

Transportation Committee Primer

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Acronyms and technical terms

Internal hyperlinks in dark blue

AOT or VTrans ■ Vermont’s Agency of Transportation. In federal law and regulations, AOT is a “state DOT”.

The Book ■ AOT’s proposed transportation plan and budget

Candidate projects ■ See page [8](#)

CCRPC ■ Chittenden County Regional Planning Commission

D&E projects ■ See page [8](#)

Front of the Book projects ■ See page [8](#)

FAA ■ Federal Aviation Administration

FHWA ■ Federal Highway Administration

FRA ■ Federal Rail Administration

FTA ■ Federal Transit Administration

FY vs SFY vs FFY ■ Fiscal Year, State Fiscal Year, Federal Fiscal Year. For documents circulating in the state house generally, “FY” by itself usually refers to state fiscal year.

MV P&U ■ Motor Vehicle Purchase & Use Tax

NHTSA ■ National Highway Traffic and Safety Administration

RPC & TAC ■ Regional Planning Commission / Traffic Advisory Committee of an RPC

STIP ■ Per Federal law, a State Transportation Improvement Plan

TIP ■ Per Federal law, a Transportation Improvement Plan submitted by a Metropolitan Planning Organization (**MPO**), in Vermont the **CCMPO** = Chittenden County Metropolitan Planning Organization

TFund ■ Vermont’s Transportation Fund

TIB Fund ■ Vermont’s Transportation Infrastructure Bond Fund

TFund assessment & TIB assessment ■ A price bases sales tax on gasoline. They are called “assessments” to clearly distinguish them from the fixed cent-per-gallon state gasoline “tax”

MFTIA and MFTA ■ MFTIA = Motor Fuel Tax Infrastructure Assessment = the TIB assessment and MFTA = Motor Fuel Tax Assessment = the TFund assessment. The MFTIA is a dedicated revenue source which secures the repayment of TIB bonds issued by the state and the acronym was adopted at the request of the bond underwriting community. The TFund assessment came later and the acronym was adopted by analogy.

Fiscal years

State fiscal years start on July 1 and end on June 30 of the next calendar year – and are named after the year of the end date. Thus in Jan 2019:

(1) FY-18 closed on Jun 30, 2018

- (2) we are in the middle of FY-19 (ending Jun 30, 2019) and soon will be considering the FY-19 budget in budget adjustment and
- (3) shortly after the Governor's budget address, the committee receive AOT's recommended budget for FY-20 (starting Jul 1, 2019 and ending Jun 30, 2020).

Federal fiscal years start on Oct 1 and end on Sep 30 of the next calendar year – and are also named after the year of the end date. This means the FY-20 transportation bill will include (1) three months (Jul-Sep) of FFY-19 and (2) nine months of (Oct-Jun) of FFY20. This is typically not a problem because the federal transportation “reauthorization” act sets parameters on federal DOT spending authority which is intended to provide assurance to states that Congress will in fact eventually appropriate certain amounts of money – but there can be glitches.

TFund

The money for the state transportation budget consists of state funds and federal funds. Federal funds are discussed below. The state money used in the transportation budget comes from two statutory funds (1) the Transportation Fund = TFund and (2) the Transportation Infrastructure Bond Fund = TIB Fund.

TFund revenue comes from:

- (1) the gasoline “tax” = a fixed cent-per-gallon tax which is currently 12.1 cents per gallon. Consumers actually pay a total of 13.1 cents which consists of the 12.1 cents- per-gallon “tax” and a 1 cent per gallon “fee” which goes to the petroleum clean up fund. The 12.1 cents-per-gallon tax goes to the TFund but by statute 0.855 cents-per-gallon is split by the DUI Fund and the Fish and Wildlife Fund. The leaves a balance of 11.245 cents-per-gallon in the TFund.
- (2) a gasoline “assessment” = a 4% levy on the retail price of gasoline excluding all state and federal taxes, fees and assessments of whatever kind, i.e. a special kind of sales tax. The TFund 4% assessment has a floor (a minimum) of 13.4 cents-per-gallon and a ceiling (maximum) of 18 cents-per-gallon. Note that for administrative reasons the assessment is not applied to the price you see at the pump but instead is based on a look-back system in which:
 - (a) average retail pump prices are surveyed during a calendar quarter, say Jan-Mar;
 - (b) all state and federal levies collected in the Jan-Mar quarter are subtracted from the average;
 - (c) the after-tax average is multiplied by 4% to determine a fixed cent-per-gallon figure;
 - (d) the resulting fixed cent-per-gallon figure is then compared to the floor and ceiling to determine which fixed cent-per-gallon figure applies; and
 - (e) the applicable fixed-per-gallon amount is then collected during the following Apr-Jun three month period. And so on for subsequent quarters.

