Fixing America's Surface Transportation (FAST) Act

Summary Fact Sheet

On December 4, 2015 the President signed the “Fixing America’s Surface Transportation (FAST) Act.” The bill authorizes federal surface transportation programs through Fiscal Year (FY) 2020. The bill focuses on highways, transit, freight and railroads.

Under the bill Texas’ apportionments for highways will be:

FY 2016 - $3.5 billion
FY 2017 - $3.57 billion
FY 2018 - $3.65 billion
FY 2019 - $3.73 billion
FY 2020 - $3.82 billion

The Government Affairs Division (GOV) of the Texas Department of Transportation (TxDOT) is developing a comprehensive review of the entire legislation and has begun work with the Federal Highway Administration’s (FHWA) Texas Division on an implementation plan and joint implementation working groups for this new public law. Below are select items of specific interest to Texas.

<u>Interstate 69</u>

The FAST Act addresses Oversize/Overweight (OS/OW) vehicles in the Interstate 69 corridor as the corridor is developed and designated. Specifically, for any segment in the State of Texas, of United States Route 59, United States Route 77, United States Route 281, United States Route 84, Texas State Highway 44, or another roadway designated as Interstate Route 69, a vehicle that could operate legally on that segment before the date of the designation may continue to operate on that segment.

<u>Interstate 14</u>

This legislation adds the Central Texas Corridor (and designates it Interstate 14) to the High Priority Corridor System. The Central Texas Corridor will commence at the logical terminus of Interstate 10, generally following portions of United States Route 190 eastward, passing in the vicinity Fort Hood, Killeen, Belton, Temple, Bryan, College Station, Huntsville, Livingston, and Woodville, to the logical terminus of Texas Highway 63 at the Sabine River Bridge at Burrs Crossing.

<u>TIFIA</u>

The FAST Act expands eligibility for the Transportation Infrastructure Finance and Innovation Act (TIFIA) program by allowing states to use funds from the National Highway Performance Program, Surface Transportation block grant program, and National Significant Freight and Highway Program to pay the subsidy and administrative costs associated with providing TIFIA credit assistance. The amount of funding allocated to the program per year has been decreased from $1 billion a year to the following amounts for each year of the FAST Act:

FY 2016 - $275 million
FY 2017 - $275 million
FY 2018 - $285 million
FY 2019 - $300 million
FY 2020 - $300 million

Title II of the FAST Act includes additional modifications to improve access to the TIFIA program and expand leveraging opportunities. Specifically, it updates the TIFIA program to enable it to be better utilized by rural areas and increases accessibility for small projects. This is accomplished by using the leveraging ability of TIFIA to support state infrastructure banks and allowing the U.S. Department of Transportation (USDOT) to set-aside TIFIA funding in order to replace the fees typically collected from TIFIA borrowers to pay for independent financial analysis and outside counsel for rural projects.

The FAST Act also directs USDOT to establish a streamlined application process for use by an eligible applicant under certain circumstances. It also makes transit-oriented development projects eligible to apply for TIFIA loans and reinstates the ability of a state to capitalize their state infrastructure bank with their federal-aid highway funds for fiscal years 2016 through 2020.

Lastly, the conference report codifies an existing USDOT practice of allowing costs related to highway projects delivered by a public-private partnership that uses an advance construction authorization coupled with the availability payment concession model to be eligible for federal aid reimbursement.

Managed/HOV Lanes

This legislation addresses the underutilization of tolling pilot programs created previously by surface transportation authorization law. States (North Carolina, Virginia, and Missouri) 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 National Environmental Policy Act (NEPA) process and executing a toll agreement with USDOT. 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.

Surface Transportation Program (STP) Block Grant

The FAST Act converts the Surface Transportation Program (STP) to a block grant program. It also increases the amount of STP funding that is distributed to local governments from 50 percent to 55 percent over the life of the bill. The Act provides states and local governments with increased flexibility by rolling the Transportation Alternatives Program into STP, and allowing 50 percent of certain transportation alternatives funding sub-allocated to local areas to be used on any STP-eligible project.

Congestion Mitigation and Air Quality (CMAQ)

The conference report expands the flexibility for the use of Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds for rural states and for the use of CMAQ funds for port-related freight operations and vehicle-to-infrastructure communications equipment.

