



STATE OF VERMONT
LEGISLATIVE JOINT FISCAL OFFICE

**Preliminary Report to the Legislature on the Allocation of Traffic Safety
Enforcement Costs**

Sec. 38 of Act 153 (2012 Session)

By Neil Schickner, Joint Fiscal Office

November 15, 2012

This report is pursuant to Sec. 38 of Act 153 (2012) session which provides:

Sec. 38. Traffic Safety Enforcement Costs

The joint fiscal office, in consultation with the commissioner of public safety or designee, shall analyze and estimate the costs incurred by the state in enforcing the state's traffic safety laws, and study how these state police costs could be apportioned between the general fund and the transportation fund. The joint fiscal office shall submit a report of its findings to the joint transportation oversight committee and the joint fiscal committee prior to the joint fiscal committee's November 2012 meeting.

Summary

- Based on the transportation committees discussion of the study proposal, the Joint Fiscal Office has interpreted the objective of the study as being the application of the user fee principle to determine the proportion of the State Police budget that is attributable to transportation system safety and thus allocable to the transportation fund. In Vermont's FY-2013 budget, the state funds appropriated to the State Police consisted of 55.7% transportation funds and 44.3% general funds.
- The study ideally requires state police officer activity data recorded by time and function. At this time, such data has not been produced by the State Police, nor is it known whether the activity data that is available is sufficiently reliable for purposes of the study and in a form that can be collected and analyzed without undue cost.
- The appropriation of fuel tax revenue and other motor vehicle related tax and fee revenue to support State Police activities is not uncommon among other states and in such states is usually a continuing source of controversy. In 14 states, the state constitution itself limits the use of transportation taxes and fees to specifically enumerated activities which include (in different formulations) the enforcement of traffic laws.
- In Maine, the state constitution expressly authorizes the use of state highway funds to support the enforcement of traffic laws. A legislative study released in 2007 analyzed the budget of the Maine State Police to determine the proportion of its activities and costs that were attributable to traffic enforcement. The study concluded that the vagueness of the concept of

traffic law enforcement and the lack of reliable, detailed activity data introduced substantial uncertainty into the analysis. Using a narrow and a broad definition of traffic law enforcement, the study concluded that between 17% and 34% of the state funds appropriated to the Maine State Police were attributable to traffic law enforcement and thus eligible for highway fund funding. The Maine legislature has gone part way in implementing the study's conclusions. In FY-2012 and FY-2012 the state funds appropriated to the Maine State Police was essentially split 50-50 between the dedicated state highway fund and the state general fund compared to a 65-35 split in 2006.

- The committee might consider extending the time for followup work on this issue to November 2013. Such a time table would have the benefit of allowing the use of FY-13 data in the analysis. To advance the study, the transportation committees during the session might also consider having the Department of Public Safety and State Police testify on the various data issues involved in the study. The legislature could also expand the staffing of the study to include Legislative Council to research other state laws and constitutions to ensure an appropriate comparison of dedicated transportation related funds and state police agencies.

Status of Study

The study design requires information from the State Police which has not been obtainable. The Department of Public Safety has been reviewing internal data most specifically tied to the state police overtime issues that arose this summer which has delayed other work. Discussions with the Department of Public Safety director of finance and management about the data requirements of the study indicate that it is likely that the needed data for the study would be more detailed than that captured at the overall finance and management level and would have to be obtained at the operational level. The Department is looking in to whether the required data is captured at the operational level (such as dispatcher logs or incident reports) in an accessible, database format or in a form that could, without undue expense, be converted into an accessible, database format. Further information on the accessibility of this information may be available before the session.

Considering the considerable amount of work that will be required to generate and analyze the data, and the potential use of the study as a basis for making appropriation decisions, the project would certainly be on a more secure foundation if the data utilized was clear of the internal overtime recalibrations and the department was comfortable with its use.

Conceptual Approach

This study was initially proposed and discussed in the Senate Transportation Committee as being a follow on to the Joint Fiscal Office study on the funding of rest areas and information centers directed by the legislature in the 2011 session and delivered to the Joint Transportation Oversight Committee on November 1, 2011 (Link [Rest Area Funding Study](#)). Specifically, the question raised was whether the user fee principle employed in the rest area funding study to identify the operating costs of rest areas that are attributable, respectively, to the transportation fund and the general fund could be applied to the activities of the state police. This preliminary report discusses the challenges which that type of analysis poses as applied to traffic safety enforcement costs.

