American Road & Transportation Builders Association

2015 "Fixing America's Surface Transportation Act"

A Comprehensive Analysis

ANALYSIS:

2015 "Fixing America's Surface Transportation (FAST) Act:"

The "Fixing America's Surface Transportation Act," or FAST Act, released Dec. 1 by the conference committee appointed to reconcile the different surface transportation reauthorization bills passed by the House and Senate, will reauthorize the federal highway and public transportation programs for fiscal years (FY) 2016-2020 and stabilize the Highway Trust Fund (HTF) during that five-year period.

Highway Program Funding

The bill includes $225.2 billion from the HTF for highway investment, a $20.2 billion increase over five years compared to maintaining FY 2015 funding. About half of the increase, or $10.7 billion, will support two new proposed initiatives—a National Freight Program and a program of Nationally Significant Freight and Highway Projects. The remainder will provide small annual increases in core highway program funding.

Of the $225.2 billion total, $207.4 billion will be apportioned among the states by formula. States use these funds for highway and bridge improvements authorized by the main highway programs such as the National Highway Performance Program, the new Surface Transportation Block Grant Program, and a few others. The apportionment formulas are set by Congress.

The remaining $17.8 billion will fund a handful of additional programs that are either run directly by the federal government, are for research and development programs, fund Federal Highway Administration (FHWA) administrative expenses, or finance competitive grants to state and local governments under programs administered by the Secretary of Transportation.

An additional $1.05 billion is authorized from the general fund for significant projects on federal or tribal lands and for the Appalachian Regional Highway Development program.

Funding details by program and year are shown in Table 1:

TABLE 1

Highway Program Funding under the "Fixing America's Surface Transportation Act" (FAST Act)							
Program Authorizations	FY2015	FY2016 /2	FY2017	FY2018	FY2019	FY2020	5-Year Total
Apportioned Programs, Trust Fund, Total	**37,798,000,000**	**39,727,500,000**	**40,547,805,000**	**41,424,020,075**	**42,358,903,696**	**43,373,294,311**	**207,431,523,082**
Estimated Split Among Programs:							
National Highway Performance Program	21,908,178,122	22,320,399,020	22,838,846,067	23,286,164,073	23,746,271,804	24,253,567,928	116,445,248,892
Surface Transportation Program	10,077,074,081						
Surface Transportation Block Grant Program /1		10,266,682,752	10,505,152,116	10,710,904,354	10,922,539,464	11,155,879,753	
Highway Safety Improvement Program	2,192,406,423	2,227,791,101	2,279,763,304	2,323,919,129	2,369,480,418	2,420,227,245	11,621,181,197
Railway-Highway Crossings Program	220,000,000	225,000,000	230,000,000	235,000,000	240,000,000	245,000,000	1,175,000,000
Congestion Mitigation and Air Quality Improvement	2,266,889,602	2,382,609,044	2,431,805,851	2,484,355,796	2,540,424,317	2,601,261,175	12,440,456,183
Metropolitan Planning Program	313,551,772	329,557,861	336,362,668	343,631,274	351,386,563	359,801,399	1,720,739,765
National Freight Program /1		1,140,460,222	1,090,874,995	1,190,045,449	1,338,801,130	1,487,556,811	6,247,738,606
Transportation Alternatives Program	819,900,000	835,000,000	835,000,000	850,000,000	850,000,000	850,000,000	4,220,000,000
Other Programs, Trust Fund, Total	**3,197,000,000**	**3,372,500,000**	**3,457,295,000**	**3,549,191,925**	**3,648,692,304**	**3,730,797,689**	**17,758,476,918**
TIFIA	1,000,000,000	275,000,000	275,000,000	285,000,000	300,000,000	300,000,000	1,435,000,000
Federal Lands and Tribal Transportation Programs							
Tribal Transportation Program	450,000,000	465,000,000	475,000,000	485,000,000	495,000,000	505,000,000	2,425,000,000
Federal Lands Transportation Program	300,000,000	335,000,000	345,000,000	355,000,000	365,000,000	375,000,000	1,775,000,000
Federal Lands Access Program	250,000,000	250,000,000	255,000,000	260,000,000	265,000,000	270,000,000	1,300,000,000
Territorial and Puerto Rico Highway Program	190,000,000	200,000,000	200,000,000	200,000,000	200,000,000	200,000,000	1,000,000,000
Nationally Significant Freight and Highway Projects		800,000,000	850,000,000	900,000,000	950,000,000	1,000,000,000	4,500,000,000
Emergency Relief	100,000,000	100,000,000	100,000,000	100,000,000	100,000,000	100,000,000	500,000,000
Research, Technology and Education Authorizations							
Highway Research and Development Program	115,000,000	125,000,000	125,000,000	125,000,000	125,000,000	125,000,000	625,000,000
Technology & Innovation Development Program	62,500,000	67,000,000	67,500,000	67,500,000	67,500,000	67,500,000	337,000,000
Training and Education	24,000,000	24,000,000	24,000,000	24,000,000	24,000,000	24,000,000	120,000,000
Intelligent Transportation Systems	100,000,000	100,000,000	100,000,000	100,000,000	100,000,000	100,000,000	500,000,000
University Transportation Centers Program	72,500,000	72,500,000	75,000,000	75,000,000	77,500,000	77,500,000	377,500,000
Bureau of Transportation Statistics	26,000,000	26,000,000	26,000,000	26,000,000	26,000,000	26,000,000	130,000,000
Construction of Ferry Boats and Terminal Facilities	67,000,000	80,000,000	80,000,000	80,000,000	80,000,000	80,000,000	400,000,000
FHWA Administration	440,000,000	453,000,000	459,795,000	466,691,925	473,692,304	480,797,689	2,333,976,918
Total Contract Authority, Trust Fund	**40,995,000,000**	**43,100,000,000**	**44,005,100,000**	**44,973,212,000**	**46,007,596,000**	**47,104,092,000**	**225,190,000,000**
Obligation Limitation	**40,256,000,000**	**42,361,000,000**	**43,266,100,000**	**44,234,212,000**	**45,268,596,000**	**46,365,092,000**	**221,495,000,000**
Exempt Contract Authority	739,000,000	739,000,000	739,000,000	739,000,000	739,000,000	739,000,000	3,695,000,000
Total Obligation Authority, Trust Fund	**40,995,000,000**	**43,100,000,000**	**44,005,100,000**	**44,973,212,000**	**46,007,596,000**	**47,104,092,000**	**225,190,000,000**
Additional Authorizations, General Fund, Total /1	**140,000,000**	**210,000,000**	**210,000,000**	**210,000,000**	**210,000,000**	**210,000,000**	**1,050,000,000**
Nationally Significant Federal Lands & Tribal Projects	30,000,000	100,000,000	100,000,000	100,000,000	100,000,000	100,000,000	500,000,000
Appalachian Regional Development	110,000,000	110,000,000	110,000,000	110,000,000	110,000,000	110,000,000	550,000,000