The assessment floor kicks in when the average quarterly pump price falls below \$3.879 per gallon. The assessment maximum kicks in when the average quarterly pump price exceeds \$5.089 per gallon.

- (3) diesel tax = fixed 28 cents-per-gallon
- (4) MV P&U = Motor vehicle purchase and use tax = 6% of market value less trade in allowance
- (5) DMV fees
- (6) Other Revenue– whole grab bag of small fees

TIB Fund

The Transportation Infrastructure Bond Fund was created to establish a dedicated source of revenue that would allow the state to raise money for infrastructure projects by issuing bonds in the state and municipal bond market. The proceeds of TIB bonds issued by the state may only be used to cover the design and construction costs of certain long-lived transportation capital assets. Revenue collected by the TIB Fund is dedicated to the payment of debt service on outstanding TIB bonds. To the extent TIB Fund revenue exceeds the amount needed to cover debt service in a fiscal year, the excess revenue may also be used for basically the same purposes, i.e. the design and construction of transportation infrastructure.

The state has issued three TIB Bond series (in 2010, 2012 and 2014) with a total initial principal amount of \$35.6 million. The bonding capacity of the dedicated revenue stream is a function of market receptivity. In 2014 the Treasurer's office estimated the total bonding capacity as being in the range of \$100 million.

TIB Fund revenue consists of:

- (1) a gasoline "assessment" = a 2% levy on the retail price of gasoline excluding all taxes, fees, assessments, etc. with a floor of \$.0396 cents-per-gallon. Except for having no ceiling, the TIB assessment is calculated and administered in exactly the same way as the TFund assessment. The TIB floor kicks in when the average retail price during the prior calendar year quarter – including all taxes and fees, i.e. the pump price – is approximately \$2.48 or lower.
- (2) a diesel "assessment" = a fixed 3 cents-per-gallon

Consensus Forecast and Revenues

The transportation budget and the general fund budget (the Big Bill) are both based on a consensus revenue forecast agreed to by an economist working for the administration and an economist working for the legislature. There are usually two consensus forecasts a year, one in mid-January and the other in mid-July.

AOT starts working on its proposed fiscal year budget about 9 months ahead of time, e.g. AOT started working last September 2018 on its proposed FY-2020 budget which begins on July 1, 2019. Thus when AOT presents in January its proposed budget for the fiscal year that starts in July, that budget is always based on the consensus forecast released the preceding July. That means when a new consensus forecast is issued in January, AOT's proposed budget could easily be out of whack with the new forecast. In that case, AOT will make recommendations to the committee on how to balance its proposed budget with the new consensus forecast.

Schedule 2 revenue reports: The administration reports revenue collections in a monthly "Schedule 2" report. Discussion of revenue reports is nearly always expressed in terms of being above or below "forecast" or "projections", meaning higher or lower than the revenue projected in the most recent consensus forecast. Keep in mind that if revenue is reported as being above or below forecast, that does not necessarily mean that revenue is growing or declining. If the consensus forecast is based on overly optimistic growth assumptions, a below forecast result could mean that revenue is growing but not as quickly as the economists assumed. Vice-versa, if the consensus forecast is based on overly pessimistic growth assumptions, an above forecast result could mean that revenue is declining but not as quickly as the economists assumed.

Revenue and AOT spending authority – Rescissions, Budget Adjustment & FY Close: The annual transportation bill specifying the transportation budget for the fiscal year beginning July 1 is based on the consensus forecast released the preceding January. The consensus forecast is updated in mid-July (the first month of the fiscal year at issue) and if the revenue forecast is downgraded, depending on the extent of the downgrade the Administration may be required to implement, or propose to the Joint Fiscal Committee, rescissions to the budget (32 V.S.A. § 704).

