REPORT TO THE LEGISLATURE PURSUANT TO ACT 43 of 2025, SECTION 14 EVALUATION; Cancellation of Locally Managed Projects

December 29, 2025

Submitted to

The Vermont House and Senate Committees on Transportation

Submitted by

Vermont Agency of Transportation

Table of Contents

List of Tables

Executive Summary

The Vermont Agency of Transportation (VTrans) commissioned an evaluation of the state statute (19 V.S.A. § 309c) governing municipal payback of grant funds for cancelled locally managed transportation projects. Recent federal changes, including the rescission of FHWA's 10-year preliminary engineering payback provision, have prompted the need to revisit and clarify Vermont's statutory language. Through document review and stakeholder interviews with VTrans staff, municipalities, Regional Planning Commissions (RPCs), the Vermont League of Cities and Towns (VLCT), and the Vermont Association of Planning and Development Agencies (VAPDA), this report assessed the risks, obligations, and process shortcomings in the current payback structure, and identified opportunities for statutory and programmatic improvement.

Key Findings

Ambiguity and Inconsistency: Current payback provisions in state statute and grant agreements are inconsistently applied and lack clarity about when and for what circumstances repayment is required. This has led to administrative complexity, increased risk aversion among municipalities, and confusion for both VTrans and local project sponsors.

Process Challenges for Municipalities: Municipalities, especially rural and smaller towns, struggle with high project costs, staff turnover, limited staff capacity, lack of technical expertise, and burdensome administrative requirements. These challenges increase the likelihood of project cancellation at later, costly stages.

Risk of Program Inefficiency: Delayed or cancelled projects keep federal funds tied up, reduce VTrans' ability to reallocate resources, and limit infrastructure progress for other communities. There is a recognized need to build stronger, up-front project vetting and readiness checks in order to prevent unviable projects from advancing.

Stakeholder Consensus on Reform: Interviewed stakeholders broadly agree on the value of standardizing payback language, clearly defining triggers and process steps, and supporting education and technical assistance. There is support for a more transparent, milestone-based payback approach and for expanding the scoping and project development support to municipalities for project readiness.

Recommendations

Standardize Payback Language and Triggers: Update state statute and all municipal grant agreements with uniform, plain-language definitions of payback obligations, clearly tied to project milestones (e.g., NEPA clearance, ROW acquisition) and specifically outlining consultation processes and proportional payback waivers.

Enhance Early Project Vetting and Scoping ("Scoping+"): Require comprehensive scoping and consider carrying scoping through conceptual plans and NEPA review where appropriate, for significant or high-risk municipal projects. Consider reducing local match requirements for scoping phases to encourage broader municipal participation and more accurate project assessment and readiness.

Implement Prequalification and Commitment Mechanisms: Require demonstration of municipal readiness and project management capacity as a prerequisite for grant awards. Include lapse dates and strict milestone deadlines in grant agreements, ensuring only committed, prepared projects advance.

Formalize Education, Training, and Technical Support: Invest in ongoing education and technical assistance for municipalities and RPCs to address frequent staff turnover and complex federal/state requirements. Provide regular, targeted training sessions, accessible process documentation, and opportunities for peer learning.

Milestone Liability Framework: Develop a risk assessment template or tool that documents and communicates the project costs incurred, costs subject to payback, and risks associated with project schedule, funding, regulatory, or technical considerations at key project milestones or phases of project development.

Institutionalize Transparent Consultation and Appeals: Ensure all affected municipalities are clearly informed of their right to consult with VTrans and to petition the Vermont Transportation Board for a proportional payback waiver when cancellation is due to events beyond their control. Produce model language and process templates to support systematic, fair, and well-documented appeals.

Continuous Process Improvement: Track cancellation and payback data annually. Conduct post cancellation reviews to identify root causes and adapt policy, guidance, and training programs for continuous improvement. Consider a discretionary fund or other "buffer" to address modest cost overruns on otherwise viable projects.

Conclusion

Vermont's existing payback statutes and grant processes require modernization and standardization to reduce confusion, align with federal changes when applicable, and support the needs of municipalities, VTrans, and regional partners. Implementing the recommendations outlined in this study will clarify obligations, reduce unnecessary risk, and provide clear pathways when project cancellation occurs. The recommendations will ultimately foster a more transparent, efficient, and outcome focused transportation grant program statewide.

1

Introduction

The Vermont Agency of Transportation (VTrans) has undertaken an initiative to evaluate the state statute governing municipal payback of grant funds in the case of cancelled projects (i.e., 19 V.S.A. § 309c). The report on payback provisions was requested in light of changes instituted by the Infrastructure Investment and Jobs Act in 2021 and more specifically by US DOT and FHWA with 90 FR 22860 Rescinding Preliminary Engineering Project 10-Year Repayment Provision (i.e., 23 CFR 630.112(c)(2)). As directed in Act 43 (2025), a report to evaluate the obligations, risks, and benefits imposed by the provisions on State and local sponsors of a municipally managed project was conducted to identify potential changes to the provisions that support appropriate administration of State and federal transportation funding resources.

To support this study VHB (1) conducted a review of the existing statutory language, the changes instituted in 2021, and the rescinded provisions; and (2) conducted a series of interviews with stakeholders including municipalities, RPCs, VLCT, VAPDA, and VTrans representatives from Municipal Assistance Section, Maintenance Districts, and Finance and Administration. The ultimate goal of this report is to support VTrans in recommending updated statutory language for payback provisions for cancelled projects that are locally managed. Additionally, informed by review of the risk, obligations, and benefits imposed by such provisions, recommendations emerged of ways to limit the number of cancelled projects through strategic project planning and educational resources.