Apportionments Among the States

The FAST Act will provide every state a 5.1 percent increase in formula funds in FY 2016. This is followed by annual increases ranging from 2.1 percent in FY 2017 to 2.4 percent in FY 2020—increases that will approximately offset the effect of projected inflation during those years. Table 2 shows the apportionment among the states of the $207.4 billion of formula funds under the FAST Act, as provided by the U.S. Department of Transportation (U.S. DOT). The figures in this table do not include the $17.8 billion that are not apportioned by formula[1].

[1] Note that the totals in the state apportionment table for each year are $3.5 million less each year than the annual apportionment totals in the first table. This represents a decrease for safety-related programs.

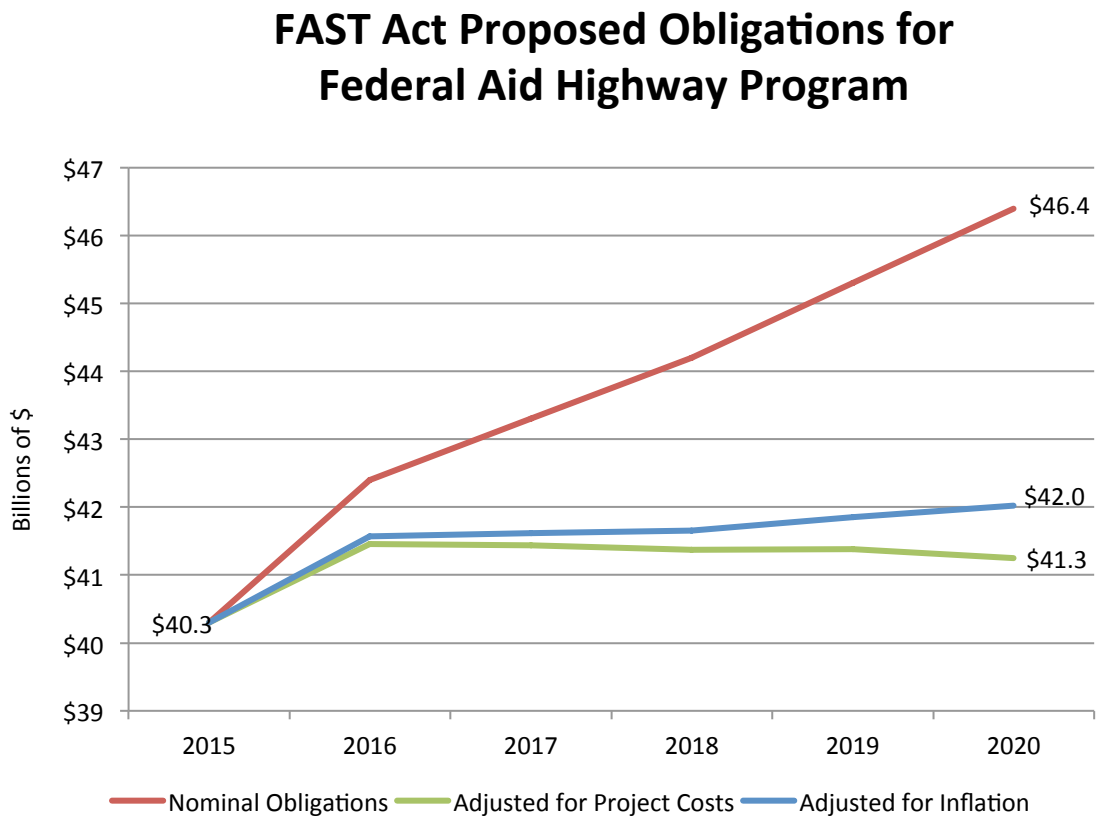
TABLE 2

COMPARISON OF ACTUAL FY 2015 APPORTIONMENTS UNDER THE HIGHWAY AND TRANSPORTATION FUNDING ACT OF 2014, AS AMENDED, AND ESTIMATED FY 2016 - FY 2020 APPORTIONMENTS UNDER THE CONFERENCE REPORT FOR H.R. 22 (FAST ACT)
(before post-apportionment setasides; before penalties; before sequestration)