The user fee principle embodies the idea that the costs of the state transportation system should be borne by the users of the system, with the amount paid by each user being proportional to the burden each user imposes on the system in terms of wear and congestion. The state transportation system is a deteriorating capital asset with ongoing maintenance and replacement costs and the state's fuel taxes, motor vehicle purchase and use taxes and DMV fees are, in essence, proxies for a system of toll charges intended to generate the revenue needed to maintain the system in a safe and serviceable condition. The user fee principle implies a quid pro quo – users pay a toll in exchange for access to the system; and also a social contract – users pay tolls with the understanding that the revenues will be re-invested in the system.

Transportation system users do not pay merely for access to a highway or bridge – they pay for access to a system that is safe to use. System safety has two dimensions. One dimension solely concerns the physical design and condition of the highways and bridges that make up the system. Given a system that is designed for safe use and is structurally sound, the second dimension concerns the dangers and hazards created when people negligently or willfully misuse the system – when they drive too fast, cross the center line, run through red lights – and the potential consequences of such misuse: life threatening injuries and the creation of new traffic hazards. Safety is clearly a key attribute of the “product” transportation system users are buying when they pay their transportation taxes and fees; but the question whether transportation fund revenues should be used to pay the costs of traffic safety and traffic law enforcement has been controversial for decades not only in Vermont but in other states.

The debate over uses of transportation fund revenues

Many people believe that the transportation fund should be limited to the construction and maintenance of state highways, bridges and other transportation structures; and argue that enforcement of traffic safety laws is just a component of general law enforcement which is the responsibility of the general fund. There are merits to this approach, particularly with respect to fund transparency and accountability, i.e. it would be easier to see what we were getting for our money if transportation fund revenues were solely dedicated to construction and maintenance.

The counter argument is that while enforcement of traffic safety laws is obviously a law enforcement activity, it is distinct from law enforcement generally precisely because we have chosen to fund our transportation system on a user fee basis. A state highway system with no police presence is a frightening prospect, and since transportation system users have a vital interest in the safety of the system, why shouldn't the cost of keeping the system safe be paid by the people who directly benefit from that safety? This is not just a matter of allocating costs between funds. One unique and valuable feature of the user fee principle is that it promotes economic efficiency, i.e. to the extent people pay for use and increased use means higher costs, the efficient use of the system is encouraged. And to the extent that traffic safety costs are significant relative to construction and maintenance costs, the exclusion of safety costs from the system pricing mechanism distorts the system's demand curve.

The counter-counter argument is that while user fee funding of the transportation system is distinct, the state's interest in law enforcement supersedes that distinction. For example, suppose I-89 and I-91 were privately owned toll ways under license from the state. Under the license, the

toll way operator could be authorized to ban from the facility people who repeatedly endanger other users, but no state would ever authorize a toll way operator to fine or incarcerate traffic offenders. Law enforcement is part of the justice system; and all citizens have an interest in ensuring that justice is pursued objectively and even-handedly (even a toll operator's authority to ban unsafe drivers from the toll way would undoubtedly be subject to a due process requirement).

A possible distinction between law enforcement and justice interests cuts back the other way (and is significant with respect to determining the scope of safety enforcement costs – see discussion below) but in short (or rather, at length) there is no right answer to the question. Due to the different ways states structure their budgets, it is difficult to ascertain with certainty how many states use fuel taxes and DMV fees, etc. to fund traffic law enforcement. Interestingly, the issue is clearest in those states in which the state constitution itself dedicates fuel taxes and other transportation taxes and fees to certain defined transportation uses. According to a NCSL 2011 survey of state transportation governance and financing, 23 states have constitutions with such provisions. Of those, 14 explicitly state in various formulations that fuels taxes, etc. shall exclusively be used for the construction and maintenance of state highways and bridges, etc. and “the enforcement of state traffic laws” or “for highway and street purposes, including state enforcement of traffic laws” or “for the construction, maintenance *and supervision* of public highways” (the other 9 state constitutions do not necessarily exclude the use of transportation fund revenues to cover traffic law enforcement costs; rather the descriptions in the NCSL survey are just not clear). (Link [NCSL 2011 Survey of State Transportation Governance and Financing](#)).

Identifying traffic safety enforcement costs

For decades transportation fund revenues have been appropriated to cover a portion of the state police budget (19 V.S.A. § 11a). The question here is whether the state police budget can be parsed to identify those activities and their costs which concern the maintenance of safety on the state transportation system. In this context, the safety interests of transportation system users has 3 distinct components (1) enforcement of the rules of the road and other vehicle operating laws, (2) emergency response to accidents and other events that disrupt traffic or create a risk of injury or damage to property and (3) aid to people stranded by a vehicle breakdown.