2

VTrans Municipal Grant Cancellation

Effective on May 30, 2025, Federal Highway Administration (FHWA) final rule rescinded the portion of regulations which required that State Departments of Transportation (DOTs) repay FHWA federal funds provided for preliminary engineering for a transportation infrastructure project if right of way (ROW) acquisition for, or actual construction of, the project is not started in ten years. Below is an excerpt from FHWA discussion on the final rule, the rescinded language from the Code of Federal Regulations (CFR), and the existing statutory language utilized by VTrans to dictate payback provisions following the cancellation of locally managed projects.

FHWA Rescinding Preliminary Engineering Project 10-Year Repayment Provision

Discussion of the rescinded provisions provided by FHWA included the following excerpt:

Section 11310(a) of the Infrastructure Investment and Jobs Act (Pub. L. 117-58) repealed the 10-year payback requirements formerly found in 23 U.S.C. 102(b). Accordingly, FHWA finds good reason to eliminate this regulatory provision entirely. The repeal of 23 U.S.C. 102(b) removes the statutory authority for FHWA to demand the reimbursement of preliminary engineering funds if on-site construction of, or acquisition of right-of-way for, a project is not commenced within 10 years of the date on which Federal funds were first made available for the preliminary engineering on the project. Similarly, the statutory change removes the obligation of State DOTs to repay such preliminary engineering costs in these circumstances. For these reasons, FHWA finds it unnecessary to maintain a provision that FHWA cannot enforce due to lack of statutory authority and that State DOTs have no legal obligation to follow.

The FHWA notes that the repeal of the 10-year payback provision under 23 U.S.C. 102(b) and FHWA's termination of 23 CFR 630.112(c)(2) does not change any other requirements that may allow FHWA to demand repayment of funds used for preliminary engineering. For example, FHWA notes that it may require the repayment and recovery of funds used for preliminary engineering if it finds improper or ineligible use of such funding otherwise not in compliance with Federal requirements. See23 CFR 1.36. The purpose of the rescission of 23 CFR 635.112(c)(2) is only that FHWA will not use the 10-year payback rule as the basis.[1]

Rescinded CFR Language

The CFR language that was removed as part of the final rule is as follows:

*(2) **Preliminary engineering project.** In the event that right-of-way acquisition for, or actual construction of, the road for which this preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the project is authorized, the State DOT will repay to the FHWA the sum or sums of Federal funds paid to the transportation department under the terms of the agreement. The State may request a time extension for any preliminary engineering project beyond the 10-year limit with no repayment of Federal funds, and the FHWA may approve this request if it is considered reasonable.*[2]

Existing Statutory Language

The existing state statutory language regarding project cancellation is as follows:

19 V.S.A. § 309c. Cancellation of locally managed projects

(a) Notwithstanding section 309a of this title, a municipality or other local sponsor responsible for a locally managed project through a grant agreement with the Agency shall be responsible for the repayment, in whole or in part, of federal funds required by the Federal Highway Administration or

[1] Federal Register :: Rescinding Preliminary Engineering Project 10-Year Repayment Provision

[2] eCFR :: 23 CFR Part 630 -- Preconstruction Procedures

other federal agency because of cancellation of the project by the municipality or other local sponsor due to circumstances or events wholly or partly within the municipality's or other local sponsor's control. Prior to any such determination that cancellation of a project was due to circumstances or events wholly or partly within a municipality's or other local sponsor's control, the Agency shall consult with the municipality or other local sponsor to attempt to reach an agreement to determine the scope of the municipality's or other local sponsor's repayment obligation.

(b) Within 15 days of an Agency determination under subsection (a) of this section, a municipality may petition the Board for a hearing to determine if cancellation of the project was due to circumstances or events in whole or in part outside the municipality's control. The Board shall hold a hearing on the petition within 30 days of its receipt and shall issue an appropriate order within 30 days thereafter. If the Board determines that cancellation of the project was due in whole or in part to circumstances or events outside the municipality's control, it shall order that the municipality's repayment obligation be reduced proportionally, in whole or in part. The municipality shall have no obligation to make a repayment under this section until the Board issues its order. (Added 2009, No. 123 (Adj. Sess.), § 30.)[3]

[3] Vermont Laws

3

Key Stakeholders in Municipal Grant Cancellation

In order to make recommendations on updating the payback provisions associated with cancellation of locally managed projects, VHB conducted a series of interviews with key stakeholders to understand the existing process for acquiring a grant, the implementation of these grants, and the many reasons that a project may be cancelled. Additionally, the primary focus was to understand milestones in the project development process that stakeholders identified as appropriate for enacting payback when a locally managed project is cancelled. Gaining this understanding helped develop recommendations that prevent cancellations by creating safeguards and improve the existing process, as well as make recommendations on clear and concise payback provisions following the cancellation of a project.

VTrans Project Team

To kick off the project, VTrans assembled a core team that guided the project process and recommended key stakeholders to interview. This group met on a bi-weekly basis with the consultant project team, bringing expertise on the topic and helping guide the research and recommendations for the report. The Project Team is listed in Table 1 and the stakeholder interviewees are listed in Table 2.