State	Actual FY 2015	Est. FY 2016	Est. FY 2017	Est. FY 2018	Est. FY 2019	Est. FY 2020	FY 2016 to 2020 Total	FY 2016 to 2020 Average
Alabama	732,263,043	769,571,910	785,463,731	802,438,701	820,550,261	840,202,114	4,018,226,717	803,645,343
Alaska	483,955,039	508,614,600	519,117,557	530,336,370	542,306,359	555,294,332	2,655,669,218	531,133,844
Arizona	706,182,063	742,166,445	757,492,248	773,862,621	791,329,101	810,281,016	3,875,131,431	775,026,286
Arkansas	499,714,166	525,175,061	536,020,027	547,604,161	559,963,932	573,374,836	2,742,138,017	548,427,603
California	3,542,468,412	3,723,001,547	3,799,881,396	3,882,001,196	3,969,619,475	4,064,689,233	19,439,192,847	3,887,838,569
Colorado	516,112,989	542,412,699	553,613,557	565,577,841	578,343,213	592,194,216	2,832,141,526	566,428,305
Connecticut	484,770,705	509,473,713	519,994,372	531,232,092	543,222,256	556,232,120	2,660,154,553	532,030,911
Delaware	163,267,961	171,587,491	175,130,787	178,915,587	182,953,804	187,335,451	895,923,120	179,184,624
Dist. of Col.	154,002,708	161,850,034	165,192,253	168,762,270	172,571,324	176,704,316	845,080,197	169,016,039
Florida	1,828,689,002	1,921,860,645	1,961,547,473	2,003,939,263	2,049,169,471	2,098,246,272	10,034,763,124	2,006,952,625
Georgia	1,246,238,772	1,309,739,819	1,336,786,115	1,365,675,824	1,396,499,894	1,429,945,392	6,838,647,044	1,367,729,409
Hawaii	163,244,192	171,562,378	175,105,158	178,889,407	182,927,036	187,308,045	895,792,024	179,158,405
Idaho	276,061,294	290,127,532	296,118,707	302,518,228	309,346,239	316,754,938	1,514,865,644	302,973,129
Illinois	1,372,231,384	1,442,156,608	1,471,937,238	1,503,747,647	1,537,687,978	1,574,514,759	7,530,044,230	1,506,008,846
Indiana	919,668,926	966,529,532	986,488,498	1,007,807,822	1,030,554,618	1,055,235,912	5,046,616,382	1,009,323,276
Iowa	474,345,450	498,513,780	508,808,186	519,804,234	531,536,542	544,266,622	2,602,929,364	520,585,873
Kansas	364,737,489	383,321,318	391,236,975	399,692,143	408,713,444	418,501,959	2,001,465,839	400,293,168
Kentucky	641,292,458	673,966,719	687,884,265	702,750,398	718,611,920	735,822,382	3,519,035,684	703,807,137
Louisiana	677,413,014	711,927,496	726,628,943	742,332,405	759,087,323	777,267,157	3,717,243,324	743,448,665
Maine	178,165,560	187,243,965	191,110,574	195,240,722	199,647,412	204,428,868	977,671,541	195,534,308
Maryland	580,007,300	609,563,599	622,151,114	635,596,565	649,942,279	665,508,023	3,182,761,580	636,552,316
Massachusetts	586,191,765	616,064,316	628,786,048	642,374,865	656,873,544	672,605,261	3,216,704,034	643,340,807
Michigan	1,016,207,628	1,067,989,869	1,090,043,951	1,113,601,188	1,138,735,743	1,166,007,859	5,576,378,610	1,115,275,722
Minnesota	629,372,872	661,441,891	675,100,754	689,690,575	705,257,282	722,147,855	3,453,638,357	690,727,671
Mississippi	466,803,812	490,587,875	500,718,610	511,539,831	523,085,607	535,613,291	2,561,545,214	512,309,043
Missouri	913,719,741	960,274,903	980,104,758	1,001,286,170	1,023,885,822	1,048,407,455	5,013,959,108	1,002,791,822
Montana	396,007,464	416,184,959	424,779,247	433,959,302	443,754,023	454,381,736	2,173,059,267	434,611,853
Nebraska	278,976,662	293,191,186	299,245,632	305,712,735	312,612,854	320,099,792	1,530,862,199	306,172,440
Nevada	350,472,546	368,332,024	375,938,098	384,062,585	392,731,061	402,136,745	1,923,200,513	384,640,103
New Hampshire	159,469,843	167,595,715	171,056,584	174,753,337	178,697,613	182,977,330	875,080,579	175,016,116
New Jersey	963,682,664	1,012,792,050	1,033,706,218	1,056,045,847	1,079,881,265	1,105,743,762	5,288,169,142	1,057,633,828
New Mexico	354,439,590	372,498,916	380,191,084	388,407,532	397,174,128	406,686,276	1,944,957,936	388,991,587
New York	1,620,088,460	1,702,649,572	1,737,809,280	1,775,365,392	1,815,436,141	1,858,914,699	8,890,175,084	1,778,035,017
North Carolina	1,006,630,450	1,057,922,052	1,079,768,287	1,103,103,510	1,128,001,186	1,155,016,278	5,523,811,313	1,104,762,263
North Dakota	239,621,802	251,831,294	257,031,648	262,586,445	268,513,174	274,943,940	1,314,906,501	262,981,300
Ohio	1,293,739,008	1,359,663,237	1,387,740,399	1,417,731,235	1,449,730,162	1,484,450,429	7,099,315,462	1,419,863,092
Oklahoma	612,127,810	643,315,998	656,600,603	670,790,656	685,930,829	702,358,595	3,358,996,681	671,799,336
Oregon	482,423,497	507,004,353	517,474,070	528,657,381	540,589,488	553,536,361	2,647,261,653	529,452,331
Pennsylvania	1,583,603,275	1,664,296,550	1,698,664,445	1,735,374,776	1,774,543,112	1,817,042,511	8,689,921,394	1,737,984,279
Rhode Island	211,081,927	221,837,373	226,418,345	231,311,545	236,532,377	242,197,215	1,158,296,855	231,659,371
South Carolina	646,306,850	679,236,584	693,262,955	708,245,330	724,230,875	741,575,911	3,546,551,655	709,310,331
South Dakota	272,190,802	286,059,805	291,966,983	298,276,779	305,009,059	312,313,885	1,493,626,511	298,725,302
Tennessee	815,605,297	857,163,013	874,863,555	893,770,525	913,943,445	935,831,968	4,475,572,506	895,114,501
Texas	3,331,596,800	3,501,354,175	3,573,657,617	3,650,889,094	3,733,291,741	3,822,702,306	18,281,894,933	3,656,378,987
Utah	335,148,600	352,225,393	359,498,902	367,268,156	375,557,614	384,552,048	1,839,102,113	367,820,423
Vermont	195,886,832	205,868,282	210,119,484	214,660,438	219,505,440	224,762,485	1,074,916,129	214,983,226
Virginia	982,180,040	1,032,226,472	1,053,542,076	1,076,310,501	1,100,603,428	1,126,962,342	5,389,644,819	1,077,928,964
Washington	654,304,963	687,644,962	701,844,910	717,012,693	733,196,062	750,755,744	3,590,454,371	718,090,874
West Virginia	421,797,542	443,288,929	452,442,922	462,220,829	472,653,435	483,973,279	2,314,579,394	462,915,879
Wisconsin	726,226,908	763,229,980	778,990,803	795,825,845	813,788,109	833,277,970	3,985,112,707	797,022,541
Wyoming	247,262,623	259,861,381	265,227,558	270,959,481	277,075,196	283,711,020	1,356,834,636	271,366,927
Apportioned Total	37,798,000,000	39,724,000,000	40,544,305,000	41,420,520,075	42,355,403,696	43,369,794,311	207,414,023,082	41,482,804,616

Market Impact

While the FAST Act's total core highway investment increase during the life of the bill will be just over 15 percent, yearly assessments are a better gauge of the measure's market impact. As noted earlier, highway investment will jump 5.1 percent in FY 2016 and then slow to rates of growth between 2.1 percent and 2.4 percent for the remainder of the bill. The chart below shows the investment levels will exceed projected inflation by a total of $1.7 billion over five years and beat projected construction material cost increases by $1 billion over the same period. As a result, federal highway investment will see narrow increases in purchasing power through FY 2020, but the FAST Act's biggest impact on the highway construction market will be the stability it provides states and the private sector.