The consensus forecast is updated again the following January at which point the current fiscal year has seen 6 months of actual revenues; and one of the legislature's first tasks is to consider the Governor's proposed budget adjustment. After December 31, the Administration works to complete the December Schedule 2 so the economists can compare 6 months of actual revenue to the consensus forecast issued the prior July. The economists agree on a new forecast and in mid-January the Emergency Board is convened to review and approve it. To further expedite the process the Administration 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 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.

So 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 fiscal year end balance in the fund which is available for expenditure in the following fiscal year.

If actual revenue falls short of the January consensus forecast, AOT's 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 between \$8 to \$12 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 – meaning no cash is in the bank – 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.

Time line of a transportation budget

Using the current FY-19 budget as an example:

Jul 2017 ■ One month after the close of FY-17 and two weeks into FY-18 the Jul consensus forecast was released for FY-18 through FY-22.

Sep 2017 ■ AOT started working on its proposed FY-19 budget based on the Jul 2017 consensus forecast.

Early Jan 2018 ■ AOT delivered its proposed FY-19 Transportation Plan to the legislature which included no significant new revenue initiatives. Total proposed spending was thus based on the Jul 2017 consensus forecast of “current law” revenues for FY-19.

Jan 2018 ■ The new consensus forecast was released for FY-18 through FY-22. The new forecast for FY-19 current law revenues upgraded the TFund forecast by \$2.1 million and upgraded the TIB forecast by \$1.1 million. During the following weeks AOT proposed changes in its budget to align spending with the new forecast. Since the state's annual Transportation Plan consists of AOT's proposed plan as amended by the legislature, all changes in spending authority were specified in the FY-19 transportation bill.

Apr 2018 ■ The legislature passed the FY-19 transportation bill and it was signed by the Governor in May. Total spending in the bill was based on the Jan 2018 consensus forecast of the then-current law revenues.

Jul 2018 ■ One month after the close of FY-2018 and two weeks into FY-19 the Jul consensus forecast was released for FY-19 through FY-23. The new current law forecast for FY-19 upgraded projected FY-19 Tfund revenue by \$2.2 million and TIB revenue by \$1.4 million relative to the then-current law Jan 2018 forecast.

Sep 2018 ■ If the Jul consensus forecast had downgraded revenue by 1% or more, under 32 VSA § 704, AOT would have presented a recession plan to align spending with the new revenue estimates to the Joint Fiscal Committee for approval. Recissions have been common in recent years but there were none in 2018.

Jan 2019 ■ Six months into FY-19 AOT will submit to the legislature its proposed FY-19 budget adjustment based on its analysis of revenue trends since Jul 2018 and input from Jeff Carr, the administration's economist, as to the likely impact of the new Jan consensus forecast.

Mid-Jan 2019 ■ The new January consensus forecast will be released.

Feb-Mar 2019 ■ The legislature with AOT's input passes a FY-19 budget adjustment act ("BAA") that aligns FY-19 appropriations with the new forecast.

Feb-Jun 2019 ■ AOT monitors actual monthly revenues relative to the spending authorized in the FY-19 budget adjustment act. AOT must limit its full fiscal year 2019 spending to the lesser of (1) the spending authorized by the FY-19 BAA or (2) actual FY-19 revenues. If Jan-Jun actual revenues come in higher than the Jan 2019 consensus forecast, the excess accrues to the bottom line of the transportation or TIB funds and will be available for spending in the FY-20 budget if the legislature passes "waterfall" spending authority. If Jan-Jun revenues come in lower than the Jan 2019 consensus forecast, AOT will typically cover the deficit by not carrying forward unexpended spending authority or by slowing down other spending.

"Fixed" uses of revenue

The Jan 2018 the consensus forecast on which the legislature's FY-19 transportation budget was based projected that transportation related state taxes, assessments and fees would generate a total of \$334 million in FY-19. The transportation bill approved by the legislature, in turn, authorized total AOT spending of state funds in FY-19 of \$264 million. The difference of \$70 million consists of a number of items which I have collectively dubbed "fixed" uses of revenue. Most of the items are fixed in the sense that they are mandated by law (although of course the legislature can change the law). The others are fixed in the sense that prudence dictates they be addressed (e.g. payment of debt service).