Table 1 – Project Team

Name	Organization	Role
Joel Perrigo	VTrans	Municipal Assistance Program Manager
Ross Gouin	VTrans	Municipal Assistance Project Manager
Costa Pappis	VTrans	Federal Policy Director
Ande DeForge	VTrans	Municipal Assistance Project Manager
Scott Robertson	VTrans	Municipal Assistance, Transportation Alternative Grant Manager
Tina Bohl	VTrans	Municipal Park and Ride Program
Robert White	VTrans	Municipal Assistance Program Manager

Table 2 – Interviewees

Name	Organization	Role	Interview Date
Tricia Scribner	VTrans	Contract Administration	10-02-2025
Jeremy Reed	VTrans	Highway Division Director/ Chief Engineer	10-06-2025
Erin Sisson	VTrans	Deputy Chief Engineer	10-06-2025
Dave Pelletier	VTrans	Policy & Planning	10-06-2025
Amy Bell	VTrans	Policy & Planning	10-06-2025
Devon Neary	VAPDA/RRPC	Board Chairperson	10-08-2025
Jason Rasmussen	VAPDA/MARC	Transportation Committee Chair	10-08-2025
Garret Folsom	VTrans	Financial Specialist	10-15-2025
Ken Valentine	VTrans	Asset Management Bureau	10-15-2025
Jennifer Fitch	VTrans	Asset Management Bureau	10-15-2025
Derek Kenison	VTrans	Municipal Assistance Project Manager	10-16-2025
Jon Lemieux	VTrans	Municipal Assistance Project Manager	10-16-2025
Scott Gurley	VTrans	Municipal Assistance Project Manager	10-16-2025
Josh Hanford	VLCT	Director, Intergovernmental Relations	10-16-2025
Samantha Sheehan	VLCT	Municipal Policy and Advocacy Specialist	10-16-2025
Chad Greenwood	VTrans	Resident Engineer	10-17-2025
Ashley Atkins	VTrans	Deputy Director Maintenance & Fleet	10-17-2025
Chris Bump	VTrans	District/Maintenance	10-17-2025

Rita Seto	TRORC	Senior Planner	10-24-2025
Steffanie Bourque	RRPC	Project Manager	10-24-2025
Bonnie Waninger	VLCT	Project and Funding Specialist	10-28-2025
Ron Redmond	City of Vergennes	City Manager	11-05-2025
Jessica Van Oort	Town of Pawlet	Planning Commission Member	11-05-2025

Key Interview Topic Areas

To inform this report, VHB conducted over 15 interviews with a wide range of stakeholders involved in Vermont's municipal grant and project delivery process. These discussions were designed to capture diverse insights into the factors leading to project cancellation, the points at which cancellations most frequently occur, and stakeholder perspectives on the effectiveness and clarity of existing payback provisions. The interviews provided valuable, practical context regarding administrative challenges, technical barriers, local governance dynamics, and perceptions of risk. By systematically exploring these areas, VHB was able to identify recurring issues, illuminate areas of consensus and divergence among stakeholder groups, and generate recommendations for statutory and process improvements to reduce cancellations and clarify municipal obligations.

Project Cancellation

Analysis of recent project cancellations provided critical context for this review. Of 32 locally managed projects cancelled in Vermont, nearly half were salt and sand shed projects, with sidewalk and shared use path projects following closely behind. Throughout a series of stakeholder interviews, VHB explored in depth the frequency with which projects are cancelled and the underlying causes of project cancellations from multiple organizational perspectives. Stakeholders consistently emphasized that project cancellation is rarely the result of a single issue, rather, it stems from a combination of financial, administrative, technical, and local governance challenges. Understanding the root causes, ranging from escalating costs and unpredictable construction markets to staffing turnover, ROW difficulties, and insufficient project scoping, was essential in shaping the recommendations for improving Vermont's grant management framework and clarifying payback provisions.

The main reasons for project cancellation:

- **Unanticipated High Costs:** Many projects were cancelled due to actual or anticipated construction bids well above the awarded grant amounts or initial estimates. This can occur from inaccurate estimates at the scoping level to just the ongoing unanticipated increasing rates of inflation.

- **Local Commitment Issues:** Turnover of local officials (e.g., town administrators, selectboard members, etc.) is often the reason for project cancellation. Additionally, changes in towns priorities and public support can shift the longer a project takes.
- **ROW Challenges:** Municipalities may face project opposition from adjacent property owners during project development process. Challenges in acquiring ROW can lead to cancellations. This is common with sidewalk and shared use path projects.
- **Administrative/ Funding Barriers:** Many of the municipal representatives do not have the experience to apply for and execute grant from beginning to end. Due to lack of experience and significant turnover, it is a cumbersome process for municipalities to take on. This is particularly evident for small communities with limited staff resources.
- **Technical/ Design Issues:** Projects can be cancelled due to lack of thorough scoping prior to moving into preliminary engineering (PE). In particular, inaccurate project cost estimates can lead to project cancellation due to municipalities then underestimating the costs associated with completing the project with limited mechanisms for making up the funding gap. Should additional grant funds be required, this could further prolong the project timeline in order to procure more funds, ultimately extending the process and opportunity for cost increases.

Through conversations with partner organizations the same themes rose to the top. VLCT and VAPDA indicated that one reason projects are cancelled by municipalities is due to the complicated nature of applying to and administering grants as well as lack of local staff education on the process. This is exacerbated by the turnover that is occurring at the municipal level. When someone leaves the town or city that was championing a project, the ability to maintain the administration of the grant and see the project through completion diminishes.

All of the groups shared the same sentiment about the rising costs of construction. The prices that are estimated at the scoping level are not reflective of when the project is actually going out to bid. Many projects have been cancelled due to the immense increase in costs. Even the 20% match can be difficult for municipalities to find in their budget, so when the costs are significantly higher than estimated at the scoping level, preliminary engineering, or after they go out to bid, it is easier and less burdensome for towns to cancel the project than to move forward with higher costs. In such scenarios where costs are higher than anticipated, the town is often found to be weighing the level of payback potentially required versus the funding shortfall to construct the project.