Source: ARTBA analysis of FAST Act. Inflation forecast from CBO's August 2015 report "An Update to the Budget and Economic Outlook: 2015 to 2025." Project costs expected to grow at historical average of 3 percent a year.

Highway Trust Fund (HTF)

The FAST Act provides five years of highway program authorizations, one less than bills passed by both the House and Senate. But it transfers enough resources into the HTF —$51.9 billion into the Highway Account and $18.1 billion into the Mass Transit Account— to fund the full five years of program authorizations. This is a significant improvement compared to the House and Senate bills, which

generated only enough revenues to guarantee funding for the first three years. The FAST Act also is the longest duration reauthorization of the programs in a decade.

It also includes a provision that will automatically increase authorized highway and public transportation investment if Congress were to pass a subsequent law adding additional revenues to the HTF. It is worth noting that virtually all HTF revenue enhancements in the last 30 years have been part of budget and tax legislation enacted outside of the surface transportation reauthorization process. This provision assures that if such action were to happen again there would be no delay in passing these resources through to needed surface transportation improvements.

Nonetheless, the transfer of money from the general fund into the HTF is only a temporary fix. Without a permanent increase in current trust fund excise taxes or enactment of a new revenue source, the HTF will exhaust the funds provided under the FAST Act by the end of FY 2020. Furthermore, because the underlying HTF revenue deficit has not been addressed, the current $14 billion annual shortfall between incoming trust fund revenues and the amount needed to support authorized surface transportation investment levels will grow over the next five years without remedial action by Congress. The Congressional Budget Office official budget score of the FAST Act, released Dec. 2, predicts Congress will need to find over $100 billion in additional HTF revenues to fund the next five year authorization bill from FY 2021 through FY 2025 – an average of at least $20 billion per year. In addition, if the past several years of trust fund revenue shortfalls are any guide, we could see states beginning to scale back planned projects well before the FAST Act expires.

Highway Program Structure

The FAST Act retains the highway program structure enacted in the 2012 Moving Ahead for Progress in the 21st Century (MAP-21) surface transportation law with only a few major additions or changes.

National Highway Performance Program (NHPP). The NHPP is the most significant highway program, focusing on maintaining and improving the Interstate Highway System and other major highways designated as part of the National Highway System. The program receives 63.7 percent of formula funds remaining after funding is provided for the Congestion Mitigation & Air Quality (CMAQ) Program, metropolitan planning and national freight programs. The bill will add two permissible uses for NHPP funds: to pay subsidy and administrative costs for TIFIA projects and for improvements to bridges that are not on the National Highway System.

Surface Transportation. The bill expands the existing Surface Transportation Program (STP) into a "Surface Transportation Block Grant Program (STBGP)" based on the thought that most of the benefits of STP funds accrue locally and that decisions about how such funds are obligated should be determined by state and local governments, which can best respond to unique local circumstances and implement the most efficient solutions. The bill rewrites and simplifies the list of uses eligible for program funds and increases the ways that STP funds can be used for local roads and rural minor collectors. The new program still requires that a fraction of program funds be distributed within each state on the basis of

population, and the fraction subject to this requirement grows from 50 percent in 2015 under the existing STP program to 55 percent in FY 2020 and FY 2021.

Furthermore, $835 million to $850 million of the annual funding for this program is set aside for the transportation alternatives program, which supports a variety of pedestrian, bicycling, and environmental activities. This maintains the same funding for enhancements as in MAP-21. The bill also requires states to invest the same amount each year in recreational trails as in 2009, although states are able to opt out of the Recreational Trails Program. The STBGP block grant program receives the same 29.3 percent of formula funds as did the STP program under MAP-21.

Congestion Mitigation & Air Quality (CMAQ) Program. This long-standing program focuses on reducing highway traffic congestion and improving air quality with a particular focus on states and areas that do not meet current air quality standards. The FAST Act makes only a few changes to the CMAQ program: CMAQ funds can be used not only for attainment of ambient air quality standards, but also to maintain standards in an attainment area; the diesel retrofit program is expanded to include port-related off-road equipment and vehicles; and low-population-density states are exempt from PM 2.5 attainment requirements if the non-attainment area has no projects that are part of a transportation plan and vehicles are an insignificant contributor to PM 2.5 non-attainment. The CMAQ program receives the same share of formula funds as applied under MAP-21.

Highway Safety Improvement Program (HSIP). The legislation ends the ability of states to shift funds designated for infrastructure safety projects to behavioral or educational activities, ensuring resources remain in construction-related programs. It also designates several new safety improvements eligible for funding including vehicle-to-infrastructure communication and roadway improvements that provide separation between pedestrians and motor vehicles.

With regards to unpaved roads, the FAST Act allows states to “opt out” of collecting safety inventory data for unpaved/gravel roads if certain conditions are met, as long as the states continue to collect data related to serious crashes and fatalities. It also requires the U.S. DOT to review data and report to Congress on best practices for roadway infrastructure improvements that enhance commercial motor vehicle safety. This is in line with an ARTBA project to develop guidance related to the disproportionate number of large truck crashes in work zones.

Transportation Alternatives. MAP-21 combined the Transportation Enhancement Program, Safe Routes to School and the Recreational Trails Program into a comprehensive Transportation Alternatives Program. The most significant FAST Act modification to this program changes its funding from 2 percent of annual apportionments (about $820 million per year) to a flat $835 million in FY 2016 and FY 2017 and then to $850 million per year thereafter. The FAST Act also expands eligible recipients for funds to include nonprofits responsible for administration of local transportation safety programs and requires annual reports from state and local planning organizations on the number of project applications and awards.