If the state police had a division whose personnel and equipment was exclusively dedicated to traffic safety, the problem would be straightforward. Traffic safety, however, is just one of the responsibilities of the state police and its front line officers, as in police departments everywhere, are public order generalists, responding to public disturbance complaints, domestic abuse calls, investigating thefts, etc. in addition to issuing traffic tickets and responding to traffic accidents. Conceptually these different activities are distinguishable, but there will invariably be cases where the lines are blurred. The following hypotheticals illustrate the problem.

Criminal law enforcement resulting in a traffic safety hazard #1: Officers approach a house to arrest a suspect on a burglary charge. The suspect flees in his car and a high speed chase ensues which ends in a traffic accident.

Criminal law enforcement resulting in a traffic safety hazard #2: An officer responds to a report of a bar room brawl. When he arrives, the brawl has moved out into a busy street.

Traffic enforcement resulting in a non-traffic criminal law issue: An officer pulls a vehicle over for an illegal turn. Approaching the vehicle the officer sees in the back seat, in plain view, a box of zip lock bags all labeled “Columbia’s Finest Cocaine”.

In the above hypotheticals an officer starts out performing one role and has to shift roles due to changing circumstances. The problem with these cases is more practical than conceptual. In a world of perfect information, an officer would be on a traffic safety clock while performing traffic safety duties and a non-traffic safety clock while performing other duties. When state police data becomes available, one key task will be to assess (1) whether the frequency of such dual role or role-crossover situations are significant and if they are (2) whether the data that is available – and accessible for department wide analysis purposes – is sufficient to support a reasonable time allocation.

Other questions raise conceptual as well as practical time allocation issues. For example, an officer responds to an accident in which one of the participants appears to be DUI. The officer collects evidence and interviews witnesses, i.e. follows all the protocols to build a DUI case. DUI charges are filed and the officer, the breathalyzer test and equipment, etc. are all involved in the legal proceedings. The question here is whether a line should be drawn between transportation safety law enforcement interests and general societal justice interests. From the perspective of highway drivers concerned with safety, some amount of the time and costs incurred by the state police in collecting and processing evidence and participating in judicial proceedings is attributable to procedures and standards designed to protect the rights of the accused and thus society’s interest in ensuring justice as opposed to preserving traffic safety. If one accepts this argument as having merit, however, one still has the problem of drawing a line to distinguish between safety enforcement interests and justice interests.

Of course, the line that has already been drawn around the state police is already somewhat arbitrary in the sense that enforcement of traffic safety interests has to involve some form of judicial proceeding, state prosecutors and judges, but transportation funds are no longer appropriated to the attorney general’s office or the judicial system. One could interpret the existing practice as a judgment by the legislature that the justice interest costs absorbed in the state police budget by transportation funds is roughly offset by the traffic safety enforcement costs covered in the budgets of the attorney general and judicial system by general funds.

The Experience of Maine

Article IX of the Maine constitution provides that state highway fund revenues shall be exclusively dedicated to (1) debt service payments on highway and bridge construction bonds and the costs of administering such bonds, (2) the cost of construction, reconstruction, maintenance and repair of public highways and bridges and (3) the costs of enforcement of traffic laws. This state constitutional restriction on the use of state highway funds is reaffirmed by statute in 23 MRSA §1653 which provides that after all debt service on highway and bridge

construction bonds has been paid, remaining highway fund revenues may be expended on, inter alia, the “State Police. For Maintenance of the State Police”.

For decades the budget of the Maine State Police has been funded through a combination of highway funds, general funds, special funds and federal funds. When the total amount of state funds is determined, the total is allocated between the highway fund and general fund in accordance with a statutory proportional formula that has been periodically adjusted – commonly referred to as “the Split”. The Split has changed quite dramatically over the years, e.g. from 90% highway fund / 10% general fund between 1946-57, to 75% / 25% from 1962-89, back to a highway fund high of 88% / 12% in 1994 to 65% / 35% in 2006.

The total amount involved, the budget rationale and the constitutional and legal basis for the Split has been a continuing source of controversy in Maine – just as, the state constitution feature aside, the amount of the “JTOC” appropriation, or more recently, the appropriation of transportation funds to the State Police, has been a continuing source of controversy in Vermont.

