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STATE OF VERMONT
LEGISLATIVE JOINT FISCAL OFFICE

TRANSPORTATION COMMITTEE PRIMER

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This document provides a high-level overview of the transportation finance landscape for the State of Vermont for members of the legislative Transportation Committees.

1. Acronyms, Definitions, and Technical Terms

Below are the terms and definitions of many common acronyms that are frequently used or referenced in transportation-related matters in Vermont.

AOT or VTrans	Vermont's Agency of Transportation. In federal law and regulations, AOT is Vermont's "state DOT."
"The Book"	AOT's proposed transportation plan and budget
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

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	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. SFY21 runs from July 1, 2020 – June 30, 2021).
MFTIA and MFTA	Motor Fuel Tax Infrastructure Assessment and Motor Fuel Tax Assessment.
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 sale transactions, as well as on the market value of vehicles at the time of registration when no sale transaction is involved. Two-thirds of the revenue collected (4%) is deposited into the Transportation Fund and the remaining third (2%) 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 Traffic 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.

TFund	Vermont's Transportation Fund
TIB Fund	Vermont's Transportation Infrastructure Bond Fund
TFund 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 TFund Assessment is synonymous with the MFTA and the TIB Assessment is synonymous with the MFTIA.

2. Vermont's Transportation Funding

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 (TFund)* and the *Transportation Infrastructure Bond Fund (TIB Fund).*

Transportation Fund revenue is generated from the following sources:

1) A **gasoline tax** at a fixed rate per gallon sold. Currently, consumers pay a total of 13.1 cents per gallon in state gasoline tax, with the revenue distributed as follows:

   a. 12.1 cents per gallon is deposited into the Transportation Fund. However, by statute 0.855 cents per gallon is split between the DUI Fund and the Fish and Wildlife Fund, leaving a balance of **11.245 cents per gallon** in the Transportation Fund.

   b. One cent per gallon is deposited into the petroleum clean-up fund.

2) The Motor Fuel Tax Assessment (MFTA). A **gasoline assessment** of 4% on the retail price of gasoline, excluding state and federal taxes, fees, and assessments of any kind. The 4% gasoline assessment has a floor (minimum) of 13.4 cents per gallon and a ceiling (maximum) of 18 cents per gallon.

   For administrative reasons, the 4% assessment is not applied to the retail price a consumer sees at the pump – instead, the assessment is based on a look-back system. In this system, average retail pump prices are surveyed during a three-month calendar quarter. All state and federal levies collected during that quarter are then subtracted from the average retail price. The after-tax average price is then multiplied by 4% to determine a fixed cent-per-gallon figure, and that resulting figure is then compared to the floor and ceiling to determine which fixed cent-per-gallon applies. The applicable fixed per-gallon amount is then collected during the following three-month quarter.

   Note that the assessment floor applies when the average quarterly retail price falls below $3.879 per gallon, and the maximum applies when the average quarterly retail price exceeds $5.089 per gallon.

3) A **diesel tax** fixed at 28 cents per gallon is deposited into the Transportation Fund, with another cent per gallon deposited into the petroleum clean-up fund.

4) **Motor Vehicle Purchase & Use Tax** of 6% of the market value (less trade-in allowance) on vehicles. Two thirds (4%) of P&U Tax is deposited into the Transportation Fund and the remaining third (2%) is deposited into the Education Fund.

5) **DMV fees** for licenses, permits, and other transactions.

6) **Other Revenue**, including many smaller fees.

The **Transportation Infrastructure Bond (TIB) Fund** was created to establish a dedicated revenue source to allow the state to pay for infrastructure projects by issuing bonds. The proceeds of TIB bonds may only be used for the design and construction costs of certain long-lived transportation capital assets. Revenue collected by the TIB Fund is dedicated to pay the debt service on outstanding TIB bonds. When TIB Fund revenue exceeds the amount needed to cover debt service in a given fiscal year, the excess revenue may be used for the same purposes (the design and construction of transportation infrastructure).

Vermont has issued three TIB Bond series (in 2010, 2012, and 2013) with a total initial principal amount of $36.4 million.

TIB Fund revenue consists of:

1) The Motor Fuel Tax Infrastructure Assessment. A **gasoline assessment** of 2% on the retail price of gasoline, excluding state and federal taxes, fees, and assessments of any kind. The 2% gasoline assessment has a floor (minimum) of 3.96 cents per gallon and no ceiling. Except for the lack of ceiling, the TIB Fund gasoline assessment is calculated and administered the same way as the 4% T-Fund gasoline assessment. The TIB Fund "floor" kicks in when the average retail price during the prior quarter is $2.48 or lower.

2) A **diesel assessment** of a fixed 3 cents per gallon.

A chart displaying comprehensive motor fuel tax rate information is provided as an appendix at the end of this document.

3. Consensus Revenue Forecasts in the Budget Process

The transportation budget and general fund budget are both 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.

Schedule 2 revenue reports track actual collections and are released by the administration on a monthly basis. Discussion of revenue reports is often in terms of collections 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 consensus 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.