The FAST Act’s two new initiatives are:

National Freight Program. The FAST Act transforms the National Freight Policy provisions of MAP-21 into a new program that funds freight-related highway improvements. It authorizes a five-year total of $6.2 billion for the program. Funds are apportioned among the states by formula, but states must establish a freight advisory committee and develop a state freight investment plan before obligating any funds. Under the proposal, the Secretary of Transportation and the states will designate a national freight network comprised of the Interstate highways and other roads, both urban and rural, that are critical to the safe and efficient shipment of freight. The national and state networks will be updated every five years. Program funds will be directed under national and state strategic plans to projects that improve highway freight transportation.

States will be able to obligate up to 10 percent of their freight program funds for improvements to freight rail or ports, statutorily breaking a long-standing practice against opening up HTF resources to modes of transportation other than highways and public transportation. It should also be noted that freight rail companies and users do not contribute to the HTF and the port community has its own separate federal trust fund.

Nationally Significant Freight and Highway Projects Program. This program will provide an average of $900 million per year in grants of at least $25 million for highway, bridge, rail-grade crossing, intermodal and freight rail projects costing more than $100 million that improve movement of both freight and people, increase competitiveness, reduce bottlenecks, and improve intermodal connectivity. Projects will be awarded competitively by the Secretary of Transportation based on criteria listed in the bill. At least 25 percent of the funds must be spent in rural areas, and the federal share of project costs will be 60 percent. While the program allows HTF resources to be diverted to freight rail projects, it will impose a $500 million limitation on the total amount that can be awarded over the next five years to freight and intermodal projects. It also reserves 10 percent of the annual grant awards for projects that do not meet the program's cost threshold. The Secretary of Transportation must report all grant awards to Congress, which will have 60 days to reject a project by joint resolution.

Accelerated Project Delivery

The FAST Act builds upon MAP-21's improvements to the project delivery process by expanding opportunities for their use in addition to creating additional reforms aimed at reducing delay.

Reduction of Duplication. The FAST Act focuses on reducing duplicative efforts throughout the environmental review process in multiple ways. First, the legislation requires "to the maximum extent practicable" the combination of a final environmental impact statement (EIS) and record of decision into a single document. As both types of documents can often be quite voluminous, eliminating one is a significant reduction in paperwork. The measure also allows, and encourages, the use of a single environmental review document throughout the entire process and among multiple agencies, as opposed to the current practice of having each agency conduct separate reviews.

Further, the FAST Act expands on combining the transportation planning and National Environmental Policy Act (NEPA) environmental review processes "to the maximum extent practicable and appropriate." For transportation projects, an extensive amount of information is gathered during

the planning process, which often occurs prior to the actual triggering of NEPA review requirements. This allows information gathered during the planning process, to the extent it is still current and relevant, to satisfy NEPA requirements, limiting duplicative reviews and reducing the amount of delay in the NEPA process. Additionally, alternatives to proposed transportation projects analyzed and rejected during the planning process do not need to be re-analyzed during NEPA review.

The FAST Act also prevents regulatory issues that have been resolved early in the process to be raised again later. The bill says that any such issue that has been resolved by the lead agency with the concurrence of the participating agencies cannot be re-examined unless "significant new information or circumstances arise." Unfortunately, what exactly constitutes "significant new information or circumstances" is not addressed in the statute, but could be addressed later via guidance or regulation. If the phrase is not clarified, there could be an opportunity for litigation.

Deadlines. The FAST Act adds to MAP-21's efforts to use deadlines to reduce delay in the transportation project review and approval process. Specifically, the legislation creates the following:

- A 45-day deadline from the beginning of the environmental review process to identify all participating agencies;
- A 45-day deadline for the receipt of a project application for U.S. DOT to decide whether or not the environmental review process may be initiated;
- A 45-day deadline for U.S. DOT to respond to a request to designate a specific modal administration as lead agency (this deadline may be extended up to an additional 45 days if new information is received); and
- A 90-day deadline from the beginning of the environmental review process to develop a coordination plan to obtain comments from participating agencies.

Categorical Exclusions. The FAST Act also continues MAP-21's expansion of the use of categorical exclusions (CEs). Currently, according to the FHWA, CEs account for more than 90 percent of transportation project reviews. Despite being the least burdensome form of environmental review, CEs can take still take more than a year to complete.

The FAST Act allows the use of programmatic agreements to process CEs as a group, rather than on a case-by-case basis in an effort to reduce their approval time. This programmatic approach to CEs was a key recommendation of the ARTBA Trans 2020 Reauthorization Task Force, which noted that reducing the amount of time it takes to process CEs could free up resources for more complicated environmental assessment (EA), EIS and permitting decisions.

Programmatic Agreements. The FAST Act encourages the use of "programmatic agreements" during project review and approval by directing U.S. DOT to establish a programmatic agreement "template," which could be widely used by individual projects. Programmatic agreements are a means of delineating responsibilities at the beginning of the environmental review and approval process. Ideally, programmatic agreements strive to specify clear roles and responsibilities for those involved in

the project review and approval process, eliminating or reducing duplication of effort, while also seeking to establish clear expectations for review timeframes and processing options. The FHWA has highlighted the use of programmatic agreements in its "Every Day Counts" program as an effective tool in reducing project delay.

Once a programmatic agreement is finalized, the FAST Act requires that its terms be given "substantial weight" by all agencies involved in the review and approval process.

Delegation of Regulatory Responsibilities to States. The FAST Act expands on past efforts to delegate federal environmental and regulatory responsibilities to states. In order to encourage greater participation in the program, the measure allows the U.S. DOT to offer training and information-sharing to states not currently utilizing the delegation program.

In addition, the legislation creates a delegation pilot program for up to five states currently enrolled in U.S. DOT's NEPA delegation program to substitute their state laws and regulations for NEPA and its associated regulations. Currently, states in the delegation program are administering NEPA in place of the federal government. Under the new program, a state could use its own laws and regulations. States enrolled in this new delegation pilot program may also use their authority over locally administered transportation projects.

