CALIFORNIA SENATE OFFICE OF RESEARCH

JANUARY 12, 2016

Federal Update

CONGRESS DELIVERS LONG-AWAITED TRANSPORTATION ACT

OVERVIEW

On December 4, 2015, President Obama signed the Fixing America's Surface Transportation Act (FAST Act), authorizing federal highway, transit, safety, and rail programs for the next five federal fiscal years at a cost of approximately $305 billion. The bill is the first long-term reauthorization of the federal surface transportation program since the enactment of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act—A Legacy for Users in 2005.[1]

The federal surface transportation program is funded primarily with federal fuel excise tax revenue, which is deposited into the federal Highway Trust Fund. Historically, Congress has adjusted this tax periodically to address increased transportation needs and to offset inflation. However, the tax has not been adjusted since 1993. Authorized expenditures under the FAST Act are projected to outpace available fuel tax revenues by an average of about $14 billion/year, a shortfall that the legislation addresses through the transfer of approximately $70 billion in General Fund revenue. The law offsets this expenditure with various funding maneuvers, including the transfer of $54 billion from a Federal Reserve surplus account, $6.9 billion from a cut in the dividend rate paid to banks by the Fed, and funds generated from sales out of the strategic petroleum reserve.

[1] In 2012, Congress passed Moving Ahead for Progress in the 21st Century (MAP–21), which substantially restructured the surface transportation program, consolidating more than 100 programs and substantially expanding states' flexibility, while also requiring the development and use of measurable performance standards. However, while previous authorizations typically had covered five or six years, lack of agreement on an adequate funding mechanism led Congress to limit the term of the bill to two years.

FUNDING

The $305 billion authorized under the FAST Act includes approximately $225 billion for the federal-aid highway program, approximately $61 billion for federal transit assistance, and approximately $19 billion for other programs.[2] Of the transit funds, nearly $49 billion is distributed to regions and transit providers by formula, while the remaining $12 billion is available for discretionary grants, mostly for capital improvements and grants for implementation of positive train control. Most highway program funds are apportioned to states, also by formula.

The FAST Act increases funding for both highway and transit by approximately 15 percent over the life of the bill. Annual highway program funding will increase by approximately 5 percent in the first year, from $41 billion in FY 2015 to $42.1 billion in FY 2016, and an additional 10 percent, to $47 billion, in FY 2020. Annual transit funding will increase by 10 percent in the first year, from $10.7 billion in FY 2015 to $11.8 billion in FY 2016, and by an additional 5 percent, to $12.6 billion, in FY 2020.

California will receive approximately $19.4 billion in highway program funds and $6.8 billion in transit funds over the five-year life of the FAST Act.

FEDERAL-AID HIGHWAY PROGRAM

The vast majority (approximately 93 percent) of federal-aid highway program funds are apportioned to states, by formula, through a series of core programs. The FAST Act largely preserves the structure of Moving Ahead for Progress in the 21st Century (MAP–21), the previous federal reauthorization bill, with some modifications, including creation of two new initiatives focused on freight. Under the FAST Act, California will receive the following average annual apportionments from each of these programs:

- ***National Highway Performance Program (NHPP)—($2 billion)***—The largest of the federal highway programs, NHPP is used by states to support the condition and performance of the National Highway System (NHS), as well as to construct new facilities. The FAST Act expands eligibility under this program to include bridges that are not part of the NHS and allows states to use these funds to cover subsidy and administrative costs of the Transportation Infrastructure Finance and Innovation Act (TIFIA) Program (see Other Key Provisions on p. 5).

[2] The FAST Act also funds the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration, and unlike past highway and transit bills, also authorizes $10 billion in General Fund expenditures for the Federal Railroad Administration and Amtrak.

- ***Surface Transportation Block Grant Program (STBGP)—$900 million/year***—The most flexible source of federal funds, it can be used by states and localities on any federal-aid-eligible highway, bike/pedestrian, or transit capital facility. Historically, at least 50 percent had to be sub-allocated to localities. The FAST Act gradually increases this minimum to 55 percent.

- ***Transportation Alternatives Program set-aside—$70 million/year***—Typically funds projects such as on- and off-road pedestrian and bicycle facilities, non-driver access to public transportation, recreational trails, and safe routes to school projects.[3]

- ***Recreational Trails set-aside—$5.75 million/year***—Funds are set aside for off-highway recreational trails projects.[4]

- ***Highway Safety Improvement Program (HSIP)—$203 million/year***—Funds projects to reduce fatalities and serious injuries on all public roads. Requires a data-driven strategic approach.

