



**National Conference of State Legislatures
Office of State-Federal Relations**

**Fixing America's Surface Transportation Act:
An Overview**

On Dec. 4, 2015, the president signed into law the [Fixing America's Surface Transportation \(FAST\) Act](#), a \$305 billion, five-year reauthorization of federal surface transportation programs. Its passage ends the decade-long period since the last long-term reauthorization. Of the \$305 billion authorized, \$284 billion is specifically for surface transportation—highway, transit, highway safety and pedestrian and bicycle infrastructure. Overall, the FAST Act provides noticeable increases in funding, with levels for highways increasing by 5 percent in the first year and 15 percent by 2020. Transit funding received an 8 percent increase in the first year and 18 percent by 2020. Below is a breakdown of the key funding and policy changes for states as well as an explanation of how, after so many years, Congress was able to provide the necessary funding for a long-term surface transportation reauthorization.

Fully Funded: A Little History

On Aug. 10, 2005, President Bush signed the [Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users](#) (SAFETEA-LU), which authorized and funded federal surface transportation programs from 2005-2009. It was during this time period that receipts for the Highway Trust Fund (HTF) began to [consistently fall below](#) congressional approved annual spending levels. This growing annual deficit was due to three primary factors:

- Decline in the value of the federal gas tax due to inflation, which has not been increased since 1993.
- Decline in total vehicle miles travelled (VMT) and the more significant decline in VMT per capita.
- Increasing fuel economy of the U.S. automobile fleet.

To ensure that the HTF remained solvent—legally, it is not allowed to have a negative balance—Congress approved transfers from the General Fund. These transfers were offset with “pay-fors,” either reductions in spending or revenue increases, to ensure a net zero impact on the overall federal budget. Over the course of 2008-2015, Congress [approved approximately \\$70 billion in transfers](#) from the General Fund to the HTF. The decision by Congress to ensure that all transfers to the General Fund were offset with pay-fors made it more difficult to fully fund a long-term transportation bill. This led to a series of short-term extensions following the end of SAFETEA-

LU in 2009. After 10 short-term extensions in fewer than three years, Congress approved the [Moving Ahead for Progress in the 21st Century](#) (MAP-21), a two-year reauthorization. Although MAP-21 was unable to provide long-term funding certainty, it made a number of significant policy changes to federal surface transportation programs. Nearly six months before its expiration, however, updated HTF revenue forecasts predicted that the fund would become insolvent without additional General Fund transfers. While Congress was able to provide the needed funding to prevent the insolvency, it marked the return to short-term extensions of surface transportation funding, with Congress approving five over the next 26 months before the approval of the FAST Act.

As the FAST does not include any new user-based revenue provisions for the HTF, Congress had to cover five years' worth of HTF deficits to fully fund the bill. The Congressional Budget Office calculated this deficit to be [approximately \\$70 billion](#). The final conference report of the FAST Act includes a number of pay-fors to ensure the solvency of the HTF. The largest pay-for, \$53.3 billion, is a transfer of funds from the Federal Reserve's Surplus Account, a kind of savings account for the Federal Reserve, to the HTF. Congress also approved a reduction in the dividend payment to holders of Federal Reserve stock with the leftover funds, \$6.9 billion, being placed into the HTF. Additionally, the FAST Act also approves the sale of 66 million barrels of oil from the Strategic Petroleum Reserve over the course of the next 10 years with the revenues of the sales, \$6.2 billion, being transferred to the HTF.

While the pay-fors ensure the FAST Act is fully funded and will be able to provide consistent and increasing levels of funding to states, a significant and growing fiscal cliff exists in 2020, when the bill expires. Further, the absence of user fees to support increased funding levels in the FAST Act goes against the tide seen in the states, where since 2013, more than a third of states have ensured that higher user fees are the backbone of increased surface transportation revenue.

Federal-Aid Highways

The FAST Act maintains many of the core federal-aid highway programs established in MAP-21 and increases funding for these programs by 15 percent to \$43.4 billion by 2020.

National Highway Performance Program (NHPP)

The NHPP is the largest of the federal-aid highway programs and provides funding to support the condition and performance of the National Highway System (NHS) as well as for the construction of new facilities on the NHS. Funding for NHPP is formula based with total funding increasing from \$21.9 billion in 2015 to 24.2 billion in 2020. Additionally, the FAST Act now allows states to use funding from the NHPP on bridges that are not part of the NHS. States may now also use NHPP funds to cover subsidy and administrative costs associated with TIFIA loans.

