FAST ACT IMPLEMENTATION: STATE AND LOCAL PERSPECTIVES

(115–10)

HEARING

BEFORE THE

SUBCOMMITTEE ON
HIGHWAYS AND TRANSIT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

APRIL 5, 2017

Printed for the use of the
Committee on Transportation and Infrastructure

Available online at: http://www.gpo.gov/fdsys/browse/
committee.action?chamber=house&committee=transportation

U.S. GOVERNMENT PUBLISHING OFFICE

24–912 PDF WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

BILL SHUSTER, Pennsylvania, *Chairman*

DON YOUNG, Alaska
JOHN J. DUNCAN, Jr., Tennessee, *Vice Chair*
FRANK A. LoBIONDO, New Jersey
SAM GRAVES, Missouri
DUNCAN HUNTER, California
ERIC A. "RICK" CRAWFORD, Arkansas
LOU BARLETTA, Pennsylvania
BLAKE FARENTHOLD, Texas
BOB GIBBS, Ohio
DANIEL WEBSTER, Florida
JEFF DENHAM, California
THOMAS MASSIE, Kentucky
MARK MEADOWS, North Carolina
SCOTT PERRY, Pennsylvania
RODNEY DAVIS, Illinois
MARK SANFORD, South Carolina
ROB WOODALL, Georgia
TODD ROKITA, Indiana
JOHN KATKO, New York
BRIAN BABIN, Texas
GARRET GRAVES, Louisiana
BARBARA COMSTOCK, Virginia
DAVID ROUZER, North Carolina
MIKE BOST, Illinois
RANDY K. WEBER, Sr., Texas
DOUG LaMALFA, California
BRUCE WESTERMAN, Arkansas
LLOYD SMUCKER, Pennsylvania
PAUL MITCHELL, Michigan
JOHN J. FASO, New York
A. DREW FERGUSON IV, Georgia
BRIAN J. MAST, Florida
JASON LEWIS, Minnesota

PETER A. DeFAZIO, Oregon
ELEANOR HOLMES NORTON, District of Columbia
JERROLD NADLER, New York
EDDIE BERNICE JOHNSON, Texas
ELIJAH E. CUMMINGS, Maryland
RICK LARSEN, Washington
MICHAEL E. CAPUANO, Massachusetts
GRACE F. NAPOLITANO, California
DANIEL LIPINSKI, Illinois
STEVE COHEN, Tennessee
ALBIO SIRES, New Jersey
JOHN GARAMENDI, California
HENRY C. "HANK" JOHNSON, Jr., Georgia
ANDRÉ CARSON, Indiana
RICHARD M. NOLAN, Minnesota
DINA TITUS, Nevada
SEAN PATRICK MALONEY, New York
ELIZABETH H. ESTY, Connecticut, Vice Ranking Member
LOIS FRANKEL, Florida
CHERI BUSTOS, Illinois
JARED HUFFMAN, California
JULIA BROWNLEY, California
FREDERICA S. WILSON, Florida
DONALD M. PAYNE, Jr., New Jersey
ALAN S. LOWENTHAL, California
BRENDA L. LAWRENCE, Michigan
MARK DeSAULNIER, California

SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

SAM GRAVES, Missouri, *Chairman*

DON YOUNG, Alaska
JOHN J. DUNCAN, JR., Tennessee
FRANK A. LOBIONDO, New Jersey
DUNCAN HUNTER, California
ERIC A. "RICK" CRAWFORD, Arkansas
LOU BARLETTA, Pennsylvania
BLAKE FARENTHOLD, Texas
BOB GIBBS, Ohio
JEFF DENHAM, California
THOMAS MASSIE, Kentucky
MARK MEADOWS, North Carolina
SCOTT PERRY, Pennsylvania
RODNEY DAVIS, Illinois
ROB WOODALL, Georgia
JOHN KATKO, New York
BRIAN BABIN, Texas
GARRET GRAVES, Louisiana
BARBARA COMSTOCK, Virginia
DAVID ROUZER, North Carolina
MIKE BOST, Illinois
DOUG LAMALFA, California
BRUCE WESTERMAN, Arkansas
LLOYD SMUCKER, Pennsylvania, *Vice Chair*
PAUL MITCHELL, Michigan
JOHN J. FASO, New York
A. DREW FERGUSON IV, Georgia
BILL SHUSTER, Pennsylvania *(Ex Officio)*

ELEANOR HOLMES NORTON, District of Columbia
JERROLD NADLER, New York
STEVE COHEN, Tennessee
ALBIO SIRES, New Jersey
RICHARD M. NOLAN, Minnesota
DINA TITUS, Nevada
SEAN PATRICK MALONEY, New York
ELIZABETH H. ESTY, Connecticut
JARED HUFFMAN, California
JULIA BROWNLEY, California
ALAN S. LOWENTHAL, California
BRENDA L. LAWRENCE, Michigan
MARK DESAULNIER, California
EDDIE BERNICE JOHNSON, Texas
MICHAEL E. CAPUANO, Massachusetts
GRACE F. NAPOLITANO, California
DANIEL LIPINSKI, Illinois
HENRY C. "HANK" JOHNSON, JR., Georgia
LOIS FRANKEL, Florida
CHERI BUSTOS, Illinois
FREDERICA S. WILSON, Florida
PETER A. DEFAZIO, Oregon *(Ex Officio)*

CONTENTS

Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

Bill Shuster
Chairman
Mathew M. Sturges
Staff Director

Peter A. DeFazio
Ranking Member
Katherine W. Dedrick
Democratic Staff Director

March 31, 2017

SUMMARY OF SUBJECT MATTER

TO:	Members, Subcommittee on Highways and Transit
FROM:	Staff, Subcommittee on Highways and Transit
RE:	Subcommittee Hearing on "FAST Act Implementation: State and Local Perspectives"

PURPOSE

The Subcommittee on Highways and Transit will meet on Wednesday, April 5, 2017, at 10:00 a.m. in 2167 Rayburn House Office Building to receive testimony from state and local authorities concerning the implementation of the *Fixing America's Surface Transportation* (FAST) *Act* (P.L. 114-94). The Committee will hear from representatives of the American Association of State Highway Transportation Officials (AASHTO), the American Public Transportation Association (APTA), and U.S. Conference of Mayors (USCM) .

BACKGROUND

The FAST Act

The FAST Act was enacted on December 4, 2015, and is the first long-term surface transportation reauthorization bill in a decade. The FAST Act reauthorizes federal surface transportation programs through fiscal year (FY) 2020. The FAST Act improves our Nation's infrastructure, reforms federal surface transportation programs, refocuses those programs on addressing national priorities, and encourages innovation to make the surface transportation system safer and more efficient. The FAST Act provides non-federal partners – state departments of transportation, public transportation agencies, and local entities, among others – with the needed certainty to make significant investments in the Nation's surface transportation system.

Federal-aid Highway Program

Title I of the FAST Act reauthorizes the Federal-aid Highway and highway safety construction programs through FY 2020, establishes new programs to promote the efficient movement of freight and support large-scale projects of national or regional significance, and makes other policy changes and reforms. A few of these programs, reforms, and policy changes are described below.

Refocuses on National Priorities

The FAST Act focuses on the importance of goods movement to the U.S. economy by establishing a new formula program for highway freight projects. It also emphasizes the need to address large-scale projects of national or regional importance by establishing a new competitive grant program, the Nationally Significant Freight and Highway Projects program, known as the FASTLANE grants program. Both programs provide limited eligibility for intermodal and freight rail projects. To address deficient bridges, the FAST Act continues the set-aside for off-system bridges, and expands funding available for on-system bridges located off the National Highway System.

Increases Flexibility

The FAST Act converts the Surface Transportation Program to a block grant program, maximizing the flexibility of the program for states and local governments. It also increases the amount of the program's funding that is distributed to local governments from 50 percent to 55 percent over the life of the bill.

Streamlines Reviews and Reduces Bureaucracy

The FAST Act streamlines the environmental review and permitting process to accelerate project approvals. It includes important reforms to align environmental reviews for historic properties. In addition, the FAST Act establishes a new pilot program to allow up to five states to substitute their own environmental laws and regulations for the *National Environmental Policy Act* (NEPA) if the state's laws and regulations are at least as stringent as NEPA. It also requires an assessment of previous efforts to accelerate the environmental review process, as well as recommendations on additional means of accelerating the project delivery process in a responsible manner.

Promotes Innovative Technologies

The FAST Act provides for the deployment of transportation technologies and congestion management tools that support an efficient and safe surface transportation system. It encourages the installation of vehicle-to-infrastructure equipment to reduce congestion and improve safety.

Focus on Highway Safety

The FAST Act increases the focus on roadway safety infrastructure and on the safety needs of pedestrians. In addition, there is an increase in funding to improve the safety of railway-highway grade crossings.

