Fixing America's Surface Transportation Act (FAST Act) Summary

The conference report on the surface transportation reauthorization bill, the Fixing America's Surface Transportation Act (FAST Act), was signed into law on Friday, December 4, after passing the House on a 359-65 vote and in the Senate on an 83-16 vote on Thursday, December 3. The text of the law can be found here.

The FAST Act authorizes $305 billion over fiscal years 2016 to 2020, including $225.2 billion for highways and $48.7 billion for transit; providing a $12.9 billion increase in contract authority over the House's Surface Transportation Reauthorization and Reform Act (STRR Act) and a $681 million increase over the Senate's Developing a Reliable and Innovative Vision for the Economy Act (DRIVE Act). In FY 2016, the law provides an increase of 5.1 percent ($2.1 billion) for highway spending, which then continues to grow at 2.1 to 2.4 percent per year through FY 2020. The bill increases transit funding by nearly 18 percent over five years. Highway Trust Fund (HTF) revenues are insufficient to support these authorization levels, so the bill transfers $70 billion from the General Fund to the HTF and offsets this increased spending with over $70 billion in budgetary "pay-fors," primarily through transferring funds from a Federal Reserve surplus account to the General Fund.

The FAST Act continues nearly all of the highway and transit formula programs of MAP-21, and focuses much of the increase in highway funding on two new freight programs, one formula-based and one discretionary. The bill does not include a large discretionary grant program with eligibility for transit projects, like the Senate DRIVE Act's Assistance for Major Projects program, but the FAST Act does reestablish the bus and bus facilities discretionary grant program, converts the Surface Transportation Program into a block grant, promotes and increases access to innovative finance tools, and builds on the environmental streamlining and project acceleration provisions of previous authorization bills.

The bill also reauthorizes Amtrak, realigning funding to reflect and support Amtrak's two lines of business by establishing a Northeast Corridor Improvement account and a National Network account for the remainder of Amtrak's nationwide system. The bill also provides $199 million in contract authority in FY 2017 from the mass transit account of the HTF to support deployment of positive train control (PTC) systems. The short-term transportation extension bill passed in late October extended the PTC compliance deadline for three years, until December 31, 2018.

Federal-aid Highway Programs

- **Nationally Significant Freight and Highway Projects** (NSFHP) (Section 1105): The bill establishes a competitive discretionary grant program for large projects on the National Highway Freight Network, highway or bridge projects on the National Highway System (NHS), intermodal projects on the National Multimodal Freight Network, or rail-highway grade crossing and separation projects. NSFHP funding can be used to pay for TIFIA subsidy and administrative costs. Local governments and Metropolitan Planning Organizations (MPOs) are eligible to apply directly for grants. Provides $800 million in FY 2016, increasing $50 million each year to $1 billion in FY 2020.
- **National Highway Freight Program** (Section 1116): The bill establishes a formula funding freight program to provide funding to each state in proportion with the state's share of primary highway freight system mileage relative to the total primary highway freight system mileage. During redesignation of the primary highway freight system, every five years, the system mileage may be increased by up to 3 percent. Provides $1.15 billion in FY 2016, $1.1 billion in FY 2017, $1.2 billion in FY 2018, $1.35 billion in FY 2019, and $1.5 billion in FY 2020. This is higher than the DRIVE Act's level in FY 2016, but significantly lower in FYs 2017-2020.
- **Surface Transportation Block Grant Program** (Section 1109): The bill changes the Surface Transportation Program into a block grant program, and increases the amount suballocated on the basis of population from the current 50 percent to 51 percent for FY 2016, increasing 1 percent each year to 55 percent in FY 2020. It is not completely clear how changing the program into a block grant to states will affect how the program is administered, as it will likely be different in each state.
  - Provides $11.16 billion in FY 2016, $11.42 billion in FY 2017, $11.67 billion in FY 2018, $11.88 billion in FY 2019, and $12.14 billion in FY 2020.
  - Repeals the Transportation Alternatives Program (TAP), and replaces the 2 percent set-aside with a set-aside of $835 million per year in FY 2016 and FY 2017 and $850 million each year from FY 2018 through FY 2020 that may be spent on all projects or activities that were previously eligible under TAP. These set-aside amounts are higher than the $819 million authorization for transportation alternatives for FY 2014 and FY 2015 under MAP-21. Only 50 percent of these funds will be suballocated on the basis of population.