In FY 2019 (a typical year) two items accounted for \$57.6 million = 82% of the total "fixed uses":

- (1) \$57.6 million = 1/3 of the Motor Vehicle purchase and use tax which by law goes to the Ed Fund. In 1998 the tax was increased with the increase going to the Ed Fund – so existing TFund revenue was never redirected to the Ed Fund; but the fact that 1/3 of the revenue goes to the Ed Fund is certainly a constraint on the capacity of the tax to support transportation purposes.
- (2) \$20.3 million to the State Police. In FY-2001 \$44 million and in FY-2003 an all time high of \$46 million of TFund revenue was appropriated to agencies other than AOT. At the time these were known as the “JTOC appropriations”. Since FY-2003 the total has been gradually reduced to its current level and a number of years ago the appropriations to different agencies were consolidated into a single appropriation to the State Police. From a user fee perspective, the safety of the state’s transportation system relies on the State Police so there is certainly an argument that TFund user fees should support the State Police. Several years ago the legislature asked the Joint Fiscal Office to determine if the State Police budget could be parsed to identify those operating and capital costs which were attributable to transportation system safety. The answer was no because the time and activity data collected by the agency was insufficiently detailed to distinguish between the various functions performed by officers.

Other “fixed uses” include funding of:

- (1) Information Center (rest area) operating costs (~\$4 million);
- (2) AOT pay act;
- (3) debt service on TIB bonds and older state general obligation bonds issued to pay for transportation infrastructure ;
- (4) an annual transfer to the Central Garage fund to purchase plow trucks and other equipment used by AOT;
- (5) annual transfers to the Downtown Fund (fixed at \$424,000) and to the Recreational Trail fund (fixed at \$370,000); and
- (6) When required by law a transfer of funds to top up the Transportation Fund Stabilization Reserve (currently \$12.8 million total).

The Budget Process

The “State Transportation Plan”

The annual transportation bill is the state transportation plan. AOT has a number of other “state plans” but they are advisory only.

Spending authority versus appropriations authority

The annual transportation bill is unique in that it specifies spending authority separate and distinct from appropriations authority. In this respect, Vermont follows the standard practice of Congress. By convention a federal agency cannot spend money unless two, usually separate, acts of Congress are in place: (1) an act specifying spending authority and (2) an act appropriating money to be spent. By analogy, a spending authority act sets up a checking account and specifies how much money an agency may spend on different types of activity – but puts no cash into the account. An appropriations act puts cash into the account, usually as a lump sum which then can be spent as specified in the spending authority act. To extend the analogy, in Vermont the

appropriations bill does not actually put cash into an account but rather authorizes an agency to spend revenues anticipated to be collected during the next fiscal year in certain designated funds. Thus a transportation bill may authorize AOT to spend up to \$250 million in transportation funds starting the next July 1. Of course, starting July 1, transportation fund revenue is collected only incrementally day by day but AOT is not required to wait until the cash is in the bank. In effect, AOT has an overdraft account at the Treasurer's office which allows AOT to cut checks drawn on the state up to the amount of its appropriation authority which overdrafts the Treasurer manages through its cash flow operations.

Format of the bill

The Governor will recommend an FY-20 state transportation plan = FY-20 AOT budget which is known as "the Book". By convention the transportation bill adopts the Governor's recommended budget except as modified in the bill itself. This means that with respect to the budget the transportation bill is limited to specifying changes to the Governor's recommend. Key point: all project spending proposed by AOT and approved by the committee will therefore not appear in the bill – it is in the state plan which the transportation bill adopts. Thus for the vast majority of projects, if a colleague wants to see if a certain project is funded you will need to look it up in the book.

State transportation plan classification of projects

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
- (2) **D&E = Development and Evaluation**: 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
- (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 multiyear 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 far and away the largest component of a project's total cost.

In the Governor's recommend - the Book - 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 annual transportation 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 is 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 of a multi-year project will be spread over several fiscal years, 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 3 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 thus specifies spending authority for all AOT activities during the fiscal year, program by program and project by project. It 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, inter alia,

- (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 – with the same effect,
- (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 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 (which raises its own state constitutional and political issues about the authority of a legislative committee smaller than the entire legislature).
- (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 Aug 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 disciplined, i.e. whether or not the administration or a project manager is gung-ho about a project, the cost estimates are bound by the rolling average of units costs. The down side is that the approach lags behind 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, sky rocketed. 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. More recently the dramatic decline in oil prices in 2014 impacted 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 particular 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 estimate, i.e. sometimes the lower costs are 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.