<u>Budget Process</u>

In a typical year, AOT will begin working on its proposed budget approximately 9 months ahead of time (work begins in September for the upcoming FY budget beginning in July). Thus, when AOT presents its proposed budget in January for the fiscal year that starts 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 easily be out of alignment 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.

The annual transportation 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 (32 V.S.A. § 704).

The consensus forecast is updated again in January, at which point the current fiscal year has seen 6 months of actual revenues. One of the Legislature's first tasks 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 economics can compare 6 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 (comprised of the Governor and 4 legislative "money chairs") is convened 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 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 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.

Typical timeline of a transportation budget:

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

September: AOT starts working 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: One month after the close of the prior FY and two weeks into the new FY, the July consensus forecast is released.

September: If the July consensus forecast had downgraded revenue by 1% or more, under 32 VSA § 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 fiscal year, 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 the legislature passes "waterfall" spending authority. 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.

4. Other Statutory Uses of Revenue

The Transportation Fund supports expenses other than appropriations to AOT. Most of the items are mandated by law (although of course the legislature can change the law).

Some notable expenses include:

(1) $20.25 million to the State Police. In FY01, $44 million and in FY03 an all-time high of $46 million of T-Fund revenue was appropriated to agencies other than AOT. At the time these were known as the "JTOC appropriations". Since FY03 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 T-Fund user fees should support the State Police.
(2) Information Center (rest area) operating costs (~$4 million);
(3) AOT pay act;
(4) Debt service on TIB bonds and older state general obligation bonds issued to pay for transportation infrastructure;
(5) An annual transfer to the Central Garage fund to purchase plow trucks and other equipment used by AOT;
(6) Annual transfers to the Downtown Fund and to the Recreational Trail fund; and

(7) When required by law a transfer of funds to top up the Transportation Fund Stabilization Reserve.

5. The Budget Process

<u>The "State Transportation Plan"</u>
The annual transportation bill ***<u>is</u>*** the state transportation plan. AOT publishes other "state plans" but they are advisory only.

<u>"Spending" Authority vs. "Appropriations" Authority</u>
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.

<u>Format of the Bill</u>
The Governor will recommend a FY22 state transportation plan (the FY22 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 <u>not</u> appear in the bill – it is instead contained 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.

<u>State Transportation Plan Classification of Projects</u>
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 the largest component of a project's total cost.

In the Governor's recommended transportation plan (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 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 3 -ear $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;

(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;

(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.

<u>Aside on construction cost estimates</u>: 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 unit costs. The downside 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, 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 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.

<u>AOT authority to adjust spending</u>: 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.

<u>Structure of the Transportation Budget in the Big Bill</u>
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.

<u>Project Prioritization</u>
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 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 Regional Planning Commission (RPC) and Traffic 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 extremely difficult for the legislature to second guess their judgment.

<u>What to watch for</u>: 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.

<u>Gap in the system</u>: 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.

6. Federal Aid

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

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

NHTSA – the National Highway Traffic and Safety Administration is a special case. NHTSA funds essentially 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 Spending Authority vs 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 FFY2020. Congress recently extended the FAST Act for another year, through FFY2021.

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 of federal transportation funds:

(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 September 2009. Unable to agree on formulas, Congress in MAP-21 (the successor reauthorization to SAFETEA-LU) 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 October 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 reauthorization 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, Congress has created pools of funds for particular purposes from which the U.S. 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 (effective from FFY03 through FFY09), which Senator Jeffords guided through Congress. 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 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 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 reasonably 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 September 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 VT has averaged somewhere around $9.8 million annually (ranging from $6M to $16M) over the past ten 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 State Transportation Improvement Plan (STIP) 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 2017 cannot bind the legislature in 2018, as a matter of federal law with respect to the use of federal transportation funds, the decisions made by the legislature in 2017 do have a certain, not precisely defined, binding effect on the legislature in 2018.

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.

SUMMARY OF VERMONT MOTOR FUEL TAX RATES – 2021

Gasoline

Levy	Amount
Gasoline Tax	12.1 cents per gallon
Petroleum Clean-Up Fee	1 cent per gallon
TFund Assessment	4% of the retail price, excluding all state and federal levies, with a floor of 13.4 cents per gallon and a ceiling of 18 cents per gallon
TIB Assessment	2% of the retail price, excluding all state and federal levies, with a floor of 3.96 cents per gallon
Total State levies	**13.1 cents per gallon + the 4% TFund assessment + the 2% TIB Assessment**
Federal Gasoline Tax	18.4 cents per gallon
Total State and Federal levies	**31.5 cents per gallon + the 4% TFund assessment + the 2% TIB Assessment**

Note: The TFund Assessment "floor" kicks in at a retail price of $3.87 per gallon and the "ceiling" kicks in at a retail price of $5.08. The TIB Fund Assessment "floor" kicks in at a retail price of $2.48 or lower.

Diesel

Levy	Amount
Diesel Tax	28 cents per gallon
Petroleum Clean-Up Fee	1 cent per gallon
TIB Assessment	3 cents per gallon
Total State levies	**32 cents per gallon**
Federal Diesel Tax	24.4 cents per gallon
Total State and Federal levies	**56.4 cents per gallon**