Public Transportation

The FAST Act reauthorizes the programs of the Federal Transit Administration (FTA) through FY 2020 and includes a number of reforms to improve mobility, streamline capital project construction and acquisition, and increase the safety of public transportation systems across the Nation. A few of these programs, reforms, and policy changes are described below.

Improves Safety

The FAST Act clarifies FTA's safety authority with respect to the oversight of, and responsibilities for, the safe operation of rail fixed guideway public transportation systems. It also requires the Secretary of Transportation (Secretary) to undertake a review of safety standards and protocols and evaluate the need to establish federal minimum public transportation safety standards. Finally, the FAST Act requires the Secretary to promote workforce safety through a rulemaking process.

Promotes Wise Investments

The FAST Act includes a number of reforms to the rolling stock procurement process in an effort to facilitate more cost-effective investments by public transportation agencies. It also addresses current purchasing power issues for smaller public transportation providers by supporting cooperative procurements and leasing.

Competitive Grant Programs

The FAST Act includes new competitive grant programs for buses and bus facilities, innovative transportation coordination, frontline workforce training, and public transportation research activities.

WITNESS LIST

Mr. J. Michael Patterson
Executive Director
Oklahoma Department of Transportation
On behalf of American Association of State Highway and Transportation Officials

Mr. Gary Thomas
President and Executive Director
Dallas Area Rapid Transit
On behalf of American Public Transportation Association

The Honorable Kasim Reed
Mayor
City of Atlanta, Georgia
On behalf of U.S. Conference of Mayors

FAST ACT IMPLEMENTATION: STATE AND LOCAL PERSPECTIVES

WEDNESDAY, APRIL 5, 2017

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:02 a.m., in room 2167, Rayburn House Office Building, Hon. Sam Graves (Chairman of the subcommittee) presiding.

Mr. GRAVES OF MISSOURI. We will go ahead and call the subcommittee to order. And I would like to say good morning and welcome all of our witnesses here today to the hearing. By now, we have all seen the reports of last week's fire and the resulting collapse of a section of I–85 northeast of Atlanta. This is a critically important piece of our infrastructure system, which carries over 400,000 cars a day. With that volume of traffic, it is amazing that there wasn't any loss of life in this incident. And I commend the State and local officials for responding so quickly to the crisis. I also want to commend the U.S. Department of Transportation for acting quickly to release emergency funds and provide assistance.

We are here to examine the implementation of the FAST Act [Fixing America's Surface Transportation Act] with our State and local partners. The FAST Act is the first long-term surface transportation reauthorization bill in a decade, and it is an important foundation for building a 21st-century infrastructure. The 5-year bill provides very much needed certainty and funding, so that our non-Federal partners can make smart, long-term investments.

The FAST Act is a forward-looking law that puts an emphasis on projects of national significance, the movement of freight, streamlining project delivery, and innovative solutions to transportation challenges. State departments of transportation and transit systems and local entities have the important task of delivering transportation projects to the communities. And as they carry out these projects, the witnesses have a firsthand view of how Federal transportation policies are being implemented by the U.S. Department of Transportation.

We look forward to building a 21st-century infrastructure with our State and local partners, and we are going to very much welcome their input today. I now recognize the ranking member of the subcommittee, Ms. Norton, for your opening statement.

Ms. NORTON. Thank you very much, Mr. Chairman. Chairman Graves, I am very grateful for this subcommittee hearing. I think it indicates that our subcommittee wants to get beyond all of the interest that we have heard on infrastructure, and see what we can really do. We know that a large infrastructure package, the idea of a large infrastructure package, which is on the minds of many in the administration and on our minds, is not going to magically appear. We did a lot of—and I am going to say I think deservedly so—a lot of self-congratulation when we passed the first surface transportation bill in 10 years, and I must say, I am very grateful, Mr. Chairman, that it was a good bipartisan effort. And I know you share with me the disappointment that in order to get any increase whatsoever after 10 years, we had to make a 6-year bill a 5-year bill.

I don't know how long we can keep that kind of disinvestment from going on. I say disinvestment because if you are not even investing in a state of good repair, much less the new infrastructure we need, you are not investing. We are disinvesting. Remember how we built this country. Ever since this idea of the Federal transportation infrastructure package was created by President Eisenhower, the country has understood that you can't be a great country unless you continuously invest in infrastructure of various kinds.

Now the Congressional Budget Office tells us that we face a $139 billion shortfall in the Highway Trust Fund just over the next decade, if we are trying to continue to fund the FAST Act funding levels. And we need $17 billion more a year than FAST Act levels at the Federal level to improve our infrastructure and to maintain a state of good repair.

I am very pleased that the President has said good things about infrastructure, so I hastened to get a hold of his so-called skinny budget, and was very disappointed to see really unheard of cuts to popular transportation programs. So instead of investing, after my hopes had been raised, for example, in transit, urgently needed to alleviate congestion, the President wants to stop all new investments in transit by cutting off the New Starts program.

I am grateful, nevertheless, for the continuing bipartisanship on this committee. I was pleased to sign a letter with Chairman Graves and the leadership of the full committee to urge the Appropriations Committee to fully fund all FAST Act programs as authorized for the remainder of 2017 and in the upcoming 2018 budget. I am still banking on a President that talks about $1 trillion proposal, at least supporting us as we fight to maintain the meager funding levels we had. And I am not pulling my hair out that the President's cuts will go through, because no matter who is President, the appropriators always rewrite the budget.

But I am concerned that the administration seems to be more enamored with pushing private capital and financing—which would end up making projects more expensive than traditional funding mechanisms—and regulatory reforms than making real investment. An investor-centered approach will do little to improve infrastructure across the Nation. I mean, you simply can't build your infrastructure and expect that toll roads will somehow pay for it. There must be a revenue stream, and for the modern era in American life, it has always begun with this committee and subcommittee. Nor can we streamline our way out of inadequate funding. Secretary Chao said recently the problem is not money.

Imagine saying that about roads and transit. The problem is always money. She didn't say that last part. That was editorializing.

She said it is the delays caused by the Government permitting processes that hold up projects for years, even decades, making them risky investments. But, in fact, if you check the data, only 4 percent of all infrastructure projects nationwide undergo any rigorous environmental review. Most of it is what you and I see every day, 90 percent of projects received from categorical exclusion through the categorical exclusion process, and are exempt from rigorous levels of review. A recent inspector general report also refutes the notion that more streamlining now is the prudent cost of action. It concludes that additional streamlining provisions in the FAST Act are actually slowing down the U.S. Department of Transportation's ability to implement the project delivery accelerations put into MAP–21.

In other words, piling streamlining measures on top of each other, before they can be implemented, simply does not help, and, frankly, does not happen. I have always defended opportunities for public participation in NEPA, and continue to believe that it helps us to improve the ultimate projects. Community input and buy-in are crucial to the successful and expeditious advancement of transportation projects. Gutting public participation in the name of cutting redtape is something that will harm our roads and will harm the constituents who use our roads and infrastructure.

I don't believe we can reinvent the wheel when it comes to transportation and infrastructure. I just think there is no way around our obligation as the Congress of the United States to provide the States and local governments with the funding and the flexibility that they alone know what to do with to produce smart and efficient projects, allowing the States, who have the wisdom, once we give them the money to go ahead.

I very much look forward to today's witnesses. I have read the headlines, Mayor Reed, about Atlanta and I–85. It will be interesting to hear what we can do and what you can do on that unforeseen circumstance. Thank you very much, and I look forward to the testimony. Thank you, Mr. Chairman.

Mr. GRAVES OF MISSOURI. Thank you, Ranking Member. I now turn to ranking member of the full committee, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. Thanks for this important hearing. I will just restate a few things because they do merit restating. We have an $836 billion backlog on unmet capital investment needs for highways and bridges; nearly 140,000 bridges need repair or replacement; and over $90 billion just to bring existing transit up to a state of good repair, let alone build out new transit options for people. Yet, we haven't increased the user fee here in Washington, DC, in a quarter of a century.

Over the past few years, 17 States have raised their gas tax, and nobody has been recalled. Nobody has lost their reelection, and it has not been a controversy. The American people get it. They are tired of sitting in traffic. They are tired of blowing out tires in potholes. They are tired of being detoured around weight-limited or closed bridges. They are tired of the decrepit state of our mass transit, and they want to see action.

So, today, I am sending Secretary Chao a letter urging her to come down and work with Congress to create a consensus around real investment, and real solutions for the Nation's infrastructure problems.

I am hearing a lot of talk about, well, it is going to be P3s; it is going to be infrastructure banks; it is going to be private tax credits, and we are going to streamline the Federal approval process. Let's address that briefly.

