

I. Executive Summary

The Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94, reauthorizes surface transportation programs for five years, providing \$305 billion over fiscal years 2016-20. 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 discretionary and one formula-based, and a bus and bus facilities discretionary grant program. The text of the law can be found on the [GPO website](#).

The Fixing America's Surface Transportation (FAST) Act provides funding opportunities for local governments:

- Converts the Surface Transportation Program (STP) into a block grant program and increases the suballocation on the basis of population over the course of the bill.
- Creates a new Nationally Significant Freight and Highway Projects (NSFHP) discretionary grant program for large freight highway projects.
- Reestablishes the bus and bus facilities discretionary grant program.
- Incentivizes private investment in public transportation projects by establishing an expedited pilot program for certain P3 fixed guideway projects under the Capital Investment Grant program.
- Establishes a formula freight program.

II. Surface Transportation Block Grant Program (STBGP)

The FAST Act changes the Surface Transportation Program into a block grant program, and increases the amount suballocated on the basis of population from the current 50% to 51% for FY 2016, increasing 1% each year to 55% in FY 2020. The FAST Act provides \$11.16 billion in STBGP funding for FY 2016.

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. Localities will need to work with their individual states and Metropolitan Planning Organizations (MPOs) to secure funding for STBGP projects. Within STBGP, the set-asides for Transportation Alternatives and the Recreational Trails Program (RTP) may be ideal opportunities to fund local park-related transportation infrastructure projects.

A. Transportation Alternatives Program (TAP)

The FAST Act repeals TAP, creates a new Transportation Alternatives set-aside under STBGP and makes changes to how the funding level is calculated. However, all projects and activities that were previously eligible under TAP remain eligible under the new Transportation Alternatives set-aside.

The FAST Act provides \$835 million for FY 2016 and FY 2017 and \$850 million for FY 2018 through FY 2020 for the Transportation Alternatives set-aside. Unlike the overall STBGP, only 50% of the set-aside funds will be suballocated on the basis of population each year. States and MPOs are required to develop a competitive process for awarding local funds, and localities will have to work with states and MPOs directly to secure TAP funding.

In FY 2014, the Moving Ahead for Progress in the 21st Century Act (MAP-21) combined the Transportation Enhancements, Recreational Trails and Safe Routes to School programs into a new program, TAP, funded by a 2% set-aside from the total amount authorized from the Highway Account of the Highway Trust Fund.

The FAST Act funds TAP through a fixed set-aside from the STBGP, increasing TAP funding in FY 2016 to \$835 million from \$819 million in FY 2014 and FY 2015 under MAP-21.

All projects eligible under TAP are eligible for the set-aside funding, including:

1. Construction, planning, and design of on-road and off-road trail facilities for pedestrians, bicyclists, and other nonmotorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).
2. Construction, planning, and design of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs.
3. Conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other nonmotorized transportation users.
4. Construction of turnouts, overlooks, and viewing areas.
5. Community improvement activities, including:
 - Inventory, control, or removal of outdoor advertising
 - Historic preservation and rehabilitation of historic transportation facilities
 - Vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control
 - Archaeological activities relating to impacts from implementation of a transportation project eligible under this title

6. Any environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation to:
 - Address stormwater management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff, including activities described in sections 133(b)(11), 328(a), and 329
 - Reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats

B. Recreational Trails Program (RTP)

The FAST Act creates a set-aside of \$85 million from the \$835 million Transportation Alternatives set-aside for RTP. The RTP set-aside is held steady at \$85 million annually for FY 2016 through FY 2020. While the FAST Act maintains states' ability to opt out of RTP, only Connecticut has elected to do so for FY 2016.

A recreational trail is defined as a thoroughfare or track across land or snow, used for recreational purposes such as (1) pedestrian activities, including wheelchair use; (2) skating or skateboarding; (3) equestrian activities, including carriage driving; (4) nonmotorized snow trail activities, including skiing; (5) bicycling or use of other human-powered vehicles; (6) aquatic or water activities; and (7) motorized vehicular activities, including all-terrain vehicle riding, motorcycling, snowmobiling, use of off-road light trucks, or use of other off-road motorized vehicles.

RTP-eligible projects include:

1. Maintenance and restoration of existing trails.
2. Development and rehabilitation of trailside and trailhead facilities and trail linkages.
3. Purchase and lease of trail construction and maintenance equipment.
4. Construction of new trails (with restrictions for new trails on federal lands).
5. Acquisition of easements or property for trails.
6. Assessment of trail conditions for accessibility and maintenance.
7. Development and dissemination of publications and operation of educational programs to promote safety and environmental protection related to trails (including supporting non-law enforcement trail safety and trail use monitoring patrol programs, and providing trail-related training) (limited to 5% of a state's funds).
8. State administrative costs related to this program (limited to 7% of a state's funds).

