

## Pre-Decisional Discussion Draft

# FIXING AMERICA'S SURFACE TRANSPORTATION (FAST) ACT

## *Fact Sheets*

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**DATE:** January 15, 2016

**SUBJECT:** At-Risk Preliminary Engineering (PE)

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### **PROBLEM STATEMENT/BACKGROUND:**

Section 1440 of the FAST Act, entitled At-Risk Project Preagreement Authority states that a subrecipient can incur preliminary engineering costs for an eligible project under title 23 USC before receiving project authorization from the State. The costs must meet all applicable requirements under 23 USC at the time the costs are incurred, and the Secretary must concur that the requirements have been met.

Subrecipients that elect to use this authority assume all risk for PE costs incurred prior to authorization, and are responsible to ensure and demonstrate to the Secretary that all applicable cost eligibility conditions have been met after the authorization is received.

### **ACTION ITEM FOR IMPLEMENTATION/RECOMMENDATIONS FOR IMPLEMENTATION:**

First, FHWA will need to issue guidance and clarification. Then, it is anticipated that Caltrans Local Assistance will need to revise forms, databases, and interfaces to accommodate this information for requesting/tracking purposes. Our invoice review process will need to be reviewed and revised to accommodate reimbursable work prior to the authorization date, which is currently not allowed.

No state legislative action is anticipated to implement this new provision of the FAST Act.

Local Assistance may convene a team to review the full impacts, which could include workload impacts, revisions to our Policy Manual and Program Guidance and related forms, and Standard Operating Procedures (SOP's).

### **IMPACT OF THE FAST ACT (Pros/Cons):**

**Pros:** Encourages project delivery by allowing local agencies to begin reimbursable work prior to the authorization date.

May help reduce the number of projects reaching/approaching the federal PE>10 rule.

**Cons:** Increases the risk of local agencies performing and paying for work that is ultimately deemed ineligible.

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May result in adverse findings against agencies; Local Assistance will have to collect federal funds already paid to local agencies.

Additional invoice review may be required.