Timing of Cancellations

The timing of project cancellation varied between the project types. The common timing for project cancellation was observed as follows:

- **Before Grant Agreement:** Some municipalities cancel during initial application, often after early realization of capacity limitations or changing local priorities. Cancellation at this stage presents minimal financial risk but does expend local staff time and sometimes RPC staff time, depending on their level of involvement.
- **During Public Process:** Public engagement or local governance changes may reveal community opposition or shifts in priorities, leading to sudden project withdrawal after significant planning investment.

- **During/ Following Conceptual Plans:** In some instances, feasibility or environmental review reveals obstacles not apparent during initial scoping. This can include unexpected environmental permitting challenges or higher than expected design complexity.
- **ROW Phase:** Acquisition difficulties can emerge at this stage, even with thorough community engagement earlier in the process. Difficult negotiations with property owners, condemnation proceedings, or utility conflicts can cause protracted delays or insurmountable cost increases.
- **Advertisement/Bid:** Municipalities may be compelled to exit the process after receiving construction bids well in excess of original estimates and/or available grant funding. Unanticipated market volatility and escalating construction costs are common triggers. The timeline of the project may also play a role here, generating more time for costs to inflate as the project works its way through the process.
- **During Construction:** Although less common, some cancellations occur after shovels are in the ground, usually as a result of major unforeseen technical or legal obstacles.

Municipal Capacity Challenges

Mentioned briefly in the previous sections, it became evident that there is a lack of expertise at the municipal level to administer a grant through the project development process and through construction. The main challenges that municipalities face are significant turnover of staff, lack of resources including time and budget, and escalating costs or inadequate funding. This is exacerbated for small towns that do not have the staff power or a project champion to keep a project moving forward.

Clear Statute Language

Under the Infrastructure Investment and Jobs Act (IIJA), the Federal requirement for state DOTs to repay preliminary engineering costs for projects that do not progress to construction was eliminated. Previously, once a project reached the preliminary engineering stage, there was a commitment required to proceed to construction or pay back the engineering funds. This federal change allows for projects to be halted without financial penalty if they are found unsuitable or if they exceed a 10-year timeline to construction. However, the state statute still mandates that municipal governments need to repay federal funds under similar circumstances. Throughout the conversations with stakeholders, consensus that there needs to be alignment between the state and federal guidelines was evident.

When speaking with the contract administration representative, it was shared that there is no standard language in the grant agreements and that some state funded grants do not include any language related to payback provisions. The contract administration team is currently working on standardizing grant language to create a clear “line in the sand” of when payback provision would be required so it is clear for the agency staff as well for municipalities applying for and administering locally managed grants.

Salt/ Sand Shed Projects

VTrans staff as well as municipal staff and representatives agreed that the salt/ sand shed projects are the hardest ones to move into construction. The grant award is not high enough to meet the costs to build the structure. Additionally, the federal requirements are the catalyst to the many additional costs. The extra environmental control and required construction monitoring creates an untenable process for small municipalities. The sentiment was shared from the municipal level that they would no longer apply for FHWA grants due to these barriers. A theme echoed by municipal project managers and regional planners is that without adjustments to grant size, process streamlining, and tailored technical support for salt/sand shed projects, the state risks both growing backlog and underutilization of available funds.

Cancelled Projects Summary

In gathering data on recently cancelled projects and additional information from stakeholder interviews, the following summarizes key takeaways from the process:

Project Type

- Sand/salt sheds and similar municipal facilities represent about half of all cancelled projects.
- Bicycle/pedestrian projects (sidewalks, shared-use paths, sidepaths, crosswalks, and scoping) account for roughly one-third of cancellations.
- The remaining approximately 15–20% projects are culverts, historic bridge rehabilitations, and other specialized TAP/STP projects.

Stage of Cancellation

Majority of projects are cancelled before construction, with:

- Many (around half) cancelled very early (no federal PE billed).
- A large share of the rest cancelled during PE (PE costs incurred; ROW and construction not reached).
- Only a small fraction of cancelled projects progressed far enough to incur federal ROW or construction costs before cancellation.

Financial exposure and payback

- A minority of cancelled projects clearly required federal payback (PE or other costs reimbursed).
- Many projects with non-zero PE expenditures have no explicit payback status in the data, creating uncertainty around federal financial risk.
- Projects cancelled pre-PE generally pose minimal direct financial loss, though they still represent lost opportunity and staff time.

Likely drivers of cancellation (patterns across projects)

- Project-type complexity: Salt sheds and bike/ped facilities have higher exposure to cancellation.
- Permitting/feasibility: Environmental, stormwater, floodplain, and local land-use constraints often emerge during PE and can halt or deter advancement.
- Cost escalation and bid climate: Rising construction costs and limited contractor interest contribute to advertised projects receiving no bids or awards.

- Local capacity: Smaller municipalities are challenged by federal requirements, project management, and maintaining momentum over multi-year schedules.

Implications for program improvement

- Focus risk-reduction efforts on salt sheds and bike/ped projects, which together comprise approximately 75–80% of cancellations.
- Strengthen early screening (feasibility, permitting, realistic costs, local match).
- Provide targeted technical and permitting support during PE.
- Establish clear, predictable payback policies so towns understand financial risk.

4

Perspectives on Project Cancellation and Payback Provisions

Stakeholder interviews made clear that ambiguity surrounding payback provisions introduces significant administrative complexity and risk for all parties involved. Small municipalities are particularly exposed: limited staff capacity and budget resources mean they experience outsized financial and operational consequences when payback is triggered late in the development cycle. These vulnerabilities are exacerbated when escalation in costs, leadership turnover, or ROW challenges lead to project cancellation.

