



**THE STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF TRANSPORTATION**



**JEFF BRILLHART, P.E.**  
**ACTING COMMISSIONER**

March 10, 2015  
Project Development Division

The Honorable Neal M. Kurk, Chairman  
Fiscal Committee of the General Court  
State House  
Concord, New Hampshire 03301

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Pursuant to RSA 14:30-a, VI, authorize the New Hampshire Department of Transportation to accept and expend revenue in the amount of \$2,080,000 from Federal Highway Administration (FHWA) to cover required reimbursement of preliminary engineering and right of way costs, effective upon the date of Fiscal Committee and Governor and Council approval through June 30, 2015. 100% Federal Funds

<b>04-096-096-963015-3049 Non-Participating Construction / Reconstruction</b>	<b>Current Budget FY2015</b>	<b>Requested Change FY2015</b>	<b>Revised Budget FY2015</b>
<b>Expenses:</b>			
046 500463 Consultants	\$1,914,713	\$2,080,000	\$3,994,713
400 500870 Construction-Repairs & Materials	5,696,857	0	5,696,857
401 500876 Land Interest	193,200	0	193,200
Total	\$7,804,770	\$2,080,000	\$9,884,770

<b>Source of Funds</b>			
<b>Revenue:</b>			
000 409151 Federal Funds	\$90,626	\$2,080,000	\$2,170,626
000 000015 Highway Funds	7,714,144	0	7,714,144
Total	\$7,804,770	\$2,080,000	\$9,884,770

**EXPLANATION**

The Department bills the Federal Government, primarily FHWA for engineering and construction inspection work performed by the Department on participating Federal projects. In the fiscal year 2014-2015 budget, the Department budgeted \$8.7 million of these Federal source funds to offset Highway funded Department labor costs.

The Department of Transportation (DOT) identified a potential contingency related to regulations in the US Code for FHWA-funded projects that would require potential reimbursement of federally funded preliminary engineering and right-of-way costs if construction had not begun or progressed within a specified time period. Specifically, these are US Code 23 Section 102(b) (preliminary engineering) and US Code 23 Section 108 (a)(2) (right-of-way). These sections are as follows:

*US Code 23 Section 102 (b): Engineering Cost Reimbursement—If on-site construction of, or acquisition of right-of-way for, a highway project is not commenced within 10 years (or such period as the State requests and the Secretary (of FHWA) determines to be reasonable) after the date on which Federal funds are first made available, out of the Highway Trust Fund (other than Mass Transit Account), for preliminary engineering of such project, the State shall pay an amount equal to the amount of Federal funds made available for such engineering. The Secretary shall deposit in such Fund all amounts paid to the Secretary under this section.*

*US Code 23 Section 108 (a)(2): Advance Acquisition of Real Property—Construction—The agreement between the Secretary and the State for the reimbursement of the cost of the real property shall provide for the actual construction of the transportation improvement within a period not to exceed 20 years following the fiscal year for which the request is made, unless the Secretary determines that a longer period is reasonable.*

State DOT has no history of being required to make reimbursement to the Federal government under either of these two sections of the US Code. However, in recent months, the State has become aware of more aggressive pursuits of reimbursements under these sections of the code by FHWA.

The Department proposes to use the estimated remaining balance of \$2,080,000 (FY2015 projection of \$10.78 million less \$8.7 million) to fund required reimbursements by FHWA for preliminary engineering and right of way costs associated with Federal aid projects that will not move to construction and non-participating construction costs associated with Federal aid projects. Non-participating construction costs are the result of latent unforeseen conditions that occur during the execution of a Federal aid project.

These funds are FHWA federal funds and pursuant to FHWA guidelines, are not applicable to Class 040 Indirect Costs, Class 041 Audit Fund Set Aside and Class 042 Additional Fringe Benefits.

Your approval of this resolution is respectfully requested.

Sincerely,



David J. Brillhart, P.E.  
Acting Commissioner

**Department of Transportation**  
**FISCAL SITUATION FISCAL YEAR 2015**  
**04-096-096-963015-3049**

Non-participating Construction/Reconstruction

Estimated revenue budgeted:	\$	-
Prior year carryforward revenue:	\$	90,626
Additional non-budgeted revenue:	\$	<u>2,080,000</u>
Amount available to budget:	\$	2,170,626
Less current FY15 budget authorization:	\$	<u>90,626</u>
Total available for budgeting:	\$	2,080,000
Amount to be budgeted this request:	\$	<u>2,080,000</u>
Amount available to budget with future requests:	\$	<u>-</u>

Source of Non-Budgeted Revenue	Amount	Expenses through 6/30/15	Balance
Federal Highway Funds	\$ 2,080,000	\$ -	\$ 2,080,000
		\$ -	\$ -
		\$ -	\$ -
<b>Totals</b>	<u>\$ 2,080,000</u>	<u>\$ -</u>	<u>\$ 2,080,000</u>