The FAST Act also instructs the department "to the maximum extent practicable" to delegate responsibility to states for "project design, plans, specifications, estimates, contract awards, and inspection of projects, both on a project specific and programmatic basis." While the bill's use of "to the maximum extent practicable" is clearly an attempt in the duplication and delegation sections to motivate state and federal agencies to utilize the efficiencies that will be available, such an approach does not require them to do so and it is unclear how or if such language is enforceable.

Coordination of Agency Reviews. The FAST Act also directs U.S. DOT, in coordination with other federal agencies likely to have review or permitting authority over transportation projects, to develop guidelines for conducting coordinated project reviews. Coordinated reviews allow for multiple regulatory processes to occur at the same time as opposed to one-after-the-other, reducing delay. Additionally, the bill directs U.S. DOT to develop an "environmental checklist" for transportation projects to be used when a lead agency and participating agencies set project review schedules.

Historic Preservation Requirements. The FAST Act simplifies historical preservation and mitigation requirements. Under the legislation, the Secretary of Transportation may determine that no practical alternative exists when a project might impact a historical resource. When such a determination is made, there will no longer be a need for any further alternatives analysis.

Bridge Repair Projects. The FAST Act seeks to streamline the environmental review process for bridge repair projects by exempting "common post 1945 concrete or steel bridge[s] or culvert[s]" from individual review. This was actually done through regulation by FHWA in 2012, but the bill makes the change permanent. Also, the measure loosens requirements under the Migratory Bird Treaty Act for

repairs made to bridges in "serious" condition (as classified by U.S. DOT's Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges) or worse.

Transparency in the Environmental Review Process. The FAST Act expands upon the current federal Permitting Dashboard, which is a website the public can access to track the review process for nationally or regionally significant projects, by creating a website allowing the public to track the process of all transportation projects requiring either an EIS or EA.

Expediting or Exempting Regulatory Requirements in Emergency Situations. Building upon the creation of a CE for emergency situations in MAP-21, the FAST Act provides further exemptions and expedited regulatory procedures for "any road, highway, railway, bridge or transit facility that is damaged by an emergency." Specifically, regulatory requirements under the federal Clean Water Act, Endangered Species Act, National Historic Preservation Act, and Migratory Bird Treaty Act are either required to be expedited or exempted in order to speed repair of critical infrastructure during emergency situations.

TIFIA and Innovative Financing

The FAST Act will cut annual investment for the Transportation Infrastructure Finance and Innovation (TIFIA) credit assistance program from the $1 billion per year authorized in FY 14 and FY 15 to the following levels:

FY16 - $275 million

FY17 - $275 million

FY18 - $285 million

FY19 - $300 million

FY20 - $300 million

While this reduction is likely the result of the FAST Act's revenue constraints rather than opposition to the TIFIA Program, it should be noted the FHWA was required to transfer $639 million in TIFIA funds to the highway formula programs on April 27, 2015, because TIFIA's uncommitted balance exceeded the statutory limit Congress imposed as part of MAP-21. Moreover, the FAST Act eliminates that mandatory redistribution of uncommitted balances, ensuring all resources allocated to the TIFIA program are reserved only for that activity.

At the same time, the FAST Act will allow more diversification of the TIFIA program's portfolio by expanding or facilitating the eligibility for several types of projects. These include projects associated with transit-oriented development, located in rural areas, smaller in scale (i.e. less than $75 million), or administered by local governments.

The TIFIA section also provides a new streamlined process for applicants using conventional loan terms from the program, as established by U.S. DOT. To be eligible, the requested TIFIA loan must by $100

million or less, secured and payable from pledged revenues not affected by project performance, with repayment beginning within five years. In addition, the FAST Act establishes increased funding levels for U.S. DOT's administration of the TIFIA program.

The FAST Act also clarifies that availability payments made by states under certain P3 concession models are eligible for federal reimbursement.

Other Notable Provisions

- Hours of Service and Motor Carrier Operators. The FAST Act widens a current exemption to the hours of service rule for interstate drivers of commercial motor vehicles used for construction. The new law allows those operating within a 75-mile radius to restart their work week after 24 hours of rest, rather than 34 hours, which is the standard for other drivers. (The previous allowable radius was 50 miles.) However, a state may establish its own radius between 50 and 75 miles for intrastate operation of these construction vehicles.

  It also codifies a recent regulatory exemption for drivers of ready mix concrete delivery vehicles, through which they are exempt from many requirements of the hours of service rule, provided they meet certain conditions as to radius of operation, on-duty time and drive time.

  Within four years after the FAST Act takes effect, U.S. DOT is to provide a report to Congress on the safety and enforcement impacts of these and other hours of service exemptions in the new law.

  The bill directs U.S. DOT to convene a task force and establish a pilot program enabling certain veterans or armed forces reserve members between 18 and 21 years of age to operate commercial motor vehicles under various restrictions.

- DBE Program. The FAST Act reauthorizes the current provisions of the Disadvantaged Business Enterprise (DBE) program. It adjusts the annual gross receipts limit for eligible DBE firms to $23.98 million consistent with recent inflation-based adjustments, and maintains the requirement for future annual adjustments as well.

  The DBE section also includes a "sense of Congress" offered by Rep. Gwen Moore (D-Wis.), directing U.S. DOT to "take additional steps" and ensure that state DOTs are complying with existing rules requiring prompt payment to DBE firms. U.S. DOT is also instructed to track complaints on this issue and make this information available publicly.

- Highway Trust Fund Transparency. Requires semi-annual reports to be published on the Internet with detailed data on the use of federal highway funds. Data will be provided by the states on the use of funds from each highway program, with details on all federally-funded highway projects, including cost, type of improvement, location and project ownership.

- Tolling. States that have been awarded approval to toll existing portions of the Interstate Highway System as part of a pilot project created in 1998 will be required to move forward with those projects within one year after the FAST Act takes effect, including submitting a final application, completing the NEPA process and executing a toll agreement with U.S. DOT. A state

may request a one-year extension if it is making substantial progress on those tasks. Otherwise a state's "slot" under the pilot program will expire. Similarly, states that receive new, provisional approval under this pilot program will have three years to complete those requirements or request a one-year extension.

Several other tolling-related provisions of the FAST Act enable certain privately-owned bus services to utilize toll facilities under similar terms as public transit vehicles.