The Maine legislature over the years has initiated a number of efforts intended to define and clarify the activities involved in the enforcement of traffic laws. In the late 1970s the Maine legislature directed the State Auditor to analyze the State Police budget to determine which activities qualify as traffic law enforcement. The Auditor, relying on a “manpower” study (it was 1978) conducted by the State Police, concluded that the then existing ratio for State Police funding of 75% highway fund to 25% general fund should be changed to 65% / 35%. In 1980 and 1981, Maine’s Attorney General responded to questions asked by legislators concerning the State Auditor’s study and the constitutional duties of the legislature. In two opinions, the Attorney General responded:

- the “Maine Constitution requires that General Highway Fund revenues ‘be expended solely’ for specifically enumerated purposes, including the ‘expense for state enforcement of traffic laws; and ‘not be diverted for any [other] purpose..’”
- accordingly “General Highway Fund revenues may fund only that portion of the State Police budget which is utilized for the enforcement of the traffic law”;
- that the determination of the percentage of the State Police budget that is actually utilized for traffic enforcement is a question of fact that cannot be resolved in a legal opinion; and
- that the legislature is not bound by the State Auditor’s report but has a constitutional duty to make a good faith effort to identify the proportion of the State Police budget utilized for traffic enforcement.

In 1991, a Maine legislator asked the Attorney General if the appropriation of state highway funds to pay the costs incurred by district attorneys in prosecuting traffic offenses would be consistent with the state constitution’s restriction in the use of highway funds. The Attorney General opined that since the constitution’s restriction applies to the enforcement of traffic laws generally and is not limited to state police traffic law enforcement activities, the proposed use of highway funds would be consistent with the constitution.

In 2005 the Maine legislature's Joint Standing Committee on Transportation asked the Maine State Legislature's Office of Program Evaluation and Government Accountability (OPEGA) to undertake a study of the Department of Public Safety (DPS) to determine what proportion of the department's budget was attributable to the enforcement of traffic laws and thus eligible for highway fund funding. The OPEGA study, released in February 2007, focused on 3 DPS programs that receive highway fund monies: (1) the State Police, (2) the Bureau of Highway Safety and (3) a DPS general administrative line item. At the time the state funding of these programs was (1) State Police: 65% highway fund / 35% general fund, (2) Bureau of Highway Safety: 100% combination of highway and special funds and (3) DPS administration: 64% highway fund / 36% general fund. (Link [Maine OPEGA 2007 Study](#)).

In the key finding, the OPEGA report states:

OPEGA began this review with the intention of executing a traditional, activity-based cost allocation analysis. We were not able to do this, however, for two specific reasons:

- (1) No clear operational definition of Highway Fund eligibility exists.
- (2) Activity data is often unavailable or unreliable.

In terms of standards, Maine is bound by its constitutional restriction that highway funds may be expended solely for certain specifically enumerated purposes, including traffic law enforcement, and not be diverted to any other purpose. As relevant here the OPEGA report argues that there is no consensus on what is encompassed by "enforcement" and mentions, as an example, traffic safety education programs and auto theft investigations.

Regarding its conclusion that the activity data required for an activity-based cost allocation study is often unavailable or unreliable, the OPEGA report explains:

For example, state police troopers had to record the number of hours worked on "patrol", but they had not been given a standard definition of the activities that were considered "patrol". This left them to form their own interpretations: some recorded only time spent seeking and stopping speeders, others recorded all time spent travelling between complaints, and some avoided recording any "patrol" time at all because they didn't know what it meant. This rendered the patrol data meaningless for the purposes of this review.

If there is a similar lack of rigor in Vermont State trooper reporting standards, the accuracy of this study would obviously be undermined. Even if the standards for trooper activity reports were rigorous, however, a separate issue is the accessibility of the recorded activity data to macro-analysis. Unless activity reports are in a form that would allow each distinct time recorded entry to be digitized, categorized and aggregated with other similar entries, the study will have to rely on the drawing of a sample which would have to be carefully constructed to be statistically reliable, and to reduce the margin of error would most probably be quite time consuming. Assuming that acceptably reliable data required to do the analysis exists in some form, the first step in the study will be determine just how much work would be required to manipulate the data into an analyzable form.

Returning to the Maine study, considering the fuzziness of both the standards and available data, OPEGA decided to analyze the data using an extremely narrow and also an extremely broad definition of traffic enforcement so as to produce both a low side and a high side estimate of the proportion of program activity attributable to traffic enforcement. For each of the 3 programs reviewed, the analysis thus resulted in a low side split and a high side split as follows:

(1) State Police budget

Low side split: 17% highway fund / 83% general fund
High side split: 34% highway fund / 66% general fund
2006 split: 65% highway fund / 35% general fund

(2) Bureau of Highway Safety

Low side split: 82% highway fund / 18% general fund
High side split: 100% highway fund / 0% general fund
2006 split: 100% highway fund / 0% general fund

(3) DPS administration

Low side split: 29% highway fund / 71% general fund
High side split: 41% highway fund / 59% general fund
2006 split: 64% highway fund / 36% general fund

The Maine legislature has gone part way in implementing the study's conclusions. In FY-2011 and FY-2012 the state funds appropriated to the Maine State Police was essentially split 50-50 between the dedicated state highway fund and the state general fund compared to the 65-35 split in 2006.