For VTrans, the rescission of federal payback authority under the IIJA has created uncertainty about stewardship of transportation funds. When money is tied up in incomplete or cancelled projects, it becomes inaccessible for other communities with urgent needs, which can delay infrastructure improvements across Vermont. Municipal Project Managers (MPM), often at RPC, face additional burdens in interpreting statutory and regulatory obligations for municipalities, especially in the context of frequent staff turnover and inconsistent guidance. This has resulted in a pattern where towns, fearing punitive payback obligations or lack of capacity, may abandon projects prematurely or forego grant opportunities altogether.

Both RPCs and municipal representatives emphasized the importance of reforming statutory language to allow for appeals and proportional waivers, particularly in cases where project cancellation is driven by factors outside the municipality's control. VLCT raised the concern that "clawback" rules for planning and scoping phases discourage vetting a project and effective risk-taking. They propose structured flexibility in the payback framework, including clear appeals mechanisms and milestone-based waivers to promote responsible development while protecting local governments from unnecessary penalties.

Core mechanisms driving project cancellation include unexpectedly high bid prices and inflationary pressures, lack of technical expertise, and insufficient vetting or initial scoping. The impacts ripple beyond finances wasted planning and design efforts, lost opportunity for statewide infrastructure improvement, and erosion of municipal trust in VTrans grant programs. To address these concerns, stakeholders recommend several process and statutory improvements detailed in the following subsections.

Scoping/ Scoping +

It came through the VTrans staff conversations to require scoping studies for all significant projects (especially salt sheds) which could help prevent projects from being cancelled. By requiring thorough scoping this would provide municipalities with a better understanding of the next steps to take a project through PE and ROW, and the grants that would be available to fund the construction.

VTrans municipal staff recommended providing NEPA to be included in the scoping process and suggested a "Scoping +" process. This would allow a project to move through NEPA at the scoping level to identify any potential barriers before it goes through PE. This could eliminate cost over runs due to the lengthy timeline that NEPA can often take.

VLCT advocated for a more supportive and collaborative atmosphere in project development, where feasibility and scoping studies are encouraged rather than penalized. They emphasized the importance of early technical analysis, robust stakeholder engagement, and evaluation of project viability prior to significant investment. VLCT suggested removing local match requirement for scoping studies to promote robust project vetting. They indicated match can be a barrier for smaller communities in Vermont. They agree that scoping is important to discover if a project is viable and requiring match discourages municipalities from vetting the project.

Municipal Prequalification and Commitment

VTrans municipal staff recommend requiring municipalities to demonstrate prior experience and/or sufficient capacity before granting funds. By requiring applicants to demonstrate sufficient experience or project management proficiency before receiving grants, the preparedness of the project champion to take on the project development process can be established. Further, establishing clear deadlines for fund utilization supports a model where municipalities are prepared for the realistic timeframes associated with project development.

Implementation of lapse dates on awards supports a model where applicants are prepared and committed to seeing the project through. VTrans stressed the importance of accountability and responsible stewardship. This timeline establishment and commitment to stewardship prevents the situation where funds are allocated to one municipality but not able to be expended as intended. This model avoids restricting the opportunities for other eligible towns to access funding and alleviates the administrative burdens of shifting funds to be allocated appropriately within the funding year.

Education/ Training

Frequent municipal staff turnover, especially in small communities, is a consistent barrier to successful project completion. Stakeholders called for comprehensive investment in ongoing education, technical assistance, and resource documentation to promote project continuity and knowledge transfer.

RPCs and VLCT suggest regular listening sessions, targeted trainings, and cross-state best practice exchanges to improve municipal understanding of grant administration and compliance. Peer learning forums would enable towns to share strategies for overcoming common pitfalls and navigating staffing transitions. Enhanced documentation such as plain-language grant templates and process guides would reinforce understanding and facilitate smoother onboarding of new personnel.

Expanding the role of RPCs in providing technical assistance throughout the grant lifecycle, from initial application to project closeout, could help buffer municipalities from operational shocks due to turnover. Likewise, annual reviews of canceled projects should be institutionalized to assess underlying causes, track impacts, and guide continuous improvement in resource allocation, training, and process design.

Condemnation

Grant applications and contracts that municipalities sign when they apply for and accept federal and state grants, require commitment to pursuing condemnation in the case that it is required in order to bring a project through construction. Through interviews, it became evident that towns are often not willing to follow through with this. Should an adjacent parcel owner emerge in opposition where there are ROW impacts, the town staff appetite for pursuing condemnation is low. This leaves towns liable for payback if they have used PE funds and are in the ROW phase of project according to state statute and grant agreements. Not moving forward with condemnation would require municipalities to payback. This tradeoff was discussed at length with stakeholders. Municipalities often balance the relationship with a neighbor or neighbors against the established need for the project. Although the benefit to the community for the project may be great, the conflict with a neighbor may be untenable. In some cases, threat of legal action and the perceived costs associated with it were what compelled the town to cancel the project.

5

Payback Scenarios

A clear understanding of how Vermont's payback provision statute (19 V.S.A. § 309c) operates in practice is critical for both effective program administration and for supporting municipal decision-making. The scenarios below illustrate the process and outcomes involved when locally managed transportation projects are cancelled at different stages of development. In accordance with current law, repayment of federal funds is only required if the project is cancelled by the municipality due to circumstances wholly or partly within the municipality's control. Prior to finalizing any repayment amount, VTrans must consult with the municipality to determine the appropriate scope of liability. Municipalities then retain the right to petition the Vermont Transportation Board if they believe uncontrollable factors contributed to cancellation, where the Board may reduce or eliminate the payback obligation in proportion to the circumstances.