- ***Congestion Management and Air Quality (CMAQ)—$480 million/year***—Targets air quality non-attainment/maintenance areas for projects to reduce congestion and improve air quality.

- ***Rail-Highway Grade Crossings—$16.5 million/year***—A set-aside within the HSIP specifically to target the elimination of hazards at rail-highway crossings.

- ***Metropolitan Planning Program—$52 million/year***—Federal apportionment to support statewide and regional planning activities.

Among the most significant changes under the FAST Act is the expanded focus on freight. While MAP–21 had required every state to develop a freight plan with an eye toward creation of a national freight network, it provided no funding. In contrast, the FAST Act creates the following:

- A $1.2 billion/ year National Freight Program targeted toward building this network. California will receive an average of $116 million/year.

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[3] In MAP–21, this was a stand-alone program. The FAST Act makes it a funding set-aside within the Surface Transportation Block Grant Program.

[4] In MAP–21, this was a set-aside within the Transportation Alternatives Program. The FAST Act makes it instead a funding set-aside within the Surface Transportation Block Grant Program.

- A $900 million/year competitive grant program for Nationally Significant Freight and Highway Projects. States, regional, and local governments are all eligible to apply for these funds, individually or in groups.

PUBLIC TRANSPORTATION

Of the $61 billion in the FAST Act for public transportation, nearly $49 billion comes from the Highway Trust Fund and is allocated through various formula grants. The remaining $12.2 billion comes from the General Fund, subject to separate appropriation. The vast majority of these funds ($11.5 billion) are allocated to competitive grants for capital investment. A small amount ($200 million) also is available for grants to assist commuter railroads in implementing positive train control technology.

As with the core highway programs, the FAST Act makes no major changes to the core transit programs.

- ***Urban Area Formula Grants***—The largest public transportation formula program provides capital, planning, and in some cases, operating revenue to transportation agencies. The program receives a modest boost in funding from $4.5 billion in FY 2015 to $4.9 billion in FY 2020.

- ***State of Good Repair Grants***—Provides grants to repair and upgrade rail and high-intensity bus systems (including bus rapid transit). Funding for this program is increased from $2.2 billion in FY 2015 to $2.5 billion in FY 2016 and $2.7 billion in FY 2020. This represents more than a 15 percent increase in the first year of the FAST Act and a more than 23 percent increase over five years.

- ***Rural Formula Grants***—Provides funds to areas with a population under 50,000. This program will grow by 10 percent over the life of the FAST Act, from $608 million in FY 2015 to $673 million in FY 2020.

- ***Bus and Bus Facilities***—Funds replacement, rehabilitation, and purchase of buses and certain equipment. The FAST Act increases annual funding from $428 million in FY 2015 to $464 million in FY 2020. In addition, the bill adds a new competitive grant program targeted at aging bus fleets. The program starts at $216 million in FY 2016 and grows to $344 million in FY 2020.

OTHER KEY PROVISIONS

- ***TIFIA Program***—TIFIA provides a means of federal credit assistance for states to finance major transportation projects in the form of direct loans, loan guarantees, and lines of credit. TIFIA loans generally have lower interest rates and more flexible repayment schedules than other types of financing. To qualify, a project sponsor must have a reliable source of revenue to pledge as repayment (i.e. toll, tax revenue). The FAST Act provides $275 million annually for TIFIA in FY 2016 and FY 2017, and increases the level to $300 million in FY 2020. This represents a substantial reduction from the $1 billion in annual funding provided in MAP–21. The FAST Act also reduces from $25 million to $10 million the threshold above which a project can qualify for TIFIA financing. The legislation also allows states to use NHPP funds to cover subsidy and administrative costs associated with TIFIA.

- ***Environmental Streamlining***—The FAST Act establishes the Environmental Review Streamlining Pilot Program, which will allow a maximum of five states that have assumed federal National Environmental Policy Act (NEPA) Assignment authority (which includes California) to substitute their state environmental review laws for NEPA requirements, provided that the state's review program is deemed substantially equivalent to federal law. The legislation also allows participating states to select up to 25 local governments to participate in the program. The law requires that, within nine months of enactment, the U.S. Department of Transportation (USDOT), in consultation with the Council on Environmental Quality, must promulgate a rule-making establishing the criteria for states to demonstrate that their laws are equivalent to NEPA.