Surface Transportation Block Grant Program (STBGP)

The STBGP, formerly the Surface Transportation Program, remains a formula grant. The STBGP provides the most flexible funding of all the programs within the federal-aid highway program as funding can be used for projects covering highways, transit, bridges, tunnels, bicycle and pedestrian infrastructure, electric vehicle charging infrastructure and more. Funded at \$10.1 billion in 2015, funding will increase to \$12.1 billion in 2020

Additionally, the FAST Act increases the percentage of STBGP funds that states must then allocate to local areas from the current 50-50 percent split to 55-45 percent in favor of local areas. This change would increase at 1 percent per year so that in FY 2016 it is a 51-49 percent split. One of the most contentious amendments that was proposed in the U.S. House of Representatives would have further reduced state funding from this program by establishing a 60-40 split. However, NCSL was able to work with the National Governors Association and the American Association of State Highway and Transportation Officials [to prevent the amendment's passage](#).

Additionally, the Transportation Alternative Programs (TAP) was rolled into the STBGP from its previous position as a stand-alone program. Funding for TAP, however, remains a specific set aside within the STBGP and is now a fixed amount—\$820 million-\$850 million— rather than a percentage of state funds, as in the past. TAP funds can now also be used to help develop habitat for pollinators on roadsides and other rights of way.

Congestion Mitigation & Air Quality (CMAQ)

CMAQ funds are directed toward projects and programs that aim to reduce emissions of transportation-related pollutants and help meet the requirements of the Clean Air Act. Projects that qualify usually aim to aid traffic flow, including projects to improve signalization, construct HOV lanes, add turning lanes, enhance transportation systems management and operations that mitigate congestion and improve air quality. Overall funding was increased slightly from its current level of \$2.3 billion to \$2.5 billion in 2020

Highway Safety Improvement Program (HSIP)

HSIP is another core federal-aid highway program aimed at significantly reducing traffic fatalities and injuries on public roads. Formula funding for HSIP was increased from \$2.2 billion currently to \$2.4 billion in 2020, although the bill removed states' abilities to use HSIP funds for non-infrastructure projects.

Additional funding for highway safety comes through both the Highway Safety Grant Program and the National Priority Safety Grant Program, commonly referred to as Section 402 grants and Section 405 grants respectively. Both of these programs are funded via the National Highway and Traffic Safety Administration (NHTSA). Section 402 grants, which are aimed at improving driver behavior and reducing deaths and injuries from motor vehicle crashes, are formula based and currently funded at \$230 million but would see an increase to \$280 million by 2020.

Section 405 grants are actually a number of subgrants that provide funding on a competitive basis to states to improve highway safety in a number of areas including impaired driving, occupant protection, distracted driving and more. States are eligible to apply if they have met certain qualifications that pertain to each subgrant. The FAST Act increases state flexibility to allow more states to qualify for these grants. As an example, in 2015, only one state qualified for the distracted driving subgrant. The FAST Act also created a new subgrant focusing on education and enforcement to reduce bicycle and pedestrian fatalities and injuries.

Additional Highway Programs

National Highway Freight Program

The FAST Act makes a number of changes to the National Highway Freight Program. The bill modifies the components of the National Highway Freight Network to now include the Interstate Highway System, non-interstate highway segments in the existing primary freight network, as well as any additional non-interstate segments as designated as such by states. States are also required to create a freight plan that highlights both immediate and long-term needs and are further encouraged to consult with a state freight advisory committee. Formula funding for states as part of the National Highway Freight Program is \$1.14 billion in 2016 and rises to \$1.5 billion by 2020.

Additionally, the FAST Act also creates a new competitive grant program, the National Significant Freight and Highway Projects, funded at \$800 million in FY 2016 and increasing by \$50 million per year after. Projects must be larger than \$100 million and improve the movement of freight and people as well as increase U.S. global competitiveness. Twenty percent is set aside for rural projects.

The FAST Act also requires a redesignation of the national freight network every five years to reflect changes in freight flows.

Transportation Infrastructure Finance and Innovation Program (TIFIA)

The TIFIA program provides federal credit assistance in the form of direct loans, loan guarantees, and standby lines of credit to finance surface transportation projects of national and regional significance. Although annual funding was significantly reduced from the \$1 billion as provided for in MAP-21 to \$275 million in 2016 by the FAST Act, it was widely believed that the reduction was not due to the lack of popular support for the program, but because the program already had a significant leftover balance from previous years. Additionally, TIFIA funds can now be accessed by projects greater than \$10 million, significantly below the previous \$25 million qualifying level. Transit Oriented Development projects can also now qualify for TIFIA funding.