III. Discretionary Grant Programs

A. Nationally Significant Freight and Highway Projects (NSFHP)

The FAST Act establishes a competitive discretionary grant program for large projects on the National Highway Freight Network, highway or bridge projects on the National Highway System, 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. The FAST Act provides \$800 million in FY 2016, increasing \$50 million each year to \$1 billion in FY 2020.

DOT recently published the notice of funding opportunity for the NSFHP grants, available on the [DOT website](#), which the Agency calls Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) grants. DOT announced that \$800 million of FASTLANE grants would be available in FY 2016, with 25% reserved for rural projects and 10% reserved for local projects. FASTLANE grant applications are due on April 14.

Local governments and MPOs are eligible to apply directly for grants. The FASTLANE grants require a minimum 20% match and may not fund more than 60% of total eligible project costs, though other federal funds may cover an additional 20% of costs. Except in limited circumstances, total project costs must exceed \$100 million or 30% of the state's federal-aid highway apportionment and the minimum grant size is \$25 million.

Eligible projects include:

- A highway freight project on the National Highway Freight Network
- A highway or bridge project on the National Highway System, including:
 - A project to add capacity to the Interstate system to improve mobility
 - A project in a national scenic area
- A freight project that is:
 - A freight intermodal or freight rail project
 - A project within the boundaries of a public or private freight rail, water (including ports), or intermodal facility and that is a surface transportation infrastructure project necessary to facilitate direct intermodal interchange, transfer, or access into or out of the facility, provided that the project will make a significant improvement to freight movements on the National Highway Freight Network and that the Federal share of the project funds only elements of the project that provide public benefits, and that the total assistance for these projects does not exceed \$500 million over the period 2016-2020
- A railway-highway grade crossing or grade separation project

B. Bus and Bus Facilities Discretionary Grant Program

The FAST Act reestablishes the bus and bus facilities discretionary grant program for projects to replace, rehabilitate, purchase, or lease buses, bus equipment, and bus facilities. We expect DOT to release the notice of funding opportunity this spring and award the grant funding during the summer or fall.

The bus discretionary program (inclusive of no or low emission grants) is funded at \$268 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. 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% of total available grants.

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. The FAST Act provides \$55 million in FY 2016 for these grants, and applicants must meet the requirements of § 5307.

C. Transportation Investment Generating Economic Recovery (TIGER) Grant Program

The TIGER grant program was funded through the Consolidated Appropriations Act of 2016 at \$500 million in FY 2016 for the eighth round of TIGER grants. Localities and MPOs are eligible entities and applications are due on April 29. Typically, TIGER grant awards have been announced in the fall, and we expect a similar timeframe for FY 2016. The notice of funding opportunity is available on the [DOT website](#).

While the FY 2016 TIGER grants do not provide dedicated funding for planning, preparation, or design, these activities may be included as part of a construction project. TIGER grants require a minimum 20% local match. The minimum grant award is \$5 million for urban projects and \$1 million for rural projects, the maximum award is \$100 million. Applicants can apply for both TIGER and FASTLANE grants simultaneously.

D. Fixed Guideway Capital Investment Grants

The FAST Act reauthorizes the Capital Investment Grants program with only minor changes in project eligibility criteria and establishes an expedited pilot program for public transportation projects with private funding to incentivize non-federal investment.

The Act establishes the Expedited Project Delivery Pilot Program for as many as eight Full Funding Grant Agreements (FFGAs) to expedite the delivery of new fixed guideway, Small Starts, or Core Capacity public transportation projects undertaken via public-private partnership (P3) arrangements. The federal share of project costs under this pilot is limited to 25%.

To be eligible, the applicant must have the legal, financial, and technical capacity to carry out the project, continuing control over the equipment and facilities, and advisors providing guidance to the applicant that are independent from investors in the project. The project must be: (1) part of an approved transportation plan; (2) supported through a P3; (3) justified by findings including mobility improvements, environmental benefits, congestion relief, economic development effects, and estimated ridership projections; (4) supported by a local financial commitment; and (5) operated and maintained by employees of an existing public transportation provider in the service area of the project.

IV. National Highway Freight Program

The FAST Act 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%. The FAST Act 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.

Certain provisions of the Law on Insolvency concerning public procurement are amended in pursuit of the main goal of the reform, namely to allow businesses to continue operating. These changes are designed to ensure the continuation of the activity covered by the contract concerned (the provision of a public service) to benefit the successful bidders, so that these bidders will be subrogated in all legal aspects to the administrative contracts affected by the continuation of the business activity concerned.

The aforementioned contracts will be subject to particular provisions as laid down by applicable public procurement legislation and the specific laws governing each type of administrative contract. A special insolvency regime is established for companies that have been awarded public works and utilities contracts and businesses that enter into contracts with public administration bodies. With respect to this type of insolvency proceedings, if an arrangement is proposed that may affect all the proceedings that have been initiated, an order will be made for the joinder of those proceedings.

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