- **Congestion Mitigation and Air Quality Improvement Program** (Section 1114): Makes vehicle-to-vehicle technologies and diesel retrofits for vehicles that are used in port infrastructure projects CMAQ-eligible for PM2.5 nonattainment or maintenance areas. Makes port-related equipment and vehicles operated within a PM2.5 nonattainment or maintenance area CMAQ-eligible. Provides $2.31 billion in FY 2016, $2.36 billion in FY 2017, $2.41 billion in FY 2018, $2.45 billion in FY 2019, and $2.5 billion in FY 2020.
- **National Highway Performance Program** (NHPP) (Section 1106): Allows NHPP funding to be used to pay TIFIA subsidy and administrative costs and allows NHPP funds to be used for bridges off the NHS. Provides $22.33 billion in FY 2016, $22.83 billion in FY 2017, $23.26 billion in FY 2018, $23.74 billion in FY 2019, and $24.24 billion in FY 2020.
- **Highway Safety Improvement Program** (HSIP) (Section 1113): Makes vehicle-to-infrastructure technologies, pedestrian hybrid beacons, median separation, and other physical infrastructure safety projects eligible for HSIP funding. Provides $2.23 billion in FY 2016, $2.28 billion in FY 2017, $2.32 billion in FY 2018, $2.36 billion in FY 2019, and $2.41 billion in FY 2020.
- **Construction of Ferry Boats and Ferry Terminal Facilities** (Section 1112): Increases funding from $67 million to $80 million per year, and adjusts the formula for distribution of funds from 20 percent based on the number of ferry passengers, 45 percent based on the number of vehicles, and 35 percent based on total route miles to 35 percent each for the number of passengers and number of vehicles and 30 percent for the total route miles.

Infrastructure Finance

- **Transportation Infrastructure Finance and Innovation Act** (TIFIA) (Section 2001): The bill reauthorizes the TIFIA credit assistance program at levels significantly below MAP-21: $275 million for each of FY 2016 and FY 2017, $285 million for FY 2018, and $300 million for each of FY 2019 and FY 2020. To ensure sufficient funding for the pipeline of anticipated projects under these new authorization levels, the bill also repeals the redistribution of unused funds to other programs, a provision that was included both the House and Senate bills. Additionally, states may use their NHPP and STP apportionments to pay the subsidy and administrative costs for projects receiving TIFIA assistance.
  - The conferees adopted much of the Senate bill's TIFIA language, including the loans-to-lenders program in which State Infrastructure Banks (SIBs) can apply for TIFIA assistance to capitalize a rural projects fund and re-lend the loan proceeds to downstream rural infrastructure projects.
  - The bill adopts the Senate bill provision expanding TIFIA eligibility to include projects "to improve or construct public infrastructure" that is located within walking distance of, and accessible to public transportation, an intermodal facility, or a public utility.
  - The bill adopts the House provision requiring the Secretary to establish a streamlined and expedited application process for project sponsors seeking loans of no more than $100 million for projects secured by pledged revenues not affected by project performance (such as tax revenues).
  - State Infrastructure Banks: The bill also restores states' authority to capitalize their state infrastructure banks with federal-aid highway apportionments for FY 2016 through FY 2020.
- **National Surface Transportation and Innovative Finance Bureau** (Section 9001): Establishes a Finance Bureau that will administer TIFIA, the Railroad Rehabilitation and Improvement Financing (RRIF) program, and the new NSFHP discretionary grant program for freight projects. The Bureau will also develop and promote best practices for public-private partnerships (P3s), provide advice to state and local governments, and require project sponsors to undergo a value for money analysis and make it publicly available. The Bureau will also make highway and surface freight transfer facility private activity bond allocations, but the bill does not increase the $15 billion cap on such bonds.
- **Water Infrastructure Finance and Innovation Act** (WIFIA) (Section 1445): The FAST Act also amends WIFIA to strike the provision prohibiting communities from funding water infrastructure projects with a combination of WIFIA assistance and tax-exempt debt.
  - Under the terms of the WIFIA program, project sponsors can secure a low-interest loan for up to 49 percent of project costs; the remaining 51 percent must come from other sources. Tax-exempt bonds will generally be the most cost-effective source for the required non-WIFIA share of project costs, so permitting project sponsors to use tax-exempt debt with WIFIA assistance will ensure the WIFIA program works as intended to reduce project costs and accelerate investment in much-needed major infrastructure improvements.
  - While funding has been appropriated for the administrative costs of standing up the Environmental Protection Agency's WIFIA office, appropriations necessary to support WIFIA loans to project sponsors are expected in FY 2017.
- **Regional Infrastructure Accelerator Demonstration Program** (Section 1441):
  - Modeled on the West Coast Infrastructure Exchange, the new Regional Infrastructure Accelerator program established in the bill provides $12 million in General Funds for the Secretary to establish one or more regional entities to develop financing strategies and otherwise promote and accelerate the development of projects eligible for TIFIA assistance.
  - Each regional entity would serve a defined geographical area and advance the following purposes: evaluate and promote innovative financing methods for local projects; build capacity of state, local, and tribal governments to evaluate and structure projects involving private capital; provide technical assistance and information on best practices to potential project sponsors; foster a pipeline of projects available for investment; bundle small and rural projects to make them more marketable to investors; and reduce transaction costs for public project sponsors.