Surface Transportation System Alternatives

The FAST Act creates a new state-based pilot program that allows a state or group of states to receive federal funding to demonstrate alternative funding mechanisms that employ user fees to maintain the solvency of the HTF. Money would be used to test the design, acceptance and implementation of such an alternative as well as for outreach to increase public awareness on the need for alternative funding. The program is funded at \$15 million in 2016 and \$20 million thereafter. NCSL advocated heavily for the inclusion of this program based on our [policy resolution](#) to solve America's long-term transportation crisis

State Authority to Toll

Unfortunately, the FAST Act did not make any major changes to the current restrictions states face in tolling existing interstates within their boundaries. States are allowed to toll any newly installed interstate capacity but must maintain free access to existing capacity. The bill does update the Interstate System Reconstruction and Rehabilitation Pilot Program, a pilot program that provides participating states with additional authority to toll existing interstate capacity.

States applying for a slot in the program must have legislation allowing a tolling project to move forward. Additionally, it requires the three states currently participating in the pilot program to meet this requirement one year after enactment of the FAST Act.

Public Transportation

The FAST Act increases the total authorized funding for Federal Transit Administration (FTA) programs from \$10.7 billion in FY 2015 to \$12.6 billion by FY 2020, totaling \$61.1 billion over the life of the bill, representing an 18 percent increase by FY 2020. However, funding is split between the HTF (\$48.9 billion) and the General Fund (\$12.2 billion), which requires an actual appropriation from Congress. Similar to the federal-aid highway programs, the FAST Act did not make major changes to core transit programs.

Urbanized Area Grants

The largest public transportation formula grant provides capital, operating and planning assistance for mass transportation. The program received an increase in annual funding from \$4.5 billion in 2015 to \$4.9 billion in 2020. Additionally the suballocation of funding to areas with a population of greater than 200,000 was increased from 1.5 percent to 2 percent.

State of Good Repair

These formula grants are provided to help repair and upgrade rail transit systems, along with high-intensity bus systems, including bus rapid transit. Annual funding was increased from \$2.2 billion in 2015 to \$2.7 billion in 2020. Additionally, the percentage share of a project that federal funds can cover was increased to 80 percent.

Rural Formula Grants

This program provides formula grants to areas with a population under 50,000 and its funding level was increased from \$608 million in 2015 to \$673 million in 2020. Of this, \$35 million a year is reserved for public transportation on Native American reservations.

Bus and Bus Facility

Currently, this program provides capital funding via formula to replace, rehabilitate and purchase buses and other eligible equipment for such facilities. Funding was increased from \$428 million in 2015 to \$464 million in 2020 and the minimum state allocation was increased to \$1.75 million from \$1.25 million. Additionally, the FAST Act creates a new competitive funding stream for bus and bus facilities, starting at \$216 million in 2016 and rising to \$344 million in 2020 to update aging bus fleets.

Additional Provisions

Speeding Project Delivery

The FAST Act continues the reforms made in MAP-21 in an effort to further reduce the time it takes for a project to undergo environmental reviews. One significant addition was the establishment of the Environmental Review Streamlining Pilot Program, which would allow up to five states to substitute their state environmental review laws for federal National Environmental Policy Act (NEPA) requirements if a state's review program is deemed

substantially equivalent. Additionally, the monetary level set for categorical exclusions (CE) in MAP-21 was indexed to inflation. CE allows projects that receive a limited amount of federal funding to forgo certain reviews. The FAST Act would also now require the U.S. Department of Transportation (DOT) to establish a website aimed at increasing project transparency so that the public can better track those projects receiving federal funds and their environmental review status.

Amtrak

The FAST Act reauthorizes Amtrak at \$1.7 billion in 2016, and rises to \$2.5 billion by 2020 for operating and capital grants. Amtrak's overall funding, however, is significantly restructured so that separate authorizations are made for the Northeast Corridor and National Network. Additionally, the bill creates a State-Supported Route Committee for a more collaborative relationship between states, Amtrak and DOT regarding state-supported routes. The FAST Act aims to foster Amtrak station development opportunities for the private sector.

Transporting Crude Oil by Rail

The FAST Act further updates federal safety requirements for the transportation of crude oil by rail. This comes [after the release of safety rules in May](#) by the Pipeline and Hazardous Materials Administration. The provisions in the FAST include a new requirement that all tank cars carrying class three flammable liquids, which includes crude oil, meet the safety requirements for tank cars as outlined in May. Previously, only those tank cars part of a High Hazard Flammable Train had to meet this requirement. Additionally, U.S. DOT must now formally require Class I railroads to generate train composition information about certain flammable liquid shipments that is provided to State Emergency Response Commissions (SERCS)

Export-Import Bank

The FAST Act reauthorizes the Export-Import Bank for four years. Its authorization had lapsed earlier in the year.