These scenarios which are informed by both statutory language and actual project data, demonstrate the varying financial and administrative implications for VTrans, municipalities, and their partners (i.e., RPCs, VLCT, VAPDA). Each scenario clarifies risks, liabilities, and benefits, providing a transparent framework for how statutory payback provisions protect program integrity while allowing for fairness and flexibility in response to local conditions. This approach supports a balanced, case-by-case decision process and supports stakeholders in planning effectively for project success or, when necessary, orderly and equitable project closure.

Scenario 1 - Cancellation Prior to PE or ROW

When a project is cancelled before federal or state dollars have been obligated, typically during the scoping phase or before a design consultant is selected, statute clearly exempts the municipality from any federal payback. This early-stage exit reflects due diligence and prudent project management when towns determine, before spending grant funds or initiating preliminary engineering, that they are not able or willing to proceed. The process not only avoids unnecessary financial risks but also allows VTrans to reallocate unobligated resources to other queued projects. For municipalities, the downside is the potential loss of local planning time or match, but the absence of federal obligation shields them from significant financial exposure. For RPCs, VLCT, and VAPDA, there is little to no reputational or financial cost associated with supporting early exits. Instead, these partners benefit from a transparent framework that encourages honest project vetting and helps local sponsors exit low-viability projects without penalty.

VTrans

- **Risk**: Minimal financial or program risk, since no federal money is lost.
- **Liability**: Limited to basic administrative processing for closure.
- **Benefit**: Can efficiently redirect the unobligated funds to other queued projects; minimizes backlog.

Municipality

- **Risk**: Investment in time or local funds for planning/scoping may be lost.
- **Liability**: Sunk costs of early-phase local match or staff time.
- **Benefit**: No federal payback obligations; low-risk off-ramp if project viability is questioned early.

RPC/VLCT/VAPDA

- **Risk**: Expended effort in application and early-phase support may not yield a built project.
- **Liability**: May need to explain non-progression to local stakeholders, but no financial exposure.
- **Benefit**: Opportunity to advise candidly on project feasibility; statute protects towns from unnecessary penalties.

Scenario 2 - Cancellation After PE Before ROW

If a municipality cancels a project after completing preliminary engineering but before entering the ROW phase, 19 V.S.A. § 309c requires federal payback if the cancellation is due to circumstances within municipal control (such as internal changes, local decision shifts, or cost escalation unrelated to uncontrollable outside factors). This approach protects program integrity and ensures federal resources are not consumed without progress toward construction. However, the statute also requires VTrans to consult with the town to assess the scope and reason for payback, allowing for transparency and flexibility if some costs were incurred unavoidably. Municipalities, while potentially facing repayment obligations often in the range of several thousand to tens of thousands of dollars, have statutory recourse. They may petition the Board for a proportional waiver if they can show some factors were beyond their control. This system allows for fair burden sharing and supports communities in managing risk, while RPCs and VLCT/VAPDA help educate municipalities about their rights, options, and best practices for documenting appeals or seeking relief.

VTrans

- **Risk:** Must follow fair processes to recover funds, manage workload, and avoid dispute.
- **Liability:** Responsible for ensuring consultation and transparency; open to appeal review by Board.
- **Benefit:** Clear statutory framework provides leverage to reclaim funds and promote accountability.

Municipality

- **Risk:** Financial liability to repay part or all federal funds invested in PE; potential local budget strain.
- **Liability:** Must engage in consultation, and, if necessary, prepare and document appeal.
- **Benefit:** Statutory right to Board review/waiver if truly unmanageable factors emerge; clarity aids contingency planning.

RPC/VLCT/VAPDA

- **Risk:** Increased advisory workload as towns weigh risk or seek support preparing appeals.
- **Liability:** May be called to offer testimony or documentation in Board hearings.
- **Benefit:** Ability to assist towns in navigating the process for relief; policy clarity ensures fairness across communities.

Scenario 3 - Cancellation After ROW

When a project is cancelled after both preliminary engineering and ROW, the potential payback exposure increases and reflects significant federal investment. If cancellation is prompted by issues such as unexpectedly high construction bids, loss of local support, or inability to secure land, and these factors are deemed within the municipality's control, the statute requires repayment of all or part of the federal PE and ROW funds. However, Vermont law provides a safeguard, and municipalities may appeal to the Board if they believe the cancellation was triggered by outside events, such as condemnation proceedings, third-party utility conflicts, or regulatory barriers. In such instances, the Board may exercise its authority to proportionally reduce or eliminate the payback obligation. For VTrans, this scenario requires detailed administrative tracking and fair judgment, balancing program accountability with flexibility for towns in challenging situations. Municipalities gain some assurance that they will not be unfairly penalized where circumstances are well documented and justifiably out of their control, but there is risk in cancelling a project this far in the process. RPCs and VLCT/VAPDA play an essential support role, helping towns prepare strong appeals and navigate the decision process, which fosters greater trust in both state and federal funding programs.

VTrans

- **Risk:** Must recover expended federal funds, which can be administratively intensive. Other municipalities missed out on using these funds that won't make it to construction.
- **Liability:** Needs processes in place to track, invoice, and collect paybacks while maintaining fairness.
- **Benefit:** Funds are recovered for future projects to maximize federal investment; precedent is clearly established.

Municipality

- **Risk:** Faces financial obligation to repay tens of thousands of dollars, which may stretch local budgets.
- **Liability:** Potential for budget strain or need for special appropriation to pay back. This can discourage future participation.
- **Benefit:** If statutory appeals/waivers exist, towns may reduce payback in truly uncontrollable situations; clear policies support planning.