- **Tolling, HOV Eligibility, Interstate Reconstruction and Rehabilitation** (Section 1411):
  - Requires equal access to HOV facilities for all public transportation vehicles and public or private over-the-road buses.
  - Extends, with some modifications, the provisions authorizing public authorities to permit various types of energy efficient and low-emission vehicles to use HOV lanes as follows:
    - May permit alternative fuel vehicles and qualified plug-in electric drive vehicles to use HOV facilities until the end of FY 2025; and
    - May permit certified low emission and energy-efficient vehicles to use HOV facilities until the end of FY 2019.
  - Provides greater flexibility in the HOV facility maintenance-of-operating-performance provisions, and permits the US Department of Transportation (USDOT) to waive sanctions for degraded HOV operations upon a finding that such waiver is in the public interest and the authority has made a good faith effort to improve facility performance.
  - Adopts the House bill provisions amending the Interstate reconstruction pilot program to (1) require applicants for a slot in the pilot program to have approved enabling legislation necessary for their proposed toll project to proceed; and (2) establish requirements for project completion, including a general term that provisionally approved applications shall expire three years after initial approval, and that previous provisionally approved applications must meet the pilot program requirements within one year of enactment of the FAST Act, or their application will expire.

Innovation

- **Intelligent Transportation Technologies Deployment** (Sections 6003 and 6004): Includes an Advanced Transportation and Congestion Technologies Deployment Initiative (Section 6004) to provide $60 million in grant funding for the installation and operation of technologies to improve safety, efficiency, system performance, and infrastructure return on investment. Provides $67.5 million per year for the Technology and Innovation Deployment Program (Section 6003).
- **Future Interstate Study** (Section 6021): Requires the Secretary to enter into an agreement with the Transportation Research Board (TRB) to study the actions needed to upgrade and restore the National System of Interstate and Defense Highways.
- **Surface Transportation System Funding Alternatives** (Section 6020): Establishes a user-fee financing demonstration program to make grants to states to test the design, acceptance, and implementation of user-based alternative mechanisms for generating revenues for the HTF. Funds the grant program at $15 million in FY 2016 and $20 million per year for FY 2017 through FY 2020.