- Bundling of Bridges. States will be authorized and encouraged to bundle multiple similar bridge projects into one project that can be awarded as a single contract, either as a package of projects or as a statewide bridge improvement program.

- Every Day Counts Program. The FAST Act instructs the FHWA to continue its Every Day Counts program, developing a new collection of market-ready innovations and best practices at least every two years.

- Work Zone Safety. Despite ARTBA-supported directives in MAP-21 to develop regulations to protect roadway construction workers from motorist intrusions into work zones, FHWA has not promulgated the new rules. The FAST Act directs FHWA "to move rapidly to finalize regulations" as directed in MAP-21 and "do all within its power to protect workers in highway work zones."

- Roadside Safety Hardware. Finally, to ensure roadway safety hardware continues to function properly, even years after initial installation, the FAST Act directs FHWA to conduct a study to obtain more inventory information on existing roadside safety devices.

- National Surface Transportation and Innovative Finance Bureau. The FAST Act establishes this new entity within U.S. DOT, with an executive director to be selected through a competitive process with presidential approval. In this provision, Congress charges the new bureau with:
  - providing state and local transportation agencies with assistance and best practices relating to project financing and funding, particularly including innovative financing;
  - administering the application process for competitive grant and loan programs such as those for Nationally Significant Freight and Highway Projects (NSFHP) and TIFIA, and allocation of private activity bonds (PABs);
  - reducing uncertainty and delays in environmental reviews and project permitting, through coordinating with other federal agencies, offering technical assistance and tracking NEPA-related reviews and decisions; and
  - promoting best practices and tracking developments in project procurement "to reduce costs and risks to taxpayers."

This section of the FAST Act also empowers the Secretary of Transportation to eliminate or consolidate offices within U.S. DOT to eradicate redundancies and realize savings.

Finally, the FAST Act establishes a Council on Credit and Finance, chaired by the deputy secretary of transportation and comprised of senior U.S. DOT and modal officials. The Council is to review and recommend applications for project grants and loans as described above. This formalizes an existing entity within U.S. DOT that had been created by administrative action.

Highway Research, Technology and Education Authorizations

The FAST Act will continue most MAP-21 provisions dealing with the federal highway research, technology and education programs with only a few significant changes. Major provisions include:

Funding. Most of the highway research, technology and training programs will receive either the same annual funding as during FY 2015 or small increases.

Advanced Technology Deployment. The bill will expand the scope of the Innovative Pavement Research and Deployment Program by requiring the Secretary to develop a program to stimulate deployment of advanced transportation technologies to improve system safety, efficiency and performance. Grants could be used for advanced traveler (travel?) information systems, advanced transportation management technologies, advanced public transportation systems, advanced safety systems including vehicle-to-vehicle communications, among others. Federal share will be 50 percent and awards could total up to $60 million per year.

Intelligent Transportation System (ITS) Program Goals. The bill expands the list of ITS program goals to include enhancement of the national freight system and support to national freight policy goals.

Use of ITS Program Funds. The FAST Act specifies that ITS funds for operational tests may not be used for construction of physical surface transportation infrastructure unless the construction is incidental and critically necessary to implement an ITS project.

Assistant Secretary and Duties. The bill creates a new Assistant Secretary for Research and Technology. The bill expands the list of explicit responsibilities of the Secretary of Transportation to include coordination of departmental research and development activities, advancement of innovative technologies, development of comprehensive statistics and data, and coordination of multimodal and multidisciplinary research, among others. The bill also provides that the Secretary may enter into cooperative contracts with other federal, state and local agencies, and others to carry out departmental research on a 50/50 cost-sharing basis.

Research and Innovative Technology Administration. The bill repeals the section of the U.S. Code establishing the Transportation Department's Research and Technology Administration, thus moving responsibility for transportation research and technology into the Office of the Secretary. The bill also eliminates the Office of Intermodalism in the Research and Technology Administration.

University Transportation Centers (UTC). The bill will continue the University Transportation Centers program with a few changes. Funding will increase from $72.5 million in FY 2015 to $77.5 million by FY 2019. Funding for the three UTC levels will be flexible within ranges rather than a fixed amount as under MAP-21, including $2 million to $4 million for the five National Transportation Center

consortia; $1.5 million to $3.0 million for the 10 Regional Transportation Center consortia; and $1 million to $2 million for the Tier I centers. Selection of centers will remain competitive and made by the Transportation Secretary, the new Assistant Secretary for Research and Technology and the FHWA Administrator. The Federal Transit Administration Administrator is no longer involved. Matching requirements remain as under MAP-21.

Transportation Funding Alternatives. The bill directs the Secretary to make grants to states to demonstrate alternative user-based revenue mechanisms that could maintain the long-term solvency of the HTF. The goal is to test at least two alternative user-based revenue mechanisms and to provide recommendations for adoption and implementation at the federal level. Funding will be up to $15 million in FY 2016 and $20 million per year thereafter, and the federal share will be 50 percent.

Future Interstate System. The bill provides for a $5 million study by the Transportation Research Board that focuses on the actions needed to restore the Interstate System as a premier system that meets the growing and shifting demands of the 21st century, with a report due in three years.

Public Transportation

The FAST Act will substantially boost public transportation investment from the current $10.7 billion to $12.6 billion by FY 2020. Total public transportation authorizations grow by 17.8 percent over the life of the bill. Of particular note to the transportation construction industry, the FAST Act increases transit capital investment grants from $1.9 billion in FY 2015 to $2.3 billion in FY 2016 (a 21 percent increase) and this level of investment is maintained through FY 2020. It should be pointed out, however, the transit capital grant program is supported by federal general funds—as opposed to HTF resources—and final investment decisions are made in the annual appropriations process. If this new increased funding level is met each year, it will mark a 21 percent increase in capital funding for transit projects above the current mark.