First off, most P3s are projects $1 billion or larger. You have got to have a rate of return. You have got to attract the investment. They have to be tolled, or some other way, you know, to recoup the investment, and they are generally 5-to-1 public money to private money. Now, the Speaker has said he wants 40-to-1 private money to public money. That means no more P3s. There are no investors out there who are going to put up at a 40-to-1 ratio and do a P3. They generally put up 10 to 15, at the most, 20 percent, and the rest comes from TIFIA or local bonding or State bonding, municipal bonds, whatever. That is myth number one.

Now, infrastructure, banks, private-activity bonds, you know, those are new forms of local borrowing. Again, they require a revenue stream, hence tolling or some other way of recouping the investment. And, of course, they do increase the costs.

Now Secretary Chao unfortunately was given some alternate facts by somebody. She stated: "Investors say there is ample capital available waiting to invest in infrastructure projects, so the problem is not money. It is the delays caused by Government permitting processes that hold up projects for years, even decades, making them risky investments." No. No. That is not the problem. In fact, we made 42 major policy changes for streamlining in MAP–21. Not all of those have been implemented yet. In fact, some of them have run into conflicts with the FAST Act. So, we did streamlining. We did more streamlining on top of streamlining. Let's get all that implemented and see if there is still any issues. I don't think you will find many. In fact, more than 90 percent of the projects go forward under categorical exclusion, which is basically filling out a few sheets of paper, and it might take you 1 month or 2 months at the most.

So that isn't the issue here. You can't streamline your way out of a lack of funding. So, you know, 4 percent of projects, 4 percent, require environmental impact statements. And as Ranking Member Norton noted, most of those are held up at the local or State level because of controversy surrounding those projects, redesign, and other things which came out in hearings, which are required under the NEPA process. But that is 4 percent of the projects. So 96 percent don't even have to go through a rigorous environmental review.

And a recent report by the Treasury looked at 40 economically significant transportation and water projects whose completion has been slowed or is in jeopardy—ah, proof positive about streamlining. No. The report found that a lack of public funding is, by far, the major factor hindering the completion of those projects.

So plain and simple, I got a provision in the FAST Act that says if Congress appropriates more money to transportation, it flows through the policies in the FAST Act. We don't need to spend a year or two rewriting the policies, arguing over transit highway split, arguing over enhancements, arguing over how much goes to freight, how much goes here, how much goes there, arguing. We don't have to go through any of the policy debate. All we need to do is have the guts to put up a little bit of money, and that is why I introduced A Penny for Progress. And as I have said before, if anybody around here thinks they are going to lose their election if they vote on something that caps the indexation increase at 1½ cents a gallon a year, then you don't belong here. Thank you, Mr. Chairman.

Mr. GRAVES OF MISSOURI. Thanks, Ranking Member. I will now introduce our panel. And first I would like to introduce Mr. Mike Patterson, who is the executive director of the Oklahoma Department of Transportation. He is testifying on behalf of the American Association of State Highway and Transportation Officials. We also have Mr. Gary Thomas, who is president and executive director of the Dallas Area Rapid Transit. And he is testifying on behalf of the American Public Transportation Association. And I would like to recognize Ms. Johnson of Texas to make a formal introduction of Mr. Thomas.

Ms. JOHNSON OF TEXAS. Thank you very much, Mr. Chairman. As a Representative from Dallas, I am proud to introduce not only a friend and partner, but a good executive, who is Mr. Gary Thomas, president and executive director of the Dallas Area Rapid Transit, which we call DART. He and I worked cooperatively together for many years to cultivate our great city of Dallas into an interconnected transit hub that it is today as the largest growing metropolitan area in the country.

He joined DART in 1998, and has since grown DART's light rail system into the Nation's longest and largest at 93 miles long. Under his leadership, DART has become a leading example for the Nation of how to effectively manage and grow a flourishing public transit network. I happen to know that DART also has very strong working relationships with our Federal partners at USDOT and the Federal Transit Administration, thanks to Mr. Thomas.

He is also very effective at cultivating strategic partnerships with local stakeholders to meet the needs of the robust multimode transit network in the Dallas metroplex. And with that, Mr. Chairman, I am proud to introduce Mr. Thomas to the committee with great anticipation to his testimony and his plea for money. Thank you, and I yield back.

Mr. GRAVES OF MISSOURI. Thank you, Ms. Johnson. And finally, we have the Honorable Kasim Reed, who is the mayor of Atlanta, Georgia, and he is testifying on behalf of the United States Conference of Mayors. And I now recognize Mr. Johnson of Georgia to make a formal introduction.

Mr. JOHNSON OF GEORGIA. I thank you, Mr. Chairman. It is my distinct pleasure to recognize and welcome my friend, Kasim Reed, mayor of Atlanta, to this hearing. As we convene this hearing this morning, I can think of no better witness to offer than the Honorable Kasim Reed. Mayor Reed, when he first came into office, he balanced Atlanta's budget, and he took care of the challenge of the unfunded pension system which had been languishing for many years. That has been taken care of successfully 6 years ago, or 7 years ago, actually. He has invested in hiring more police officers in Atlanta. Our crime rate continues to go down. Mayor Reed is the 59th mayor of the city of Atlanta, serving in that capacity since 2010. Mayor Reed is known for building relationships and working in a bipartisan way with local, State, and Federal stakeholders on economic development and transportation issues.

During his tenure, Atlanta has experienced significant economic development and a population boom. For instance, his work with Governor Nathan Deal and the Obama administration to obtain Federal support for the Port of Savannah Harbor Expansion Project, has resulted in much economic development for the Atlanta region and for the State of Georgia. The city has responded by undertaking an ambitious agenda to upgrade roads and bridges and improve the city's transportation infrastructure.

The city of Atlanta, under Mayor Reed's leadership, is currently undergoing a historic $2.6 billion expansion of the Metropolitan Atlanta Rapid Transit Authority, or MARTA, as well as expanding and completing unique projects such as Atlanta's BeltLine, which is a 22-mile stretch of trails and transit around the city on abandoned railways. This project has opened up a lot of economic development in terms of new housing, rehabilitated housing, new residents coming in, businesses opening up, communities being created that are walkable, bikeable, and interconnected. And also, at the same time, he has presided over the opening of the Maynard H. Jackson Jr. International Terminal at the Atlanta Airport as Atlanta matures into a world-class city. He is overseeing, currently, a $6 billion expansion of the Hartsfield-Jackson Airport, an international airport, the world's busiest airport; at the same time building a state-of-the-art stadium for our dear Falcons. It nears completion, world-class facility with a retractable roof.

So much that we can talk about, Mayor Kasim Reed's leadership. He is leveraging the strength of partnerships with the State of Georgia, colleges and universities, and the private sector to build an innovative transportation infrastructure that ensures mobility and creativity for Atlanta's residents, businesses, and visitors, all taking place while Atlanta remains an affordable city where everyday working people can afford to live, work, and play. With that, I am proud to introduce to this committee, Mayor Kasim Reed.

Mr. GRAVES OF MISSOURI. Thank you, Mr. Johnson. With that I would ask unanimous consent that our witnesses' full statements be included in the record. Without objection, that is so ordered. And since your written testimony is going to be made part of the record, the committee would ask that you please limit your summary to 5 minutes.

With that, Mr. Patterson, we will start with you.

TESTIMONY OF J. MICHAEL PATTERSON, EXECUTIVE DIRECTOR, OKLAHOMA DEPARTMENT OF TRANSPORTATION, ON BEHALF OF THE AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS; GARY C. THOMAS, PRESIDENT AND EXECUTIVE DIRECTOR, DALLAS AREA RAPID TRANSIT, ON BEHALF OF THE AMERICAN PUBLIC TRANSPORTATION ASSOCIATION; AND HON. KASIM REED, MAYOR OF ATLANTA, GEORGIA, ON BEHALF OF THE UNITED STATES CONFERENCE OF MAYORS

Mr. PATTERSON. Thank you, Mr. Chairman, members of the committee. My name is Mike Patterson. I am the executive director of the Oklahoma Department of Transportation, ODOT, and I am here today to testify on behalf of ODOT and the American Association of State Highway and Transportation Officials, AASHTO. First, we want to thank you, Mr. Chairman, and other members of your committee, for your leadership and efforts to increase the efficiency of delivering transportation projects. In collaboration and in cooperation with the Federal Government, the State DOTs continue to seek opportunities and create solutions to solve the deteriorating national transportation system. All of us have come to realize that additional funding is important. That serves as a partial solution to the problem. The FAST Act's authorization of $305 billion for Federal highway safety, transit passenger rail programs from 2016 to 2020 could not have been timelier in spurring our economic growth and investment in our multimodal transportation infrastructure. But equally important to initiating and completing transportation investments in a timely matter involves major programmatic and policy reforms contained in both the FAST Act and MAP–21.