Public Transportation

- The FAST Act reauthorizes Urbanized Area Formula Grants, Rural Formula Grants, and the Fast Growth/High-Density program and provides for modest growth in these programs. It significantly increases State of Good Repair funding from $2.17 billion in FY 2015 to $2.51 billion in FY 2016 and increasing to $2.68 billion in FY 2020. The bill also greatly increases funding for buses and bus facilities, more closely aligning overall public transportation funding to the historical 40 New Starts/ 40 Rail/ 20 Bus proportions that were altered in MAP-21.
- **Grants for Buses and Bus Facilities** (Section 3017): The bill reauthorizes the bus and bus facilities formula program and reestablishes a bus discretionary program for projects to replace, rehabilitate, purchase, or lease buses, bus equipment, and bus facilities. The conferees did not adopt the House provision striking High-Density state apportionments under § 5340(d) and redirecting those funds to the bus discretionary program.
  - Within the bus formula program, the bill establishes a pilot program for cost-effective capital investment by permitting transit agencies in a state to pool their formula funds; the state must ensure that each transit agency participating in the pool receives an amount of funds equal to what each would otherwise individually receive over the five-year period of the bill. Provides level funding for the bus formula program in FY 2016, $427 million, increasing to $464 million in FY 2020.
  - Within the bus discretionary program, the bill permits a state to submit a statewide application on behalf of a transit agency operating in rural areas or other areas for which the state allocates funds. Bus discretionary grant applicants in urbanized areas must meet the requirements of § 5307, and applicants in rural areas must meet the requirements of § 5311. No single grantee may be awarded more than 10 percent of total available grants. The bus discretionary program (inclusive of no or low emission grants) is funded at $264 million in FY 2016, $284 million in FY 2017, $302 million in FY 2018, $322 million in FY 2019, and $344 million in FY 2020.
  - Discretionary grants for low or no emission vehicles, equipment, and facilities (including retrofitting facilities for charging stations) are moved out of research programs and into the bus program, to reflect the conferees' intent that such grants should support vehicles and facilities that are ready for use in public transportation service. Grant applicants must meet the requirements of § 5307.
- **Fixed Guideway Capital Investment Grants** (Section 3005): The bill reauthorizes the Capital Investment Grants program with only minor changes in project eligibility criteria and increases General Fund authorizations for the program from the MAP-21 level of $1.9 billion per year to $2.3 billion per year (flat-line authorizations over the five-year life of the bill). The final funding levels each year remain within the control of the annual appropriations process.

- Small Starts: The bill provides some increased flexibility in funding corridor-based bus rapid transit projects by striking the requirement for short headways on weekend days. Additionally, the bill increases the caps on Small Starts projects: the limit on total project costs is increased from $250 million to $300 million, and the cap on eligible § 5309 costs is increased from $75 million to $100 million.
- Federal Share of Project Costs: The bill retains the 80 percent federal share provision for new fixed guideway projects, Small Starts, and Core Capacity projects, but reduces the § 5309 share (the amount of any Full Funding Grant Agreement (FFGA)) for any new fixed guideway capital project to 60 percent of capital project costs.
- STP Funding: The conferees did not adopt the House provision banning the use of Surface Transportation Block Grant Program (STBGP) funding for new fixed guideway capital projects.
- Expedited Project Delivery Pilot Program: The bill establishes a pilot program in which the Secretary may enter into as many as eight FFGAs to expedite the delivery of new fixed guideway, Small Starts, or Core Capacity projects undertaken via public-private partnership arrangements. The federal share of project costs under this pilot is limited to 25 percent.

- **Enhanced Mobility of Seniors and Individuals with Disabilities** (Section 3006):
  - Reauthorizes § 5310 with modest funding increases and directs the Secretary to collect, review, and disseminate best practices to public transportation agencies.
  - Establishes a pilot program to provide grants for innovative projects that improve the coordination of transportation services and non-emergency medical transportation services for the transportation disadvantaged. Grants require a 20 percent local match. Provides $2 million from the HTF in FY 2016, $3 million in FY 2017, $3.25 million in FY 2018, and $3.5 million in FY 2019 and FY 2020.