AOT authority to adjust spending: To provide for these kinds of contingencies, 19 VSA §10g gives AOT flexibility to adjust scheduled spending. Basically, 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 won't 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 appearance of the transportation budget in the Big Bill is rather curious as it 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. 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 under 19 VSA §10g AOT needs to reallocate spending authority to cover an emergency or a cost overrun, 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 VSA §10g(l) and (m) were added in the FY06 transportation bill to establish a system for evaluating, ranking and prioritizing projects on the basis of (hopefully) 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 while it is far from perfect it has been a useful tool – particularly for legislators. When a town council member asks why a particular project seems to be going nowhere, your first question should be whether the RPC and TAC have given the project a high priority ranking. If the RPC considers other local projects to have a higher priority, it is extremely difficult for the legislature to second guess their judgment.

What to watch for: In theory, within each program, AOT's recommended funding should start with the program's No. 1 ranked priority and then proceed down the rankings until all the available funding (as recommended by AOT) is exhausted. In actual practice, however, some highly ranked projects often have no recommended funding while unranked projects do. The obvious question is why, and to improve the system, the explanations need to be explored.

Gap in the system: The hole in the system as it presently exists is that it applies to each program area separately – which means the system does not even attempt to assess whether

roadway project X should have a higher priority than state bridge project Y. This is a huge hole because if it were possible to develop a system for ranking projects across program areas, it would obviously provide a basis for determining how much money should go to the roadway program versus the bridge program, etc.

Federal agencies

Vermont receives federal transportation funds from:

FHWA – the Federal Highway Administration (presumably they stuck the incongruous W in there to distinguish it from FHA the Federal Housing Authority)

FTA – the Federal Transit Administration

FAA – Federal Aviation Administration

FRA – Federal Rail Administration

All of the above are part of the federal DOT.

NHTSA – the National Highway Traffic and Safety Administration is a special case.

NHTSA funds basically go to traffic safety education programs. 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.

Just to make things more complicated, besides driving education programs, federal law also authorizes states to use monies allocated to a Governor’s Highway Safety Council on FHWA approved “safety” projects. Vermont state law authorizes the use of Highway Safety Council funds on safety projects so for years, particularly when Vermont’s formula funds were being diverted to the Highway Safety Council for noncompliance with various federal mandates, AOT’s recommended budget would always include safety projects funded with federal funds reallocated from the Governor’s Highway Safety Council.

Federal Aid

Federal spending versus appropriations authority

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

Reauthorization act: FHWA, FTA and FAA 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 is intended to allow states to plan their spending efficiently. The current incarnation of the reauthorization act is the **FAST Act = Fixing America’s Surface Transportation Act** signed into law in December 2015 and running through FFY-2020.

Appropriations act: A supposedly annual appropriations act actually authorizes the cash for federal DOT program spending authority. When Congress actually 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.

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.

When a reauthorization act expires without a new act in place, Congress typically extends the expiring reauthorization act, usually with only minor changes, for a fixed period of time. That provides the Federal DOT with spending authority – but no cash. Cash, 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 3 general categories:

(1) Formula funds aka annual apportionment funds: Formula funds are the biggest pot of federal money. These are the annual funds specified in the governing reauthorization act. Formula funds are typically tied to particular programs (e.g. interstate, bridge, etc.) although there is considerable flexibility to move funds around. One flexibility Vermont has used extensively over the years is the ability to shift highway funds to support public transit operating costs.

Payor vs Payee States: For years most federal formula funds were allocated to states in accordance with a quantitative formula (e.g. a state's lane miles of interstate divided by total U.S. interstate lane miles). The formula allocations, however, were often subject to a “small state minimum” which gave small states the specified minimum when that amount was larger than the formula determined amount. This practice led to the distinction between “payor” states who paid more in federal gasoline taxes than they received back in federal aid and “payee” states who received more in federal aid than they paid in federal gasoline taxes. The issue has been controversial and in recent years Congress has amended the law in various complicated ways to reduce the small state minimum benefit and thereby guarantee to payor states that they receive in total federal aid a certain percentage of the federal gas taxes they send to Washington.

