiscal year apportionment or from Vermont's apportionment several years ago. In other words, AOT's recommended spending of federal funds always contains a mix of funds that were obligated in different years.

After the federal fiscal year closes on September 30, FHWA determines the total nationwide amount of formula funds allocated to states that were not obligated (and the total can be significant); and in August of the following year invites states to submit projects to receive additional funds. The obligation limitation is allocated in the same proportion as the annual state apportionments – but only to the extent a state submits qualifying projects. AOT has aggressively and successfully pursued these left-over funds through the annual

"August redistribution." The funds are added to "obligation authority" and do not increase the "apportionments" authorized by the multi-year transportation authorization bills.

STIP

Under federal law, by October 1 each year Vermont must file with FHWA a State Transportation Improvement Plan (STIP) which describes project by project how the state plans to spend its federal highway and public transit funds during each of the next four federal fiscal years. All such federal funds must be obligated and FHWA will not release any federal funds unless they appear in the STIP.

The Legislature has ultimate control over the disposition of all federal transportation funds (with one key exception concerning the CCMPO noted below). The Legislature's authority in any particular session, however, is subject to constraints - namely the Legislature's approval of the obligation of federal funds to specific projects in prior transportation bills which have been incorporated by AOT into Vermont's STIP. While as a matter of state law, the Legislature in 2022 cannot bind the Legislature in 2023, as a matter of federal law with respect to the use of federal transportation funds, the decisions made by the Legislature in 2022 do have a certain, not precisely defined, binding effect on the Legislature in 2023.

TIP

A TIP is the "Transportation Improvement Plan" of an **MPO**, a "Metropolitan Planning Organization" recognized under federal law. Vermont has only one MPO, the **CCRPC**, the Chittenden County Regional Planning Commission. As a matter of federal law, the state (i.e. the Legislature through the annual transportation bill) controls the total amount of federal transportation funds to be allocated to CCRPC area projects but the CCRPC has control over which projects to pursue within the CCRPC. An MPO TIP must be included in and is part of the state STIP.

Appendix: Glossary

AOT or VTrans	Vermont's Agency of Transportation. In federal law and regulations, AOT is Vermont's "state DOT."
Candidate projects	Projects contained in the state transportation plan that are waiting in the queue for preliminary funding.
CCRPC	Chittenden County Regional Planning Commission. The CCRPC is one of 11 regional planning commissions in Vermont and also administers Vermont's sole Metropolitan Planning Organization (MPO).
D&E Projects	Development & Evaluation. Projects contained in the state transportation plan that have received funding for alternatives analysis, preliminary engineering, and design work.
"Front of the Book" Projects	Projects contained in the state transportation plan that (1) are ready to go out to bid and start construction in the fiscal year of the bill; (2) already under construction, or (3) are anticipated to begin construction in the next four fiscal years.
FAA	Federal Aviation Administration. A federal agency under the purview of the U.S. Department of Transportation, the FAA regulates all aspects of civil aviation including the construction and operation of airports, air traffic management, and the certification of aircraft and personnel.
FHWA	Federal Highway Administration. A federal agency within the purview of the U.S. Department of Transportation, the FHWA supports highway transportation through the Federal-Aid Highway Program and performs research and technical assistance on safety, congestion, and construction methods. The Federal-Aid Highway Program provides federal funding and oversight for construction and maintenance of the national highway system (interstates, U.S. highways, and many state highways), mainly through federal gasoline tax revenues.
FRA	Federal Railroad Administration. A federal agency under the purview of the U.S. Department of Transportation, the FRA regulates rail safety, administers railroad assistance programs, researches and develops improved safety and transportation policies, rehabilitates and modernizes the Northeast Corridor for passenger service, and serves as the primary federal agency that supports rail transportation activities.
FTA	Federal Transit Administration. A federal agency under the purview of the U.S. Department of Transportation, the FTA provides financial and technical assistance to public transit systems.
FY, FFY, and SFY	Fiscal Year, Federal Fiscal Year, and State Fiscal Year. Generally, most documents circulating in the State House use "FY" by itself to reference the State's fiscal year, which runs from July 1 – June 30. In contrast, the Federal Fiscal Year runs from October 1 – September 30. Both State and Federal Fiscal Years are named based on the calendar year in which they end (e.g. SFY2023 runs from July 1, 2022 – June 30, 2023).
MFTIA and MFTA	Motor Fuel Tax Infrastructure Assessment (2% to the TIB Fund) and Motor Fuel Tax Assessment (4% to the T-Fund).
MPO	Metropolitan Planning Organization. The Chittenden County Regional Planning Commission oversees Vermont's sole MPO, the Chittenden County MPO (CCMPO).
MV P&U Tax	Motor Vehicle Purchase and Use Tax. This tax, generally, is imposed by the State at a rate of 6% on motor vehicle purchases, as well as on the market value of vehicles at the time of registration when no sale transaction is involved. The tax also includes a 9% tax on short-term vehicle rentals. Two-thirds of the revenue