It is our hope that Congress will feel comfortable in seeking additional reforms that will provide further opportunities to improve the efficiency and effectiveness of transportation programs and project delivery while remaining responsible stewards of taxpayer resources in both human and natural environments.

Moving forward, we must develop a modern revenue model for funding our surface transportation investments. The days of almost total reliance on consumption tax for a fleet of ever-increasing fuel-efficient vehicles is nearing its end. What we consider innovative funding today must and will become a new normal for funding transportation. Until that time, it is imperative that the annual obligation authority in the FAST Act be fully honored, the structural cash flow deficit in the Highway Trust Fund be resolved, and the schedule of recisions of contract authority be abolished.

Even in today's environment of financing solutions, it remains imperative that direct funding of transportation investments remain the primary focus. The reality remains that most transportation projects cannot generate adequate revenue to service debt or provide the return on investment required by private sector equity holders.

Everyone recognizes that the FAST Act provides only a near-term solution to the Federal surface transportation funding. That is because the Highway Trust Fund continues to remain at a crossroads. The Highway Trust Fund has provided stable, reliable, and sometimes substantial highway and transit funding for decades since its inception in 1956, but this is no longer the case. Since 2008, the Highway Trust Fund has been sustained through a series of general fund transfers now amounting to $140 billion. According to the January 2017 baseline of the Congressional Budget Office, the Highway Trust Fund spending is estimated to exceed receipts by about $17 billion in fiscal year 2021, growing to about $24 billion by 2027.

Furthermore, the Highway Trust Fund is expected to experience a significant cash shortfall in 2021, since it can't incur a negative balance. AASHTO estimates that States may see a 40-percent drop from fiscal year 2020 to the following year, from $46.2 billion to $27.7 billion. In the past, such similar shortfall situations have led to the possibility of reduction in Federal reimbursements to States on existing obligations leading to serious cash flow problems for States and resulting in project delays.

Based on the Federal Surface Transportation Program's long track record of efficiency and flexibility, we recommend that any increase in Federal funds should flow through the existing FAST Act formula-based program structure, rather than through untested approaches that require more time and oversight.

Though certainly significant, benefits from investment in transportation infrastructure go well beyond short-term construction jobs created. A well-performing transportation network allows businesses to manage inventories and move goods more cheaply across a variety of suppliers and markets for their products and get employees reliably to work.

Congress should encourage the USDOT to implement the provisions of both MAP–21 and the FAST Act, fully consistent with legislative intent. An example of the problematic USDOT regulatory action is the onerous and the unanticipated requirement regarding Metropolitan Planning Organization, MPO, coordination. Although State DOTS and MPOs already exemplify the kinds of coordination sought, the new regulation added significant legal and administrative requirements that would serve as barriers to constructive and flexible approaches to planning and programming being implemented by States and MPOs today. Along with the Senate's recent passage of companion legislation to repeal this rule, we appreciate your committee's prompt action last week to bring this before the House floor.

Mr. Chairman, thank you for conducting this important hearing to bring a greater awareness of transportation infrastructure needs of the Nation, and thank you for the opportunity to provide testimony. We will be happy to answer any questions the committee may have.

Mr. GRAVES OF MISSOURI. Thank you, Mr. Patterson. Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Chairman. My name is Gary Thomas, and I am the CEO of Dallas Area Rapid Transit. I certainly appreciate the work that this committee does, and thank you, Congresswoman Johnson, for your kind introduction; but more importantly, thank you for what you do in our region. You have been the stalwart congresswoman for our region for many, many years, and we certainly appreciate the impacts that you have had.

I am grateful for the opportunity to talk about the impact that the partnership with the Federal Government, and most specifically, the FAST Act, is having on our community. DART was created in 1983, when north Texans voted to tax themselves a 1-percent sales tax to create a transit agency that, quite frankly, they didn't know what it was going to do at that point in time. Today, DART is a multimodal transit agency operating North America's longest light rail system in the fourth largest metropolitan area in the United States.

The 2.3 million residents of our 13-city, 700-square-mile service area, count on DART's network of bus, light rail, commuter rail, and paratransit services, to give them a choice to get them where they need to go every single day.

I have been part of the public transportation industry now for 30 years, and CEO since 2001. Public transportation is changing the way American communities grow. Equally importantly, we are seeing a significant return on the public investment. Transit-oriented development along DART rail lines has generated more than $7 billion in economic impact from new or planned construction. Additionally, in 2014 and 2015, there were 43,000 jobs that were created as a result of this development, resulting in nearly $3 billion in wages, salaries, and benefits.

Now in our region, customers insist on being mobile and being connected. Our GoPass mobile ticketing app was one of the first in the industry to respond to that demand with a multiagency and multimodal fare payment system. Just over 2 years ago, we began working with car and ride-sharing companies like Lyft, Uber and ZipCar to allow our customers to position—to provide a more complete trip. In other words, first-mile, last-mile opportunities. Now we are using a Federal Sandbox or Mobility on Demand Grant to make it easier for car and ride-sharing customers to connect with transit through that app.

Our congressional delegation knows the Federal funds invested in DART will generate significant economic impact, and a higher quality of life in our region. We are pleased to enjoy consistent, bipartisan support. We also believe that we need to bring money to the table. Voters in our 13 cities decided to dedicate a portion of their sales taxes to help fund transit in their communities. We used that to leverage Federal dollars. The FAST Act and its predecessors are difference makers in north Texas, so you can imagine the disappointment we had when we heard the details of the administration's 2018 budget.

DART's success is prompting calls for more service, as you might imagine. We are advancing plans for a second light rail line in downtown Dallas that we hope will be partially funded by a Core Capacity Grant. Unfortunately, the budget proposal would foreclose this possibility, so despite significant local investment, the project would be delayed at least 10 years without Federal funding support. Yet we need the capacity today.

We are also bringing an old railroad corridor, the Cotton Belt, to life with a new commuter rail line, adding a new rail connection to DFW International Airport. In response to local demand, we are able to accelerate that project by more than a decade with the help from a RRIF loan, a Railroad Rehabilitation and Improvement Financing loan through the Federal Railroad Administration.

Federal support has helped us complete the conversion of our bus fleet to compress natural gas. In addition, we are using Federal funds from the low- and no-emission bus program to purchase seven electric busses that will be in operation next year. We have been aggressive and intentional in seeking creative ways to fund and deliver our projects. It certainly doesn't hurt that we have been able to develop a reputation for consistently being under budget and ahead of schedule on our projects.

Our mobility challenges are difficult, but certainly can be solved. People in communities everywhere are working on solutions that meet their unique needs. They have the vision and the desire. They need help with the funding. We believe there is a role for local communities to partner with the Federal Government to work together to support these visions with sustainable, substantial, and predictable funding that the FAST Act provides. I cannot impress upon the committee strongly enough how important it is to keep the FAST Act intact and that commitment intact as we move forward.

Thank you very much, Mr. Chairman, and members of the committee. I look forward to answering any questions.

Mr. GRAVES OF MISSOURI. Thank you, Mr. Thomas. Mayor Reed.

Mr. REED. Thank you. Mr. Chairman, and members of the committee, I want to thank you for the opportunity to be here today. I also want to thank my congressman from Georgia——

Mr. SHUSTER. Mayor, could you pull that mic a little closer to you? I want to make sure I hear every single word you say.

Mr. REED. Thank you, Representative Shuster. I also want to thank my friend, Congressman Hank Johnson, for that kind introduction. I am very hopeful that my wife was watching. That made me feel good about myself. Thank you, Congressman Johnson. I also want to thank the administration and this committee for your help with regard to the crisis that we have faced with the collapse of the I–85 interstate in Atlanta, Georgia. The level of cooperation from our Federal partners could not have been stronger, and I wanted to take this opportunity to express my personal gratitude.

I come here today as the mayor of Atlanta and the chairman of the Transportation Committee for the U.S. Conference of Mayors. The challenge that we are having in Atlanta with I–85 and its collapse really points out that an overall transportation system is needed now more than ever. In fact, since we have been facing this challenge with I–85, the use of MARTA, the ninth largest public transit system in the United States, has increased by more than 29 percent as we work through the challenge we are facing. So alternatives, including resilient models, we think will be increasingly important in the 21st century.

But we are also investing in roads, which is an issue that I know is very important to members of this committee as well. In 2015, the State of Georgia passed H.B. 170 under the leadership of Governor Nathan Deal, which raised the gas tax in order to fund nearly $1 billion annually for bridge and road repair, so we are working hard to keep our own house in order, in addition to having a strong relationship with our Federal partners. The city of Atlanta is also moving full speed ahead and leading in our own way.

Last November, the city moved forward with a half a penny sales tax referendum, which would generate $2.6 billion for MARTA, and this item passed with 71 percent voter support. We also had a second ballot measure, a TSPLOST, for four-tenths of a penny, which will raise an estimated $300 million for infrastructure projects, and it received 68 percent support.