In Vermont's FY-2013 budget, of the total state funds appropriated to the State Police, the split was 55.7% transportation funds and 44.3% general funds. Having received no data from the State Police, it is impossible to assess the relevance of OPEGA's analysis of Maine's State Police budget. Two factors, however, suggest that the final result of this study should roughly correlate with OPEGA's analysis. First, the Vermont and Maine State Police appear to perform many of the same functions, i.e. both are law enforcement agencies with broad responsibilities ranging from homicide investigations to the provision of state wide crime lab services in addition to traffic law enforcement (although differences in certain agency functions could be significant). Second, the Maine standard of "traffic law enforcement" appears to roughly equivalent to the standard of transportation system safety proposed to be used in this study. With those caveats, it is interesting to note that OPEGA's analysis of the Maine State Police budget concluded that between 17% and 34% of the agency's state funded activities were attributable to traffic law enforcement and thus eligible to be funded with highway funds.

Other States

A comparison to other states is problematic and can be misleading because (1) the functions of the state police varies significantly from state to state and (2) the transportation based taxes and

fees that support state police agencies can be difficult to identify. Illustrative examples are discussed below.

In Colorado, Montana, Alabama, Kentucky, Louisiana and Iowa, the state constitutions restrict the use of fuel taxes and other vehicle related fees to specifically enumerated uses which in different formulations include the enforcement of traffic safety laws. In the FY-2013 Colorado state budget, the text notes that the state highway users trust fund provided 76% of the funding the Colorado State Patrol. As the name implies, however, the functions of the Colorado State Patrol are more limited than the functions of more general purpose state police agencies like the Vermont State Police. More specifically, whereas the Vermont State Police includes a Criminal Investigation Unit, in Colorado, the equivalent Bureau of Investigation is a separate division within the state Department of Public Safety. A proper comparison would require a complete breakdown of the budgets and funding sources of the different functional units of the Colorado Department of Public Safety and their re-aggregation to match the functions performed by the Vermont State Police. (Link [Colorado Legislature FY13 State Budget](#))

Montana and Alabama present the same problem, each having a highway patrol and a separate criminal investigation unit within the state department of public safety. (Links [Montana Governor's FY13 budget Judicial Branch & Law Enforcement](#) and [Alabama FY13 Budget](#)).

Kentucky and Louisiana present different types of problem. In Kentucky as in a number of other states, the state police is responsible for commercial vehicle law enforcement whereas in Vermont, the DMV has a special unit devoted to commercial vehicle law enforcement. In Louisiana, 24% of the state funding of the state police comes from “fees and self-generated revenues” which includes the revenue from traffic fines whereas in Vermont traffic fine revenue flows through the transportation fund.

A special case is presented by Iowa. While the Iowa state constitution authorizes the expenditure of transportation taxes on fees on the “supervision of public highways” the Legislative Services Agency of the Iowa legislature describes the funding of the Iowa State Patrol (i.e. more of a highway patrol than a multi-functional state police) as follows: “Between FY 1982 and FY 1995, the State Patrol was funded directly from the Road Use Tax Fund. From FY 1996 to FY 1999, the State Patrol was funded from motor vehicle use tax receipts and in part from General Fund appropriations. Since FY 2000, the State Patrol has been funded from the State General Fund.” (Link [Iowa State Patrol](#)).

These caveats aside, the following generalizations can be made:

- Among all the states that have a dedicated transportation fund (defined in different ways), whether established by the state constitution or by statute, in the majority of such states the operational costs of traffic safety law enforcement is an eligible expense of the dedicated funds;
- In such states, the “State Police” or “State Highway Patrol” is recognized as being the primary state agency responsible for the enforcement of traffic safety laws and thus eligible to be funded by dedicated “transportation fund” revenues.

- In such states, the proportion of the state funds appropriated to the State Police or State Highway Patrol from dedicated “transportation fund” revenues is currently and historically been within a wide range with the decisive factors being, at different times and in different degrees of influence, (1) a commitment to the user fee principle and (2) the growth rates and health of the state’s different funds relative to perceived needs.