

**TO: House Transportation Committee**  
**FROM: Vermont Association of Planning and Development Agencies**  
**DATE: March 10, 2025**  
**RE: Comments on Payback Provisions, Transportation Bill, Draft 1.1**

The Vermont Association of Planning and Development Agencies (VAPDA) and the Vermont League of Cities and Towns (VLCT) have identified significant concerns with the proposed changes in Section 3 of Draft 1.1 of the T-Bill, which requires municipalities to pay back funds for most canceled projects that were funded through the Vermont Agency of Transportation (VTrans). The existing language is problematic in several respects, including its vagueness, its broad discretionary power granted to VTrans regarding payback amounts and processes, and its lack of clear guidance for project sponsors. Additionally, the existing provisions were previously tied to a Federal Highway Administration (FHWA) payback requirement, which applied only to specific project phases such as Preliminary Engineering (PE) funds. However, that FHWA requirement has now been eliminated, leaving the state's payback provisions to expand in scope with even more uncertainty.

VTrans' proposed changes to this section only serve to exacerbate these existing issues. The elimination of the tie to FHWA requirements has broadened the scope of payback to include additional project phases and conditions, while also creating ambiguity about when the payback provisions would apply and what criteria would be used to determine the amount owed.

In response to these concerns, VAPDA and VLCT propose the following draft legislation to establish clearer, more consistent payback provisions for canceled municipally managed projects. This proposal aims to protect municipalities from undue financial burdens while ensuring that state funds are used effectively. It provides clear criteria for determining when payback is warranted, outlines exemptions for circumstances beyond municipal control, and ensures a more transparent decision-making process by VTrans, along with an appeal mechanism for municipalities.

The attached legislative proposal incorporates the feedback of municipalities, including provisions for special consideration of municipalities that have completed formal scoping studies, particularly those funded and managed by VTrans. This proposal seeks to create a fairer, more predictable framework for municipalities, VTrans, and other stakeholders involved in transportation project development across Vermont.

## Sec. X. Payback Provisions for Canceled Municipally Managed Projects

### (a) Applicability

This section establishes clear and consistent payback provisions for municipalities that cancel projects funded through the Vermont Agency of Transportation (VTrans). These provisions apply to all municipally managed projects receiving state or federal funds administered by VTrans.

### (b) Payback Requirement

A municipality that cancels a municipally managed project shall be required to reimburse VTrans for funds expended on the project only if the project meets one or more of the following conditions:

1. The project has entered the Right-of-Way (ROW) acquisition or Construction phase at the time of cancellation.
2. The municipality has failed to meet project deadlines established in the grant agreement or project schedule after receiving notice of noncompliance and an opportunity to remedy delays.
3. The municipality voluntarily withdraws from the project after receiving construction authorization.

### (c) Exemptions from Payback

A municipality shall not be required to reimburse VTrans for any expended funds if:

1. The project is canceled prior to Preliminary Engineering (PE) completion, unless another funding source explicitly requires repayment.
2. The cancellation is due to circumstances beyond the municipality's control, including loss of required federal or state funding not attributable to municipal action, regulatory or permitting constraints that render the project infeasible, or VTrans or Federal Highway Administration (FHWA) policy changes that affect project eligibility or feasibility.
3. Special consideration shall be given to municipalities that have completed a formal scoping study, particularly one funded by and managed through VTrans, in determining whether payback is warranted. If a municipality has followed the formal scoping process and has advanced the project based on the findings of that study, but later determines the project is infeasible due to cost overruns, environmental permitting issues, or engineering constraints, VTrans shall waive or significantly reduce any required payback.

#### (d) Definitions of Municipal Control in Project Cancellations

##### (1) Cancellations Within a Municipality's Control

A municipality shall be considered responsible for project cancellation, warranting potential payback, if the decision to abandon the project is based on reasons within its direct control, including but not limited to:

- **Selectboard Vote to Withdraw** – A formal vote by the municipality's governing body (Selectboard, City Council, or Village Trustees) to discontinue the project due to political, public, or policy reasons.
- **Public Pushback or Lack of Political Support** – A decision to cancel a project due to opposition from residents, businesses, or elected officials, despite prior planning and approval.
- **Landowner Disputes Within the Project Area** – Cancellation arising from opposition or unwillingness of property owners to sell or provide necessary easements or rights-of-way, except where the municipality has exhausted all reasonable alternatives, including redesign or legal remedies.

##### (2) Cancellations Outside a Municipality's Control

A municipality shall not be required to reimburse VTrans if a project is canceled due to factors beyond its control, including but not limited to:

- **Substantial Cost Overruns** – If project costs significantly exceed initial estimates, with special consideration given to municipalities that conducted a formal scoping study. A cost increase of at least 20% beyond the estimated budget due to inflation, labor costs, material shortages, or unanticipated engineering challenges shall be considered substantial.
- **Environmental Permitting Concerns** – If state or federal regulatory agencies impose environmental restrictions, conditions, or denial of permits that make the project infeasible or significantly more expensive than anticipated.
- **Engineering or Design Infeasibility** – If updated engineering assessments or site conditions render the project technically infeasible, unsafe, or non-compliant with federal or state transportation requirements.
- **Loss or Reduction of External Funding** – If federal, state, or other necessary funding sources are reduced or withdrawn, making the project financially unviable through no fault of the municipality.

#### (e) Calculation of Payback Amount

When payback is required under subsection (b), the amount shall be limited to:

1. The total amount of state or federal funds expended on the project after the municipality's acceptance of Right-of-Way or Construction funding.
2. A maximum of 50% of Preliminary Engineering (PE) costs, if the project was canceled for reasons within the municipality's control, but before ROW or Construction funding was authorized.

3. For municipalities that completed a formal scoping study funded and managed by VTrans, any required payback shall be waived or significantly reduced if the project is later deemed infeasible due to factors beyond the municipality's control.

(f) Notice and Appeal Process

1. VTrans Determination – VTrans shall provide a written determination of any required payback, including a detailed breakdown of costs and justification, within 60 days of project cancellation.
2. Municipal Appeal Window – A municipality may appeal the payback determination within 30 days of receiving the decision.
3. TBoard Review Process – The Vermont Transportation Board shall issue a final ruling within 90 days of receiving an appeal, ensuring municipalities receive timely resolutions.

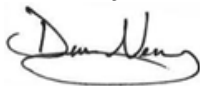
(g) Appropriate Timelines for Decision-Making

1. Municipal Cancellation Decisions
  - Preliminary Engineering Stage – Cancellation decisions should be made within 90 days of receiving feasibility reports or environmental permitting determinations.
  - Right-of-Way Acquisition Stage – Municipalities should notify VTrans of potential cancellation at least six months before ROW funding obligations are finalized.
  - Construction Stage – Cancellations should not be permitted once a construction contract is awarded, except in cases of financial infeasibility, regulatory barriers, or loss of funding.
2. VTrans and Transportation Board Timelines
  - VTrans Payback Determination – VTrans must issue a decision within 60 days of project cancellation, including a breakdown of required reimbursement.
  - Municipal Appeal Window – A municipality has 30 days from receipt of the VTrans decision to file an appeal.
  - TBoard Final Decision – The Vermont Transportation Board must issue a final ruling within 90 days of receiving an appeal.

(h) Implementation

The provisions of this section shall take effect on [DATE] and shall apply to all municipally managed projects initiated after this date.

Sincerely,



Devon Neary

Vermont Association of Planning and Development Agencies