So I think it is important to realize that in Georgia and in the metro area, we are focusing on roads and partnership with the State, but we are also not leaving our transit responsibilities and capabilities behind. City residents are, indeed, voting with their pocketbooks, and businesses are voting with their feet.

In the last 42 months, after we have made these investments in improving our road infrastructure and our transit infrastructure, we have won 17 either regional or U.S. headquarters in the city of Atlanta. They include businesses like NCR, Honeywell, GE Digital, UPS. We have had the largest net increase of jobs into the city in more than 40 years after making these infrastructure investments. This would not have been possible without the stability that was provided by the FAST Act and your leadership in making that legislation possible. So I wanted to thank you for that.

In the last 2 years, Atlanta taxpayers have focused increasingly on making sure that we fund our share of infrastructure, and I think it is important to note that we ask this committee, as you develop future legislation, to always keep in mind what the local community has invested as we try to attract grants and Federal support. We are fixing roads and bridges, engineering more than 30 miles of complete street projects, including bicycle lanes and traffic light synchronization initiatives. As a result of all of these items, the city of Atlanta's credit rating has improved 7 positions, 7 positions, to AA plus as rated by Standard and Poor's, Moody's, and Fitch. The point we are making is, is that when you invest in these critical infrastructure items, the market responds, and the business community responds.

Modest expansion means the potential is very real for new light rail transit and flexible bus service that will connect with existing heavy rail and the Atlanta Streetcar systems. None of this would have been possible without your committee's support. Mr. Chairman, that concludes my testimony.

Mr. GRAVES OF MISSOURI. Thank you very much, Mayor. We will now turn to Chairman Shuster of the full committee.

Mr. SHUSTER. Sorry I am late. I did make it to hear all your testimony. I want to thank you all. Mr. Patterson, Mr. Thomas, thank you for bringing your expertise, and thank you, Mayor Reed, for being here again. Outside of the Ninth Congressional District, I think you are probably my favorite mayor in America, because you really understand infrastructure. I am so sorry for what happened down there on the bridge in I–85, but from what they are telling me, they are going to rebuild that bridge in about 80 days. This is certainly a tragedy. Thank goodness, thank God nobody was killed, but we ought to pay very, very close attention to how fast this moves because we need to learn from this as we did by the Interstate 35 bridge several years ago. They built that bridge in about just shy of 400 days. These are the kinds of things that we should learn from as you move forward because it is going to be critical to do that.

I was late because I spent an hour, just an hour with Secretary Chao. She came and briefed about 45 Members of Congress. She talked about the infrastructure bill and how important it is to the President; and, of course, 40, 45 Members were there asking a lot of great questions, and there is a Federal component to it obviously, and we have got to figure the revenues out, how we get more revenues. Public-private partnerships are a tool in the toolbox, but it is not the toolbox. It is a good tool; we need to make it better. And then figuring out how to unleash the private dollars. As I talk to people around the country, there is a $2 billion road project in California right now—$2 billion dollars, $50 million of it is Federal money. The rest is California money, and State, local, private-sector dollars, they want to get about $500 million or $600 million in a TIFIA loan, and they are dragging their feet. These are the kinds of things we have to get out of the way of the States and the locals to move these projects forward.

So I really appreciate the three of you being here today. Thank you so much. But I would be remiss if I didn't introduce and welcome to the committee the dean of the Secretaries of Transportation—the dean of the Secretaries of Transportation, from Oklahoma, Gary Ridley. Dean Ridley, it is good to see you. Just you being in the room, we are all learning through osmosis by you being here. So I really always appreciate you being here. I will say it again. I thank the three of you for being here, and thank you, Chairman Graves, for having this hearing.

Mr. GRAVES OF MISSOURI. With that we will open it up for questions. We will start with Mr. Barletta.

Mr. BARLETTA. Thank you. As most of my colleagues know, I grew up working in the road construction business, and that experience showed me how difficult it can be for State and local governments to move forward with projects when they are uncertain about Federal transportation spending. Not only that experience, I was a former mayor as well, so I saw it on both ends. And that uncertainty trickles down to private industry. My family would not hire more workers or purchase more equipment without knowing what the future might hold, without knowing what kind of work would be out there and for how long.

Now, under the FAST Act, Federal transportation funding runs out in 2020. Can any of you speak how this deadline affects your ability to move transportation projects forward?

Mr. THOMAS. Congressman, thank you for the opportunity to address that question. From the transit agency's perspective, we did a very detailed long-range financial plan, a 20-year financial plan, that identifies, assumes, in some regards, and identifies all of our revenue and also identifies all of our expenses, so our projects are very specific. We make sure that we know what we can build, when we can build them, and that we can operate and maintain them once we can build them. Not having the certainty beyond 2020 certainly prohibits us from that certainty, from that reliability of knowing what we can do in that 20-year plan. So it limits us as we look at one of the fastest, as our congresswoman said, the fastest growing regions in the country. We can't always predict and solve some of the transportation challenges that we need to be doing now to make sure that those projects are in place at that point in time. So the long-range funding is certainly critical for transit as we move forward. Thank you.

Mr. REED. As a follow-on to my colleague's comments, one of the things that we could absolutely do right now would be to smooth out the process around continuing resolutions, even under the FAST Act that we have right now. Whenever we have that tension period when we are waiting for the continuing resolution process, it affects our ability to budget. And our State DOT, for example, is in a position where it can't adequately prepare to get projects out waiting for that process. So that is something that is within the FAST Act structure right now that could help us push a great deal more dollars out to businesses to get folks working.

Mr. BARLETTA. Thank you. One of the biggest complaints I hear from people back home is that redtape and bureaucracy consistently hamper investment and innovation. Now, the FAST Act called for greater environmental streamlining to get needed projects to completion faster. Can any of you speak to the success of this attempt? Is it actually happening, or are permits still slow to be developed by stakeholder agencies?

Mr. PATTERSON. Congressman, as I mentioned in my comments, I really appreciate what has happened with streamlining and the effects that came out in the FAST Act and MAP–21. We still have some challenges. There are rulemaking processes that are still underway that we still don't have the rules in place, even after 5 years. But it is important that the rules come out right. We don't want them just to be expeditiously drawn up and be wrong. So we haven't felt all of the effects of your efforts and the rest of Congress' efforts to provide that streamlining, but we are hopeful that it does come to pass.

Mr. BARLETTA. Thank you. And just finally, there is no question, we need to find a sustainable funding source for infrastructure. We can't keep pulling these rabbits out of our hat and these one-trick ponies, one-hit wonders, whatever we want to call them here in Washington, but we need a sustainable funding source. I support a user fee. I think it is one way that we can do that. What solutions do any of you have, maybe, for a sustainable revenue stream that we could put in the Highway Trust Fund, to help the Highway Trust Fund?

Mr. PATTERSON. Congressman, Oklahoma is a member of what we call the Western Road Users Consortium. There is a group on the east coast——

Mr. NADLER. Can you speak closer to the mic?

Mr. PATTERSON. Oklahoma is a member of the Western Road Users Consortium, and there is a group on the east coast that is looking at what you call user fees, some sort of way to fund transportation beyond the consumption tax that I mentioned in my oral testimony. We see that something has to be done, and I appreciate the Federal Government and Congress providing some grant opportunities for our Western RUC to look at different funding mechanisms. I know that Oregon has a test underway, and California just entered into that similar kind of test model. So States are looking at that, and we hope that the Federal Government and

Congress looks at our success and our failures to develop something for the future.

Mr. REED. Last month, we also visited with Representative Shuster and Ranking Member DeFazio to talk about their Penny for Progress proposal as a guide. Additionally, we really strongly believe that local governments and State governments that really put skin in the game ought to have a process where they have an advanced position in attracting Federal capital. So how you all would structure that on a long-term basis we would leave to the wisdom of this body. But when a local jurisdiction, or a State's citizens raise their hands and say we are going to be first in on dealing with our own problems, we believe that that municipality or State should be in an advanced position, and that significant points should be awarded to whatever pool of money you all ultimately make available for us to deal with some of these tough challenges.

Mr. BARLETTA. Thank you. Thank you, Mr. Chair.

Mr. GRAVES OF MISSOURI. Ranking Member Norton.

Ms. NORTON. Thank you, Mr. Chairman. I would be interested in knowing if any of your States have raised the State gas tax and what the effect on public opinion was, and what do you think would be the effect of raising the Federal gas tax now that perhaps some State gas taxes have been raised? I would be interested in what all of you have to say about that.

Mr. THOMAS. Yes, ma'am, Ranking Member. Texas has not raised their gas tax since 1992, so it is much the same case. But when you watch gas prices every day swing 10, 15 cents a gallon, I am not sure how much a penny, penny and a half, 2 pennies would be noticed. Certainly there have been conversations in Austin about gas tax, about vehicle miles traveled. There have been a lot of suggestions. We recognize, as a State, that something needs to be done, but much like what is happening across the country, a lot of conversation. We just haven't made that decision yet.