	collected is deposited into the Transportation Fund and the remaining third is deposited into the Education Fund.
NHTSA	National Highway Traffic Safety Administration. A federal agency under the purview of the U.S. Department of Transportation, NHTSA writes and enforces Federal Motor Vehicle Safety Standards, funds highway safety efforts, and regulates vehicle theft resistance and fuel economy standards.
RPC and TAC	Regional Planning Commission and Transportation Advisory Committee of an RPC.
STIP	State Transportation Improvement Plan.
TIP	Transportation Improvement Plan. Per federal law, a TIP is submitted by a Metropolitan Planning Organization (MPO). In contrast to a STIP, which is submitted by the State. A TIP is included in, and part of, the STIP.
T-Fund	Vermont's Transportation Fund
TIB Fund	Vermont's Transportation Infrastructure Bond Fund
T-Fund Assessment and TIB Assessment	An 'assessment' imposed by the State of Vermont based on the sales price of gasoline, which is different from the fixed cent-per-gallon state gasoline 'tax'. The T-Fund Assessment is synonymous with the MFTA and the TIB Assessment is synonymous with the MFTIA.
"The White Book"	AOT's proposed transportation plan and budget.

Vermont Gasoline Levies (as of October - December 2022)					
Revenue Source	Effective Tax (cents per gallon)	Fund/Purpose	Description/Statute Citation	FY23 Revenue Estimate (July 2022) 301,183,388	Gallons
Per-Gallon General Gasoline Tax	11.345	Transportation Fund	23 V.S.A. § 3106(a)(1)(A)	$ 34,169,255	
	0.380	DUI Enforcement Special Fund	23 V.S.A. § 1220a(b)(3)	$ 1,144,497	
	0.285	Fish and Wildlife Fund	0.375 cents is distributed 76% to Fish and Wildlife Fund, 24% to Department of Forests, Parks, and Recreation for natural resource management. 23 V.S.A. § 3106(d).	$ 858,373	
	0.090	To Dept of Forests, Parks, and Recreation		$ 271,065	
Total Per-Gallon General Gas Tax	**12.100**			**$ 36,443,190**	
Gasoline Assessment (4%) (Motor Fuel Tax Assessment)	**15.510**	Transportation Fund	Calculated quarterly based on 4% of average tax-adjusted retail prices of prior quarter. Minimum of 13.4 cents, maximum of 18 cents. 23 V.S.A. § 3106(a)(1)(B)(ii).	**$ 44,030,745**	Per July 2022 consensus revenue forecast
TIB Assessment (2%) (Motor Fuel Transportation Infrastructure Assessment)	**7.750**	Transportation Infrastructure Bond (TIB) Fund	Calculated quarterly based on 2% of average tax-adjusted retail prices of prior quarter. Minimum of 3.96 cents, no maximum. 23 V.S.A. § 3106(a)(1)(B)(i).	**$ 21,600,000**	Per July 2022 consensus revenue forecast
Petroleum Cleanup Fee	**1.000**	Petroleum Cleanup Fund	10 V.S.A. § 1942	**$ 3,011,834**	
Total State Taxes and Assessments	**36.360**			**$ 105,085,768**	
Federal Gas Tax	**18.400**	Federal Highway Trust Fund		**$ 55,417,743**	
Total State and Federal Taxes and Assessments	**54.760**			**$ 160,503,512**	

Vermont Diesel Levies					
Revenue Source	Effective Tax (cents per gallon)	Fund/Purpose	Description/Statute Citation	FY23 Revenue Estimate (July 2022) 67,142,857	Gallons
Per-Gallon Diesel Tax	28.000	Transportation Fund	23 V.S.A. § 3003	$ 18,800,000	Per July 2022 consensus revenue forecast
Diesel TIB Assessment	3.000	Transportation Infrastructure Bond (TIB) Fund		$ 2,014,286	
Petroleum Cleanup Fee	1.000	Petroleum Cleanup Fund	10 V.S.A. § 1942	$ 671,429	
Total State Taxes and Assessments	**32.000**			**$ 21,485,714**	
Federal Diesel Tax	**24.400**	Federal Highway Trust Fund		**$ 16,382,857**	
Total State and Federal Taxes and Assessments	**56.400**			**$ 37,868,571**	