RPCs/VLCT/VAPDA

- **Risk:** Need to advise towns about payback risk well in advance, potentially leading to more project aborts before PE.
- **Liability:** Advocacy workload to ensure towns understand rights/obligations.
- **Benefit:** Can use historical case examples from Vermont to help towns plan for, or avoid, similar risks.

6

Recommendations

The current state and federal legislation do not align to allow enforcement of the payback provisions for cancelled locally managed projects. It is recommended to create a process that supports towns in successful project completion, employs preventative measures to avoid cancellation, and provides clear statutory language in instances where a project is cancelled what the payback requirement should be.

Scoping / Scoping+ Recommendations

VTrans and stakeholders recommend requiring comprehensive scoping studies including early NEPA review for all significant and high-risk municipal projects, with particular focus on salt and sand shed projects. This approach enables identification of barriers and accurate cost estimates, reducing the likelihood of downstream cancellations.

Removing or reducing local match requirements for the scoping phase will lower barriers, especially for small towns, and publishing a project development timeline with a decision tree for payback triggers will create much needed clarity. This is something to consider in the long term. VAPDA and the Transportation Equity Framework recommended considering an equitable approach to local match, particularly for early stages of project development like Scoping or Scoping +. Consider reduced local match based on "objective measures of municipal capacity."[4]

Risks, Liabilities, and Benefits:

- VTrans
  - **Risk:** Ineffective fund stewardship if projects are cancelled after major investments.
  - **Liability:** Increased administrative burden from managing failed or cancelled projects.
  - **Benefit:** Early vetting and clear milestones reduce downstream cancellations and streamline oversight.
- Municipalities
  - **Risk:** Financial exposure if payback is triggered after NEPA or preliminary engineering.
  - **Liability:** Insufficient upfront vetting leads to wasted resources and project failure.
  - **Benefit:** Lower scoping match increases access and confidence.
- RPCs/ VLCT/ VAPDA
  - **Risk:** Need for increased support if early-stage vetting is weak.
  - **Liability:** Difficulty providing effective guidance when statutory criteria are unclear.
  - **Benefit:** Improved project vetting leads to higher completion rates and clarifies their advisory role.

Municipal Prequalification and Commitment Recommendations

Establishing prequalification requirements where municipalities demonstrate readiness and project management experience is essential to lowering the risk of project abandonment. Lapse dates and milestone deadlines in grant agreements will maintain momentum and accountability. Statutory provisions for proportional waivers and appeals will offer fairness when uncontrollable factors (such as staff loss or regulatory barriers) arise.

Risks, Liabilities, and Benefits:

- VTrans
  - **Risk:** Inability to recover stalled funds if unprepared municipalities receive grants.
  - **Liability:** Delay of critical infrastructure projects elsewhere if funds are tied up.

[4] Vermont Transportation Equity Framework

- **Benefit:** Prequalification keeps the pool of grantees capable, boosts completion rates, improves stewardship.

› Municipalities

- **Risk:** Obligation to repay funds and possible exclusion from future grants if unable to meet commitments.
- **Liability:** Exposure to project failure and reputation damage due to unclear requirements or high turnover.
- **Benefit:** Appeals and waivers provide relief where warranted; prequalification protects against pursuing unmanageable projects.

› RPCs/ VLCT/ VAPDA

- **Risk:** More frequent intervention and crisis support if underprepared towns are awarded grants.
- **Liability:** Increased coordination needed for managing appeals and exceptions.
- **Benefit:** Clearer criteria focus RPC support efforts and reduce premature cancellations.

Education and Training Recommendations

Investing in regular education, training, and technical support is fundamental for navigating frequent municipal staff turnover. Routine training sessions, listening forums, peer-learning opportunities, accessible process documentation, and annual post-cancellation reviews are all recommended to strengthen municipal capacity and institutional continuity.

Risks, Liabilities, and Benefits:

› VTrans

- **Risk:** Inconsistent oversight and program results if local staff turnover goes unaddressed.
- **Liability:** Greater long-term administrative oversight required for untrained or new municipal staff.
- **Benefit:** Strong local capacity leads to steadier project delivery and better program outcomes.

› Municipalities

- **Risk:** Disruption and project setbacks when key staff depart and knowledge is lost.
- **Liability:** Increased difficulty with onboarding replacements without adequate documentation and training.
- **Benefit:** Ongoing education and accessible support empower towns, lower risk, and improve compliance.

› RPCs/ VLCT/ VAPDA

- **Risk:** Strain on resources if called upon for continual retraining.
- **Liability:** Recurring responsibility for knowledge transfer as local staff changes.
- **Benefit:** Standardized training and shared learning enable more effective and sustainable RPC support.

Milestone Liability Framework Recommendations

Stakeholders recommend establishing a clear milestone liability framework that articulates how municipal financial and administrative risk changes as a project moves through the stages of project development. This framework should be aligned with established payback standards and used as an educational and planning tool, not as a separate or conflicting repayment schedule.

In such a framework, VTrans would define and document a risk assessment at key project milestones or phases of project development (e.g., Scoping, preliminary design, NEPA review, ROW acquisition, final design). The assessment would evaluate risk of cancellation and associated liability considerations, including:

- The types of costs typically incurred at each phase.
- Whether the costs are subject to federal or state payback if the project is cancelled.
- The degree of schedule, regulatory, or technical uncertainty remaining at each milestone.

This approach suggests VTrans would identify a method of documenting and communicating the milestone risk assessment with municipal project teams at key milestones to:

- Communicate the risk of cancellation and potential liability at each phase.
- Review project status against schedule, funding, and regulatory requirements.
- Confirm that municipalities understand the implications of proceeding to the next phase, including potential payback obligations.
- Discuss options for pausing, restructuring, or discontinuing projects, where appropriate, prior to proceeding to the next project phase where obligations or liabilities may shift.