Ms. NORTON. Mr. Patterson or Mayor Reed?

Mr. PATTERSON. Oklahoma has not raised our gas tax since 1987. Governor Fallin has proposed to increase our fuel tax. It is estimated that by June, we will have the lowest fuel tax in the country at 14 cents for diesel——

Ms. NORTON. So how is that working out for you?

Mr. PATTERSON. It is not working out too well. So Governor Fallin has made that proposal to increase it to 24 cents for each diesel and gasoline, and it is going through the legislative process at this point.

Ms. NORTON. Mayor Reed.

Mr. REED. Yes, ma'am. Our Governor, Nathan Deal, in 2015, a Republican Governor with almost near constitutional majorities in our House and in our Senate in Georgia with Republican majorities in both, raised the gas tax and raised $1 billion as a result of that. In the city of Atlanta, in November, we passed $2.6 billion for the largest expansion of our transit system in history. It passed with 71 percent local support. We also had a TSPLOST funding measure that passed with 68 percent local support to fund more than $300 million in infrastructure. A year prior to that, we had a local referendum for a $250 million infrastructure bond. It passed with more than 80 percent support.

So my State—I am from the State of Georgia—we have a very conservative State, and all of these measures have been passed with broad majorities. The legislative majority was in the general assembly for the $1 billion in road money, and then the other items that I referenced regarding MARTA, our transit system, and our infrastructure funds, have been done within the city of Atlanta. So I think it is a nice mix of urban and rural showing that whether you are focused on rural folks or urban folks, people get that we need significant infrastructure investment.

Ms. NORTON. Very instructive. Conservative or Republican, nobody has found a way to build roads and bridges and transit systems without money. I am interested in what the States have done because almost half the States have taken the initiative, seeing that the Federal Government is stuck and has been stuck for a generation.

One more question. I got into the FAST Act—actually it was the idea of a number of us—funds for alternatives. We don't just criticize the fact that Congress won't, or your States or those two States for that matter, continue to ignore the need for funds. We look for alternative funds, and note that some States have found alternative ways, or suggested alternative ways, or are actually experimenting. There is $10 million in the FAST Act for such experimentation. Looking at the notions to come forward recently about private investment as a way to fund roads and the investors getting back their investment through, I suppose, fares or tolls or the rest, I would be interested in knowing whether you think relying more heavily on private investment would help us, in fact, hasten the work that needs to be done on our roads, bridges, and infrastructure?

Mr. PATTERSON. In Oklahoma, and in many States, we have seen a reliance more on private investors. In Oklahoma, we have our turnpike authority, which was created back in the late 1940s, to develop a high-speed, safe transportation facility between Oklahoma City and Tulsa. From that point, it has expanded on, and it is clearly a tolling authority, but the private investors are the moms and pops around the country that buy bonds. So we can't forget that that is a private investing opportunity.

Ms. NORTON. But could you build most of the roads using tolls? Would the public tolerate that?

Mr. PATTERSON. No, ma'am, we can't, and we realize that. We understand that at this point, many States are relying on some sort of tolling to make up the difference between adequate funding between both the State and Federal level.

Ms. NORTON. Could I just get answers from the other two witnesses, please?

Mr. REED. Congresswoman, I think that it depends, as long as you keep your focus on project models versus tax credit models. So, I think that the conversation has to be around real projects. Probably the most successful public-private partnership we have in our city is a project called the Atlanta BeltLine, where we reclaimed 22 miles of old abandoned railroads, and now, the $400 million in public support has triggered $3.8 billion in private capital attracted to renovating that entire corridor, and creating 1,200 acres of green space. That is a project model where everybody knows where the focus is going to be, and everybody is tracking the jobs that are being created. The concern that we are experiencing is moving to a tax credit model for the financial services community or financiers. And so that is the distinction that I think is going to be really important as we have this conversation. The most striking and most successful public-private partnerships that I have seen have been project-specific with very broad community buy-in.

Ms. NORTON. Mr. Thomas.

Mr. THOMAS. Yes, ma'am. From a transit industry perspective, it is a little bit different. Transit P3s are a great opportunity perhaps, as long as you understand going into it that that money is going to cost you more than what you could typically borrow other places, so there are levels of public-private partnerships. Certainly in one case, where we worked very closely with Uber and Lyft, that is a public-private partnership of sorts. On the other hand, when we do a design-build project, that is a public-private partnership, perhaps at the lowest level, but no funding or financing involved. When you get to the funding and financing level, and, of course, the associated risk-sharing opportunities, those cost more money. The private sector is going to expect higher interest rate on the money that they put into a project than what we can typically get through the Federal funds, or even a RRIF or TIFIA loan.

Ms. NORTON. Thank you very much.

Mr. GRAVES OF MISSOURI. Mr. Davis, 5 minutes.

Mr. DAVIS. Thank you, Mr. Chairman.

Thank you to the witnesses. Mayor Reed, sorry about the Braves on opening day. Not an easy thing, especially after the Falcons.

Mr. REED. I hadn't gotten over the Falcons, but I appreciate it. I appreciate all the good will I can get.

Mr. DAVIS. Well, we don't want to remind you of bad things happening to Atlanta sports, but as a Braves fan myself, it is always good to have the mayor of Atlanta here. I want to ask you about funding set aside under the Surface Transportation Block Grant Program that is suballocated to localities. STBG, formerly STP, is the most flexible formula transportation funding available to States and municipalities to improve Federal highways, Federal aid highways and bridges. And I was pleased that the FAST Act took important steps to gradually increase STBG allocation closer to traditional levels, reaching 55 percent by 2021.

Mayor, can you explain for the committee the importance on increasing the suballocation of these funds for local communities like yours to be able to address your transportation and infrastructure problems?

Mr. REED. Congressman Davis, I think that they are absolutely vital, and they will encourage local municipalities to deal with our infrastructure challenges.

The one point that I would make here is one I have already made, which is that I do believe that local governments that really step up and start solving these problems on their own should have a dynamic competitive advantage. And that is not, in my opinion, enough of the consideration as a part of this process. I believe that the steps that were already taken have been vital, but I do believe that our Federal partners could encourage us to do more on our own in order to be rewarded for that good behavior.

Mr. DAVIS. Well, I appreciate hearing that, Mayor. And also, I am pleased, you know, that the FAST Act does gradually increase that local control by increasing the suballocation for STBG, but I would have preferred for actually a larger increase. And that is why I, along with my friend, Ms. Titus from Nevada, advocated for language that would have gradually increased that suballocation to 60 percent by 2021. And while we were ultimately unsuccessful, I still believe we should look at ways to increase the local control and flexibility of these transportation dollars.

Do you have any suggestions additionally to what you responded to my previous question with, that Congress could take to further promote local control and help communities better address your priorities?

Mr. REED. I think holding up national models that Congress has confidence in for other governments to see would be very helpful. In other words, having some forum playing a clearinghouse function where the answer isn't always additional money or capital, but the answer may be that these are governments that are taking on these challenges and handling them well from a financing standpoint and execution standpoint, and a value of the dollars generated, because everybody's going to come here and ask for more money. But, if you are a local leader or a mayor, you have an end date. And to the extent that a body like yours held projects out as models after you verified them and are prepared to put your stamp of approval on it, I think that it would make it much easier to scale these projects around the country in communities large and small.

Mr. DAVIS. That is great advice. And do you have any projects that you might want to mention here to the committee that are working well as maybe public-private partnerships regarding infrastructure improvements in Atlanta?

Mr. REED. Absolutely. I believe that the Atlanta BeltLine is as successful a private-public partnership as anywhere in the country. If you have been to New York and enjoyed their High Line, the Atlanta BeltLine would be the equivalent of extending that to Westchester County. It is $400 million in public money; it is $3.8 billion in private money; it connects 45 neighborhoods that used to be separated by freeways. It has caused the city to connect just socially in a way that it had never connected before. That would be one example.

Another example would be the Atlanta Streetcar, where we had $98 million in public investment and we have had $2.5 billion in new construction activity within a 5-minute walk of that line.

Mr. DAVIS. OK. I am not as familiar with that first project you mentioned. How are you paying back the private portion as a return on investment, what method?

Mr. REED. It is through the use of tax credits for investments. So, for example, when you invest in the Atlanta BeltLine, the public went in and did all of the spending that it took to clean and prepare it; and then the private sector came in after the public sector went in and identified the line. So, for example, there was a 1-million-square-foot building that had been boarded up and was dilapidated. It has now attracted one-quarter of a billion dollars' worth of investment. That used to be owned by my government. I sold it to the private sector for $27 million. The private sector came in and invested one-quarter of a billion dollars. It is built on the Atlanta BeltLine, and now 1.4 million people are using the Atlanta BeltLine.