Freight

The FAST Act rewrites 23 U.S.C. §167 to create a new formula freight program that will direct between $1.15 billion (in FY 2016) to $1.50 billion (in FY 2020) per year of total highway formula apportionments to a new formula freight program. Larger states (any state which has over two percent of the United States' total mileage on the National Highway Freight Network) would be required to spend their annual freight apportionment on projects on the primary highway freight system, on critical rural freight corridors, or critical urban freight corridors (all of which are designated pursuant to provisions in Section 1116 of the Act). States with less than two percent of the total National Highway Freight Network (NHFN) miles would be able to spend their money on projects on any part of the NHFN within that state. States can obligate up to 10 percent of their total freight apportionment for intermodal or freight rail projects.

In addition to the formula program, USDOT will administer a new competitive grant program entitled the Nationally Significant Freight and Highway Projects (NSFHP) program. The NSFHP program will facilitate the construction of infrastructure projects that are difficult to complete solely using existing federal, state, local, and private funds. Among other purposes, projects supported by this program will reduce the impact of congestion, generate national and regional economic benefits, and facilitate the efficient movement of freight.

Border Funding

The FAST Act allows states that border Canada or Mexico to designate up to five percent of its STP Block Grant funding for border infrastructure projects. In FY 2016, the State of Texas designated five percent of its STP funds for this purpose.

Project Delivery and Environmental Streamlining

This legislation provides various NEPA changes including the requirement of approval checklists. The bill changes the NEPA assignment audit requirements from six audits over four years to one audit per year for the first four years (four audits total).

Categorical exclusions are expanded to include multimodal projects and emergency repair projects. Limited federal assistance categorical exclusion is now tied to annual inflation.

The bill also creates a new pilot program to allow up to five states to apply state environmental law to environmental reviews in place of NEPA. In addition, a new Federal Permitting Center is created to improve the permitting process for surface, aviation, ports and waterways projects over $200 million, and projects requiring Environmental Impact Statement-level review, or projects requiring permits from more than one federal agency.

Railroads

The FAST Act includes provisions to improve the United States' rail infrastructure and its intercity passenger rail service. The bill authorizes a new Consolidated Rail Infrastructure and Safety Improvements grant program to support a broad array of rail projects and activities, using cost benefit analysis principles for project selection, and repeals duplicative grant programs. It authorizes a Federal-State Partnership for the State of Good Repair grant program designed to improve critical rail assets with a backlog of deferred maintenance, such as the Northeast Corridor infrastructure. It also authorizes a Restoration and Enhancement Grant program to assist with, on a competitive basis, the initiation or restoration of routes formerly operated by Amtrak.

The FAST Act includes several provisions to improve the safety of highway-rail grade crossings, including grade crossing safety action plans, a private grade crossing study, and an evaluation on the use of locomotive horns at grade crossings. Additionally, the Act includes requirements to strengthen the safety of passenger rail, including locomotive recording devices, speed limit action plans, and locomotive alert systems.

The bill amends the Railroad Infrastructure Financing Improvement Act (RIFIA), to include several provisions designed to increase utilization of this program by streamlining USDOT's approval processes; mirroring programmatic features similar to the successful TIFIA program to make the Railroad Rehabilitation and Improvement Financing (RRIF) program a more flexible lender; and includes steps to develop partnerships that combine RRIF loans with other types of financing, including private financing. It also requires the Secretary to repay the credit risk premium, with interest, to a borrower that has repaid its RRIF loan, regardless of whether the loan is or was included in a cohort. The intent of this provision is for the Secretary to repay such credit risk premium, with interest, as soon as feasible but not later than three months after the date of enactment. Finally, the bill includes language that modifies general authority to provide direct loans under RRIF to include at least one of the eligible applicants in a joint venture.

Transit

The FAST Act introduces an expedited project delivery pilot program for capital investment grants, which aims to streamline the project delivery process for up to eight grants for new fixed guideway capital projects, core capacity improvement projects, or small start projects. This pilot specifically aims to expedite projects with less than 25 percent federal funding that receive support from public-private partnerships.

The Act also amends the Federal Transit Administration's Buses and Bus Facilities grant program to allow recipients in a specific state to pool their formula funds to allow for the accommodation of larger scale procurements. In addition, it reinstates a competitive grant bus program (which will receive between $268 and $344 million per year) which includes a 10 percent rural set-aside and a cap directing that not more than 10 percent of all grant amounts can be awarded to a single grantee. It also allows states to submit state-wide applications for bus needs, which would allow the state to distribute competitively, awarded funds.