Planning

- **Metropolitan Transportation Planning** (Sections 1201 and 3003):
  - Provides that representation on MPOs must be determined by the bylaws or enabling statute of the MPO, and allows a representative of a public transportation provider to serve as a representative of a local municipality.
  - Adds intermodal facilities that support intercity transportation, including intercity buses and bus facilities, to items allowed in a transportation improvement program (TIP).
  - Encourages MPO officials to consult and coordinate with officials responsible for tourism and natural disaster risk reduction.
  - Adds improving the reliance and reliability of the transportation system and reducing or mitigating stormwater impacts of surface transportation and enhancing travel and tourism as issues that the metropolitan planning process should address.
  - Adds intercity bus operators and employer-based commuting programs such as a carpool program, transit benefit program, parking cash-out programs, shuttle program, or telework program as ways travel demand can be reduced through congestion management.
  - Provides that MPOs may develop a congestion management plan that will (1) develop regional goals to reduce vehicle miles traveled during peak commuting hours; (2) identify existing public, employer-based, and other transportation services that support access to jobs; and (3) identify projects and programs to reduce congestion and increase job access opportunities. In developing the congestion management plan, requires MPOs to consult with employers, private and nonprofit providers of public transportation, transportation management organizations, and organizations that provide job access reverse commute projects or job-related services to low-income individuals.

- **Statewide and Nonmetropolitan Transportation Planning** (Sections 1202 and 3003):
  - Makes similar changes to statewide and nonmetropolitan transportation planning provisions, including allowing intermodal facilities that support intercity transportation to be included in a TIP, and improving the reliance and reliability of transportation systems and enhancing travel and tourism as issues the planning process should address. Requires the use of a performance-based approach for statewide and nonmetropolitan transportation planning.

Environmental Streamlining and Accelerated Project Delivery (Sections 1301-1318)

- **Eliminating Duplication of Environmental Reviews:** To eliminate the duplication of environmental reviews at the state and federal levels, directs the Secretary to establish a pilot program to authorize up to five states to conduct environmental reviews and make approvals for projects, either using the state's environmental requirements or National Environmental Protection Act (NEPA) requirements. States in the pilot program may exercise the authority for locally administered projects for up to 25 local governments. The Secretary must approve or disapprove of applications to the pilot program within 120 days.
- **Satisfaction of Requirements for Certain Historic Sites:** Requires the Secretary to coordinate with the Interior Department and the Advisory Council on Historic Preservation to establish implementing regulations and procedures to align NEPA requirements with rules regarding historic sites. Provides that if the Secretary in an analysis required by NEPA makes the determination that there is no feasible alternative to the use of a historic site for a public transportation or highway project, and the state and tribal historic preservation officers, the Council, and the Secretary of the Interior concur, that no further analysis is required.
- **Treatment of Certain Bridges Under Preservation Requirements:** Codifies a 2012 FHWA regulation exempting common post-1945 concrete or steel bridges or culverts from individual review. Relaxes requirements under the Migratory Bird Treaty Act for repairs to bridges in "serious" condition.
- **Programmatic Agreements:** Directs USDOT to establish a programmatic agreement template that can be used for individual projects, and requires the terms of a finalized programmatic agreement be given substantial weight by all agencies involved in the review process. Allows the use of programmatic agreements to speed approval time by processing categorical exclusions as a group instead of on a case-by-case basis.

- **Transparency:** Expands the use of a federal Permitting Dashboard for all transportation projects requiring an Environmental Impact Statement or Environmental Assessment, to allow the public to track the federal review process.
- **Accelerated Decisionmaking in Environmental Reviews:** Requires a lead agency, "to the maximum extent practicable," to combine a final environmental impact statement and record of decision into a single document unless substantial changes to the proposed action are made by the environmental impact statement or there is a significant new circumstance or information relevant to environmental concerns. Allows the lead agency to use errata sheets to modify a final environmental impact statement if the changes are confined to factual corrections or explanations. Allows for the adoption and incorporation of documents by reference.
- **Emergency Exemptions:** Provides additional exemptions and expedited procedures for projects to repair damaged roads, highways, railways, bridges, or transit facilities during emergency situations.
- **Efficient Environmental Reviews for Project Decisionmaking:** Directs USDOT to develop guidelines for conducting coordinated project reviews, and to develop an environmental checklist to be used when coordinating agencies set project review schedules.
- **Deadlines:** Establishes the following deadlines to speed up the environmental review and approval processes:
  - 45-day deadline to identify all participating agencies;
  - 45-day deadline for the receipt from project application for USDOT to decide whether to initiate the environmental review process;
  - 45-day deadline for USDOT to requests for a modal administration to act as lead agency, which may be extended by 45 additional days with new information; and
  - 90-day deadline to develop a coordination plan to receive comments from participating agencies.

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