The issue was further complicated when Congress failed to enact a comprehensive reauthorization bill on the expiration of SAFETEA-LU in Sep 2009. Unable to agree on formulas, Congress in MAP-21 provided that each state shall receive the same proportion of total federal aid as it received in the last year of SAFETEA-LU. Thus from Oct 2009,

Vermont's federal aid has technically not been based on a quantitative formula (subject to a small state minimum), but those features have, in effect, been rolled into the overall proportion. The current re-authorization bill, the FAST Act, incorporates the same approach.

(2) Earmarks vs Competitive Grants: Federal “earmarks” are tied to a specific project and cannot be used for any other purpose (and can only be changed by another act of Congress). For a number of years earmarks were a significant and controversial proportion of federal transportation funding but in recent years earmarks have essentially been eliminated. In lieu of earmarks, in recent years Congress has created pools of funds for particular purposes from which the Secretary of Transportation is 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 infrastructure projects.

Historical Aside - the Jeffords legacy: Earmarks typically appeared in annual transportation appropriations and for a time it was standard practice to include extensive earmarks in multi-year reauthorization bills. Reauthorization earmarks were different because like the reauthorization itself, the earmarks were granted on a multi-year basis with specified amounts made available each year of the life of the reauthorization.

Such was the case with SAFETEA-LU which Senator Jeffords guided through Congress (effective from FFY-03 through FFY-09). In SAFETEA-LU Vermont received a substantial (disproportionate) amount of 6 year earmarks. When SAFETEA-LU expired on Sep 30, 2009 all those earmarks had been paid out – but no replacement reauthorization was in place so Congress extended SAFETEA-LU through an extension. To deal with the 6 year earmarks that were part of the cash flow to the states during the life of SAFETEA-LU, the extension provided that states receiving such earmarks would receive the same annual amount in the form of, and as an addition to, their annual formula funds. This compromise, with minor tweaks, has been followed by Congress ever since and has essentially been incorporated in the current FAST reauthorization Act. As a consequence since September 2009 Vermont has been receiving \$60 million at an annual rate of additional federal formula funds (equal to approximately half of the formula funds Vermont was receiving prior to SAFETEA-LU).

Match requirement

Whatever it is called, federal funds typically require a non-federal match. The feds don't care who pays the match, just that it is paid – and the feds ensure that the match is paid by only releasing federal funds on an after-the-fact reimbursement basis.

For example, the typical match is 80-20 (federal-nonfederal). Interstate projects at 90-10 are the major exception. When the state makes a progress payment on an 80-20 state highway project, the state pays the contractor with 100% state dollars, processes the paperwork with FHWA verifying the payment and the FHWA wires the state the fed's 80% share. Since the eligibility of the project for federal funding and the contract itself has been pre-approved by FHWA, the procedure has a quick turn-around, i.e. 24-48 hours.

Federal funds and town highways and bridges: Under state law, Vermont typically makes available the use of the state's federal formula funds for federally eligible town projects. Few

town projects, however, are eligible for federal funds – the town bridge program (town bridges over 20’ in length) and enhancement 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 before the end of the federal fiscal year in question must “obligate” the formula funds made available that fiscal year to a federally eligible project. 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.

Key point: 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 5 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 Sep 30, FHWA determines the total nationwide amount of state formula funds that were not obligated (and the total can be significant); and in August of the following year invites states to submit projects to receive the freed up funds. The freed up funds are allocated in the same proportion as the annual state apportionments – but only to the extent a state submits qualifying projects. AOT has aggressively pursued these left over funds. Below is AOT CFO Lenny LeBlanc’s description of the process:

This is called the annual “August redistribution” and Vermont has averaged \$11.8 million annually (ranging from \$6 to \$33 million) over the past 15 years. The funds are added to “obligation authority” and do not increase the “apportionments” authorized by the multi-year transportation authorization bills. It is typically baked into our “90% rule” (obligation limit to apportionment) estimate.

STIP

Under federal law, by October 1 each year Vermont must file with FHWA a STIP = a “State Transportation Improvement Plan” which describes project by project how the state plans to spend its federal funds during each of the next 4 federal fiscal years. By definition, 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 2018 cannot bind the legislature in 2019, as a matter of federal law with respect to the use of federal transportation funds, the decisions made by the legislature in 2018 do have a certain, not precisely defined, binding effect on the legislature in 2019.

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 exclusive control over the allocation of that total sum among federally eligible projects within the CCRPC. An MPO TIP must be included in and is part of the state STIP.