Mr. DAVIS. Thank you very much for your responses and thanks for being here.

Mr. REED. Thank you for the question.

Mr. GRAVES OF MISSOURI. Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Patterson, your written testimony implies that the FAST Act authorization levels rise faster for transit than for highways. In fact, highway and transit funding each increase an average of 3 percent per year over the 5 years of the FAST Act. This committee has stood by the 80/20 Highway Trust Fund split for decades. Does AASHTO support maintaining this historic 80/20 split between highway and transit funding in future transportation bills as we did in the FAST Act?

Mr. PATTERSON. Yes, sir, we do. We believe that——

Mr. NADLER. Talk to the mic, please.

Mr. PATTERSON. I'm sorry.

We do believe that the 80/20 split is appropriate and should be maintained.

Mr. NADLER. Thank you. And, also, your testimony makes a compelling argument that direct funding is essential for highway and bridge projects. You have made the case that public-private partnerships, State infrastructure banks, TIFIA credit assistance and local bonding initiatives are helpful, but will not replace real direct dollars.

Can you please explain why most transportation projects cannot generate sufficient revenue through tolls, fares, or other payment models to provide a return on investment for private sector investors?

Mr. PATTERSON. When you typically look at a transportation project across this country, when you are talking about rural or urban situations, there is no opportunity, in most cases, to toll that facility. Additionally, there is no economic way to capture the dollars that are generated along the route. An example, in Oklahoma we have seen where, in a small town in southern Oklahoma, they grew out and annexed out to what we call Interstate 35. They did that because of the economic development the interstate provided to them, but we, as a DOT, can't capture that. But there was benefit to the city, through additional sales tax.

Mr. NADLER. Thank you. I have one more question for you, sir, and then I will move to the other witnesses.

Earlier this year, Speaker Paul Ryan suggested that an infrastructure package should consist of 98 percent private funding. Specifically, the Speaker said that there should be a 40-to-1 ratio between private sector and public sector funding in a Federal infrastructure package.

Mr. Patterson, your testimony discusses the importance of direct Federal funding for transportation, which accounts for 43 percent of highway capital expenditures nationwide. Do you believe that an infrastructure package that relies on 98 percent private funding can adequately address the needs of Oklahoma and other States?

Mr. PATTERSON. I don't understand how you get to that perspective. It is something that I would have to learn more about.

Mr. NADLER. Well, the perspective is basically that you have some sort of tax credits with Federal funding that amounts to 2 percent, and the other 98 percent comes in from private P3s or something. You don't think that works?

Mr. PATTERSON. I don't think it works in Oklahoma.

Mr. NADLER. But you do think it works elsewhere, just not in Oklahoma?

Mr. PATTERSON. I can't speak for the other States, but I would imagine not.

Mr. NADLER. Thank you.

Mr. Thomas, do you agree that public-private partnerships, State infrastructure banks, TIFIA credit assistance, and local bonding initiatives are helpful, but cannot replace real direct dollars?

Mr. THOMAS. They give us tools in the toolbox, but it needs to be a complete toolbox. Otherwise, you can't get the project done, sir.

Mr. NADLER. And it is an incomplete toolbox without direct Federal funding?

Mr. THOMAS. Yes, sir.

Mr. NADLER. Thank you.

Mayor Reed, do you believe that private investors will be able to fund the vast majority of highway and transit projects, or that most projects will require Federal, State, and local funds to complete?

Mr. REED. I don't believe that the private market will do that, because they will cherry-pick projects, which will leave essential projects that we need that are just not as financially attractive. And so, the answer is, I believe that the public-private partnership model is important, but it will not replace the need for our Federal partners to bear the lion's share of the load, because the incentive to do a private deal is to make a profit for the private sector.

Mr. NADLER. So, in summary, for all three witnesses, the proposal that we have heard—the administration has not made a formal proposal, but the proposal that we have heard may be coming from the administration that they will do, I think, an 82-percent tax credit, again, for private partnerships, and that will fund $1 trillion in infrastructure. Do any of the three of you believe that that would work to fund $1 trillion in infrastructure, if the only Federal money basically is an 82-percent tax credit?

Mr. REED. I do not. I believe that you have to have a project model, not a tax credit model.

Mr. NADLER. What do you mean by a project model?

Mr. REED. I mean, specific projects that you are identifying that the Federal Government is investing into in order to create jobs, as opposed to a tax credit model.

Mr. NADLER. So there has got to be a Federal investment in addition to tax credits?

Mr. REED. Yes, in addition to a State and a local investment.

Mr. NADLER. Mr. Thomas, Mr. Patterson.

Mr. THOMAS. I agree with the mayor from Atlanta, that there has got to be the direct investment and that the tax credits wouldn't do it all by itself.

Mr. NADLER. Thank you. Mr. Patterson.

Mr. PATTERSON. I agree with the other two.

Mr. NADLER. Thank you. So, in summary, all our witnesses think that the proposal that I outlined which we have heard will be the administration proposal, would not, in fact, generate $1 trillion for infrastructure investment or anything near it. Is that correct?

Mr. PATTERSON. Yes.

Mr. THOMAS. Yes.

Mr. NADLER. Thank you very much. My time is well expired.

I thank the chairman for indulging us in the time.

Mr. GRAVES OF MISSOURI. Mr. Ferguson, 5 minutes.

Mr. FERGUSON. Mayor Reed, glad to have a fellow Georgian in today, and thank you for taking time. I know the new mantra in Atlanta, the new hashtag is #IfICanGetThere. It has been tough. But I want to thank you all on behalf of the rest of the State for your diligence and working, of course, with Governor Deal to help mitigate what is a very, very difficult situation for not only Atlanta, but the Southeast. And I think it goes to show just how important transportation is, that one breakdown of the system can have ripple effects throughout an entire region.

Can you speak briefly to the coordination needed between local, State, and Federal officials, and, most importantly, on the planning process as it relates to transportation projects, and also, a little feedback on how the response was from the Federal Department of Transportation with the emergency on I–85?

Mr. REED. Well, thank you, Congressman. And your accent was music to my ears. I felt right at home when you said hello.

Here is what I think: I think that the most important fact has been that Governor Deal and I always had a strong working relationship. And so, whether it was when the State of Georgia was competing for TIFIA funding, or we were competing for a number of TIGER grants, or working to deepen the Port of Savannah, we have always partnered. And so when you have an emergency like we had regarding the bridge collapse on I–85, if you work together all of the time in a cooperative fashion, you just get through this challenge the way that you will get through others.

The bulk of the credit, Congressman, belongs to our first responders. In a tragic event, we had no loss of life, and I think the credit to that goes to our firefighters and our police officers and our State patrol officers. They coordinated. They shut down the highway expeditiously. And then we coordinated in deploying resources, which included foam fire trucks from Hartsfield-Jackson Atlanta International Airport, which were essential in putting the fire out so that less damage was done.

Our Federal partners have been exemplary. They have worked in the best tradition of the Federal, State, and local relationship. And I had been in multiple meetings, because it was sine die for the legislature. We were at the State capitol when this crisis occurred, and we instantly began working together. And I think that is why we are going to get the highway up and operational as soon as we possibly can. And I also think that that is why you haven't seen us playing typical political games of blames-personship.

Mr. GRAVES OF MISSOURI. Ms. Johnson.

Ms. JOHNSON OF TEXAS. Thank you. I thank you, Mr. Chairman, for this hearing. It has been one that has brought a great deal of frustration for me as I sit here and look at that quotation up there on the wall. The section of the Constitution, article 1, section 8, speaks to the Federal Government's responsibility toward post offices and roads. We have privatized the post office, and I don't know what we are getting from it. But I just don't see how we can privatize transportation. Nevertheless, I am one of these people that will try to find a way to work with any philosophy that I can to try to get a job done.

But this is a tough approach to attempting to address the essential transportation problems in our country. So I am going to ask Mr. Thomas, how detrimental will these cuts be, or if they will be detrimental to the city of Dallas, to DART, and the cities across the country if the CIG [Capital Investment Grants] programs are cut? We have a lot of plans to accommodate the needs in the area, as I am sure every other major city does. But when you read the President's budget, what is your reaction? Where do we go from here?

Mr. THOMAS. Congresswoman, right now we have three projects that are well into the process in the Dallas area alone. Two are core capacity projects, and one is a Small Starts project. The one is a second alignment through downtown. Again, when people think of transit in the United States, they don't always think about Dallas, Texas. But as I said earlier, we have got the longest light rail system in the United States, in North America, for that matter. All of those corridors, all of those lines come through a single corridor in downtown right now. If there is anything that happens on that corridor, an accident, a fire—we had a fire a few years ago. When the firemen lay their hoses across the tracks, they don't particularly want trains to run across those hoses, and we appreciate that and we understand that.