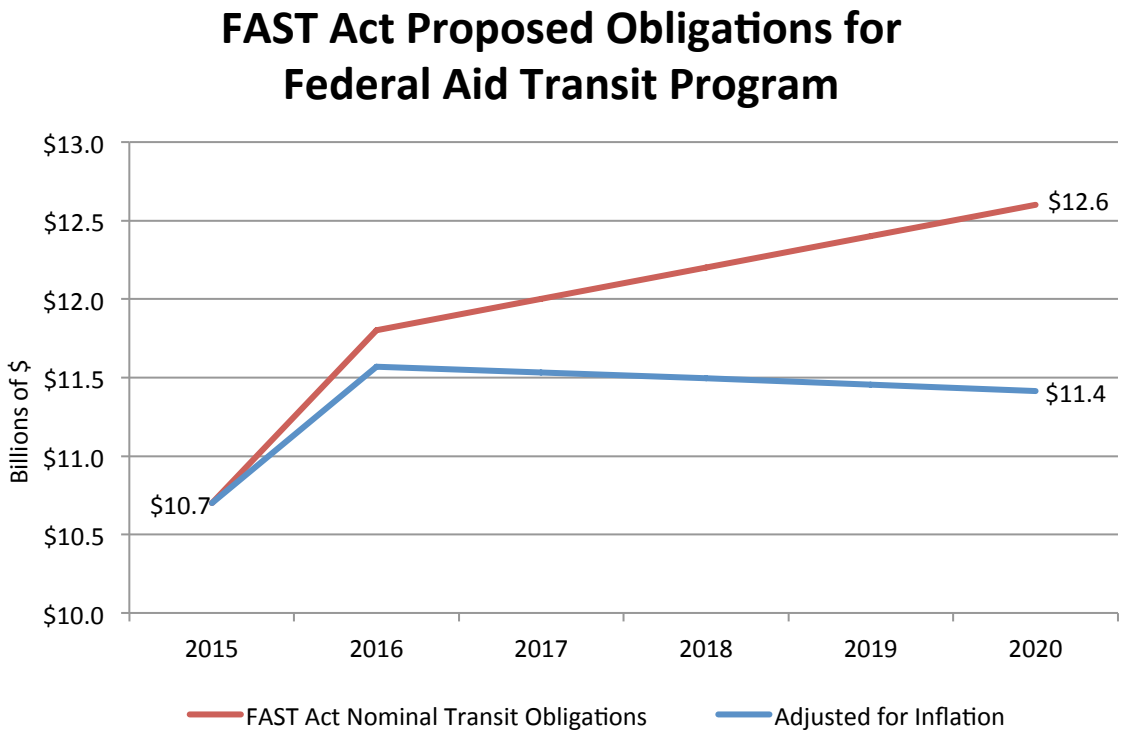
The House-Senate compromise bill includes language allowing up to eight transit capital projects that are part of a public-private partnership to be considered for fast-track approval process as long as the projects receive less than 25 percent of funding from the federal program. This builds on a similar pilot program created in MAP-21 that allowed for three projects receiving less than 50 percent federal funds to receive the expedited approval process.

The measure also contains $200 million for Positive Train Control upgrades – a rail safety capital technology program being mandated at the federal level with the intent of cutting down on train crashes. The funds for this initiative come from the HTF's Mass Transit Account. Table 3 depicts the specific programmatic and yearly public transportation investment levels that will be provided.

TABLE 3

Public Transportation Program Funding Under the "Fixing America's Surface Transportation Act" (FAST Act)							
Program Authorizations	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	5-Year Total
Authorizations - Trust Fund							
Formula Grants, Total	**8,595,000,000**	**9,347,604,639**	**9,534,706,043**	**9,733,353,407**	**9,939,380,030**	**10,150,348,462**	**48,705,392,581**
Urbanized Area Formula Grants	4,458,650,000	4,538,905,700	4,629,683,814	4,726,907,174	4,827,117,606	4,929,452,499	23,652,066,793
State of Good Repair Grants	2,165,900,000	2,507,000,000	2,549,670,000	2,593,703,558	2,638,366,859	2,683,798,369	12,972,538,786
Bus and Facilities Formula Grants	427,800,000	427,800,000	436,356,000	445,519,476	454,964,489	464,609,736	2,229,249,701
Formula Grants for Rural Areas	607,800,000	619,956,000	632,355,120	645,634,578	659,322,031	673,299,658	3,230,567,387
Growing and High Density State Formula Grants	525,900,000	536,261,539	544,433,788	552,783,547	561,315,120	570,032,917	2,764,826,911
Formula Grants for Enhanced Mobility of Seniors and Individuals with Disabilities	258,300,000	262,949,400	268,208,388	273,840,764	279,646,188	285,574,688	1,370,219,428
Metropolitan Planning	128,800,000	130,732,000	133,398,933	136,200,310	139,087,757	142,036,417	681,455,417
Transit Oriented Planning	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	50,000,000
Pilot Program for Innovative Accesss and Mobility		2,000,000	3,000,000	3,250,000	3,500,000	3,500,000	15,250,000
Research, Development, Demo and Deployment Program		28,000,000	28,000,000	28,000,000	28,000,000	28,000,000	140,000,000
Tech Assistance and Development		4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	20,000,000
Bus Testing Facility	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	15,000,000
National Transit Institute	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	25,000,000
National Transit Database	3,850,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	20,000,000
Bus Competitive Grants & Low Emissions Grants		268,000,000	283,600,000	301,514,000	322,059,980	344,044,179	1,519,218,159
Research, Development, Demonstration and Deployment Program	70,000,000	20,000,000	20,000,000	20,000,000	20,000,000	20,000,000	100,000,000
Tech Assistance and Training	7,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	25,000,000
Authorizations - General Fund							
Capital Investment Grants	1,907,000,000	2,301,785,760	2,301,785,760	2,301,785,760	2,301,785,760	2,301,785,760	11,508,928,800
Administration	104,000,000	115,016,543	115,016,543	115,016,543	115,016,543	115,016,543	575,082,715
Total Authorizations	**10,683,000,000**	**11,789,406,942**	**11,976,508,346**	**12,175,155,710**	**12,381,182,333**	**12,592,150,765**	**60,914,404,096**

Similar to the FAST Act's highway investments, the measure's public transportation investment levels will see a significant 10.4 percent increase in FY 2016, followed by annual increases of 1.6 percent to 1.7 percent over the subsequent four years. These investment levels exceed projected inflation by a total of $700 million over the next five years. (See chart below.)



Source: ARTBA analysis of FAST Act. Inflation forecast from CBO's August 2015 report "An Update to the Budget and Economic Outlook: 2015 to 2025."