- ***Tolling Authority***—The FAST Act makes minor changes to provisions in law restricting states' authority to toll interstate facilities. Under current law, any state may impose tolls on new interstate capacity but must maintain free access to existing capacity. Three states (Virginia, Missouri, and North Carolina) have special authority under the 1998 Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP) to impose tolls on existing interstate capacity. However, none of those states has ever successfully implemented this authority. The FAST Act modifies the ISRRPP, providing for other states to apply to replace those currently in the program in the event that the current participants continue to not move forward. However, it also requires that any state applying for a slot in the program enact legislation allowing a toll project to move forward.

- ***Amtrak/Passenger Rail***—The FAST Act authorizes approximately $8 billion in grant funding for Amtrak over the life of the bill, including $1.45 billion in FY 2016.

This represents a small increase above the $1.39 billion authorized in FY 2015. However, the FAST Act significantly restructures the program such that separate authorizations will now be made for the Northeast Corridor ($2.5 billion total) and for the National Network ($5.5 billion total), which includes California. The legislation also creates a State-Supported Route Committee intended to facilitate a more collaborative relationship between states, Amtrak, and USDOT regarding state-supported routes.

- ***Research and Innovation***—The FAST Act includes a number of technology, research, and innovation-focused provisions, including the following:

  - Authorizes nearly $100 million over the life of the act for grants to states demonstrating user-based alternative revenue mechanisms to maintain long-term Highway Trust Fund Solvency. This could include mileage-based user-fee programs such as those California is exploring under the pilot authorized by SB 1077 (DeSaulnier), Chapter 835, Statutes of 2014.

  - Establishes a $60 million/year Advanced Transportation and Congestion Management Technologies Deployment grant program to facilitate development of model deployment sites for the large-scale installation of advanced technologies that improve safety, efficiency, system performance, and infrastructure return on investment.

  - Explicitly makes vehicle-to-infrastructure communication technology an eligible expenditure within four major Federal Highway Adminstration core funding programs (NHPP, STBGP, HSIP, and CMAQ).

- ***Rail Transportation of Crude Oil***—The FAST Act updates federal safety requirements for the transportation of crude oil by rail, building on USDOT's 2015 safety standards. The FAST Act requires all tank cars carrying Class 3 flammable liquids (including crude oil) to meet the 2015 safety requirements (previously only some had to meet this requirement). In addition, the FAST Act requires USDOT to formally require Class 1 railroads to generate and furnish to state emergency responders composition information about certain flammable liquid shipments.

- ***Export-Import Bank***—The FAST Act reauthorizes this independent, self-sustaining executive branch agency for four years. The bank's mission is to facilitate the export of U.S. goods and services by providing U.S. businesses with financing tools to help them compete for business globally. The agency's charter expired earlier in 2015.

ADDITIONAL RESOURCES

This update includes a summary of some key provisions of the FAST Act but is not intended to be comprehensive. The following links include additional detail and analysis.

- House Transportation and Infrastructure Committee—The Web site includes the official summary of the bill, as well as the full text and a joint explanatory statement. http://transportation.house.gov/fast-act/

- American Association of State Highway and Transportation Officials—The association has published a detailed and comprehensive summary of the entire act. http://fast.transportation.org/Documents/AASHTO%20Summary%20of%20FAST%20Act%202015-12-16%20FINAL.pdf

- California Department of Transportation (Caltrans)—Caltrans has published a memorandum outlining key provisions of interest to California. http://www.dot.ca.gov/hq/transprog/map21/implementation/ca_ftl_fastact_pl114-094.pdf

- National Conference of State Legislatures (NCSL)—The NCSL has posted a short, easy-to-read summary and analysis of key provisions. http://www.ncsl.org/documents/standcomm/scnri/FAST_Act_Analysis.pdf

Written by Ted Link-Oberstar. The California Senate Office of Research is a nonpartisan office charged with serving the research needs of the California State Senate and assisting Senate members and committees with the development of effective public policy. The office was established by the Senate Rules Committee in 1969. For more information, please visit **http://sor.senate.ca.gov** or call **(916) 651-1500.**