Over time, VTrans would develop and publish a milestone-based risk assessment template, providing a decision tool that helps to illustrate how exposure changes as a project advances, helping municipalities make informed choices about whether and when to proceed, seek additional support, or reconsider project scope.

Risks, Liabilities, and Benefits:

› VTrans
  - **Risk:** Failure to clearly communicate escalating risk could result in disputes over payback or perceived unfairness.
  - **Liability:** Inconsistent or undocumented discussions about risk at project milestones may complicate enforcement of repayment requirements.
  - **Benefit:** A transparent, standardized milestone liability framework supports better decision making, reduces late-stage cancellations, and improves federal and state fund stewardship.

› Municipalities
  - **Risk:** Proceeding through higher-risk stages without understanding potential liability could expose towns to unexpected payback obligations.
  - **Liability:** Limited awareness of milestone-specific risks may lead to project cancellation after substantial investment.
  - **Benefit:** Clear, phase-by-phase communication and tools enable informed choices about advancing, pausing, or redefining projects, and alleviate fear of unknown obligations.

› RPCs / VLCT / VAPDA

- **Risk:** Without a common framework, RPCs may struggle to consistently advise municipalities on when their risk meaningfully changes.
- **Liability:** Misalignment between local guidance and VTrans expectations could create confusion or mistrust.
- **Benefit:** A common template for the milestone liability framework provides a shared reference point for RPCs and other partners, enhancing the quality and consistency of their technical assistance.

Clear Statutory Language Recommendations

Stakeholder consensus from state, regional, and municipal entities strongly supports the standardization of statutory language regarding municipal payback obligations, with clarity both in contract language and legislation establishing state payback provisions consistent with federal policy. Potential revisions to the statutory language could consider a schedule for repayment that identifies the obligations of repayment at project milestones (e.g., ROW clearance). Implementing clear, uniform payback provisions in all grant agreements will significantly reduce confusion and mitigate perceptions of risk among municipalities. This clarity should be reinforced by transparent appeals processes and documented exemptions for extenuating circumstances.

Risks, Liabilities, and Benefits:

› VTrans

- **Risk:** Lack of clear statutory authority could result in inconsistent enforcement or inability to reclaim funds if projects are cancelled.
- **Liability:** Ambiguous rules may create administrative challenges and disputes, increasing the risk of audit findings or loss of federal trust.
- **Benefit:** Standardized language strengthens VTrans' ability to enforce fair and predictable payback, simplifies contract management, and ensures alignment with federal and state policy.

› Municipalities

- **Risk:** Unclear requirements could expose towns to unexpected liabilities and foster unnecessary reluctance to participate in funding programs.
- **Liability:** Without uniform statutory guidance, municipalities might face inconsistent obligations across different projects or funding cycles.
- **Benefit:** Knowing what payback is required allows towns to better plan, make informed project decisions, and seek relief through defined exclusions or appeal mechanisms.

› RPCs/ VLCT/ VAPDA

- **Risk:** Persistent ambiguity increases RPC workload as they try to interpret evolving requirements and advise municipalities accordingly.
- **Liability:** Confusion over obligations could damage trust between RPCs and their partner towns, especially if advice differs from VTrans enforcement.

- **Benefit:** Established statutory clarity enables RPCs to offer reliable, accurate guidance, reduces risk of miscommunication, and strengthens their advisory capacity during project planning and administration.

Potential Statutory Language Provisions

(a) Repayment Obligation; Federal Standards.
If a project is cancelled by the municipality or local sponsor, the municipality or sponsor shall be responsible for repayment of federal or state funds obligated for project development consistent with federal requirements and standards governing the payback of federal-aid funds, including any provisions regarding eligibility, waiver, or forgiveness of repayment.

(b) *Up-front Consultation and Notice.*
Prior to any determination that a cancellation is due to circumstances or events wholly or partly within municipal or sponsor control, the Agency shall:

- Consult with the municipality or sponsor to assess the reasons for cancellation and determine the scope and amount of the repayment obligation,
- Provide written notice including justification, calculation of repayment, and information on appeal rights.

(c) *Municipal Right to Appeal and Proportional Waiver.*
Within 15 days of receiving written notice under subsection (b), a municipality may petition the Vermont Transportation Board for a hearing to determine whether cancellation was in whole or in part outside the municipality's control. The Board shall hold a hearing within 30 days of receipt and issue its decision within 30 days thereafter.
If the Board finds that cancellation was due in whole or in part to circumstances outside the municipality's control, including but not limited to legal condemnation proceedings, third-party utility conflicts, regulatory interventions, or environmental obstacles, the municipality's repayment obligation shall be reduced proportionally, or waived in full, as determined fair by the Board.

(d) *Exceptions and Relief Mechanisms.*
Events qualifying as "outside the municipality's control" include, but are not limited to:

- Third-party refusal or legal barriers (e.g., utility or railroad conflicts, federal agency denials),
- New regulatory or statutory restrictions not foreseeable at grant execution,
- Natural disasters or other "force majeure" events.

(e) *Continuous Review and Adjustment.*
The Agency shall track project cancellations and payback outcomes annually and propose process, guidance, or statutory improvements as needed. Updated procedures and appeals guidance shall be published and made accessible to all municipalities and regional partners.

(f) *Uniform Grant Agreement Language.*
All grant agreements issued under this section must include clear, uniform language on payback obligations, triggers by milestone, consultation and appeal processes, and reference to this statute.