So we desperately need that second alignment through downtown Dallas. We are proposing a 50/50 split, in other words, bringing 50 percent of the funding for that project from local funds, with a 50-percent match from the Federal Government on a core capacity.

The other project that we are working on is an extension of our older platforms, which would allow us on 28 platforms to extend those 100 feet, which gives us, just by that alone, 30 percent capacity increase on those two lines, the Red Line and Blue Line. Again, looking for a 50/50 split. TxDOT has actually come to the table with half of that, and so we are looking at the core capacity program for the other half.

The third project is an extension of our Streetcar project. The Streetcar program that we just opened not too long ago is unique, because it uses American-made streetcars, streetcars that actually are dual mode. They will operate with an overhead wire and without an overhead wire. We intend to extend that through downtown Dallas with the Small Starts program. We are well into the process, the environmental process, working with the community, making sure we know where these projects should go, what the alignments are, building that support locally. All of those go away. They go away.

Ms. JOHNSON OF TEXAS. Now, we still are having tremendous growth to the area. So if they go away, where do we go from there?

Mr. THOMAS. That is a good question, Congresswoman. You know, I think as we look at certainly in our region, but across the United States, the impact of the Capital Investment Grants has been important, has been critical, as transit agencies have continued to provide choices for people in their communities to be able to get where they need to go, whether it is to the doctor, to the grocery store, and, most importantly, to jobs. Well over 80 percent of the people that are riding public transportation are going to their jobs.

So it is imperative that we continue to look for and continue to support the FAST Act. It has been incredibly successful to this point. I think it is imperative that we continue to support that through 2020, at least.

Ms. JOHNSON OF TEXAS. Thank you very much.

Mr. THOMAS. Yes, ma'am.

Ms. JOHNSON OF TEXAS. Mr. Chairman, my time has expired.

Mr. GRAVES OF MISSOURI. Mr. LaMalfa.

Mr. LAMALFA. Thank you, Mr. Chairman, and, panelists, for joining us today.

Mayor Reed, I will start with you first of all. Thank you for being here. And I wish the best to the Braves so long as they don't have any cross-interest with the Giants. Former National League West mates; now it has all changed. Anyway.

You know, we have some commonality with emergency situations here with you with that bridge and I–85 here. And I still harken back to when things went really well after the Northridge earthquake in California. This is way back in 1994, where it was projected it might be a year, year and a half having one of the biggest freeways in the country or the world knocked out, that due to a can-do attitude from contractors and the State pulling together and putting aside some unnecessary redtape, they were able to get that back up within just a few months and save much, much loss in economic activity and inconvenience to the people in southern California there.

And so, I hope that that is going well and you are getting all the cooperation in the world from the Federal Government and others to see your bridge through. My understanding is that on the original timetable, from what I saw in the press yesterday, moved up from maybe the fall or the winter to maybe June. So I hope it is moving fast for you.

We have an immediate need in our own backyard with—I am from northern California, where you may have seen the story about Oroville Dam and the spillway problem we had here February, and it resulted, partly as a precaution, in an evacuation of nearly 200,000 people that were downstream of that. Nothing really bad ended up happening with the emergency spillway there, but the potential for the erosion that was there due to a design that is, indeed, questionable, made that necessary for public safety requirements. So infrastructure and the public safety are very intertwined, as we have seen.

Do you feel that the Federal transportation infrastructure, the programs that support the locals in increasing public safety and being prepared as much as they need to be for emergency situations like I am talking about in my backyard or SoCal years ago or what you face with the loss of that bridge in your area, the Federal Government, are we doing a good enough job supporting the local levels in that safety aspect? Again, specifying emergency situations where you need quick action?

Mr. REED. My sense is yes. I chair a group called UASI, which is our local disaster planning entity in Metropolitan Atlanta. And I think that when it comes to emergency response, everything that I have seen shows a high level of professionalism and a high level of coordination. And so, that is an aspect of the Government that I feel very good about.

I do believe that we are all going to have to change at the local level really to a posture of being resilient, because without moving into a debate about climate, weather patterns and emergency situations are coming with increasing frequency. And, so, I think that this is a conversation we are going to have to start having more aggressively with our Federal partners.

The things that you are experiencing in northern California really have a great deal to do with being on a permanent resilient footing. And as I sit here testifying right now, we are experiencing unusually bad weather in the city of Atlanta, and have been. And so what is happening is, local governments are having to be on an almost permanent footing of responding to crises of one kind or another, frequently, weather-related crises.

Mr. LAMALFA. Do you think greater weight should be given to not only improved movement, but the flexibility in emergency situations that could come through the FASTLANE program?

Mr. REED. There is no question about it. Flexibility is going to be either the order of the day, or it is going to be thrust upon us by circumstances. So I think that it is a more thoughtful approach to have flexibility built into the relationship as opposed to having good people have to make it up at the last minute.

Mr. LAMALFA. Thank you.

Mr. REED. Thank you, Congressman.

Mr. LAMALFA. I appreciate it. And in my experience, your airport also has been very good as I take the red eye from the coast and end up there about 6 a.m. sometimes, but it is always a nice facility to be with. Just the line at Popeyes is always too long at 6 a.m. there.

Mr. REED. That is the busiest Popeyes Chicken in the world, by the way.

Mr. LAMALFA. Thank you, sir.

I yield back.

Mr. GRAVES OF MISSOURI. Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chair.

Mr. Thomas, I have a question in regard to Capital Investment Grants. The Trump administration's skinny budget calls for elimination of Capital Investment Grants or the New Starts. DART has two separate projects in this pipeline. Do you think it makes fiscal sense to eliminate an infrastructure program that has 55 projects from across the country in the planning engineer stage, potentially sending back billions of dollars of infrastructure investment?

Mr. THOMAS. Certainly across the United States, Congresswoman, there has been a lot of work done in preparation of these projects. A lot of these projects, as they are in Dallas, have gone through extensive community meetings, lots of planning efforts, lots of coordination. And certainly in our case, we are bringing a significant amount of money to the table, as we always have, as we will continue to do in our financial plan.

And people have looked at the FAST Act as—that although it only goes to 2020, and we understand there are challenges beyond that, we are certainly appreciative of the long-term bill. We would like for it to stay intact and for it to continue to move forward through 2020. So these agencies, including ours, that have anticipated that funding can go ahead and get these projects completed and provide those choices to people——

Mrs. NAPOLITANO. Yes, but does it make fiscal sense to eliminate them?

Mr. THOMAS. Certainly in DART's case, no, ma'am, it does not, because we are bringing money to the table. They are getting 50 cents on the dollar for a project. So it seems like it makes a whole lot of sense to continue to do that.

Mrs. NAPOLITANO. Thank you. Another question I have has to do with Positive Train Control. The FAST Act provided $199 million guaranteed for the Mass Transit Account of the Highway Trust Fund for fiscal year 2017, to help commuter railroads implement PTC. The Appropriations Committee, our very own, did not make the funding available, however, under the continuing resolution. This critical safety funding will lapse if the CR is extended for the remainder of this fiscal year.

Mr. Patterson and Mr. Thomas, can you elaborate why this funding is important to your agencies?

Mr. THOMAS. Well, certainly the transit industry is hopeful that Congress will quickly complete the fiscal year 2017 budget so that that $199 million of grant funding can be allocated to the properties throughout the country. We have got a 2018 deadline for our commuter rail system to put that in place. That requirement comes on top of operating and maintaining our system every day. So it is imperative that——

Mrs. NAPOLITANO. It has already been extended once.

Mr. THOMAS. Yes, ma'am. And so it is imperative to meet the 2018 deadline to get that funding in place so we can get that critical safety project completed.

Mrs. NAPOLITANO. Thank you.

A question primarily for Mr. Patterson and Mr. Reed—Mayor Reed. I have been working on an amendment to FAA reauthorization to prohibit FAA from impacting State and local general sales tax. The issue: For 30 years, FAA has required excise tax on aviation fuels to be spent on airports for airport infrastructure, but for 30 years, the FAA has not interpreted this requirement to affect general sales tax, which tax aviation fuel as well as other products sold in the country or the State. Now they are changing their interpretation, requiring State and local governments to count how much money is collected by the general sales tax on aviation fuel and siphoning the money back to the airport.

A major Federal business problem when State and local governments are being told how to spend their own tax dollars by the FAA. It will impact local transportation projects, since most sales tax around the country provide for local transportation funding.

The Hartsfield-Jackson Atlanta International Airport in the State of Georgia is one of the most impacted regions in the country with the new rule. It will take millions of dollars out of local control, a major problem in my State of California. Are you aware of the issue and do you have concerns with this new FAA rule? Should Congress fix and return 30 years of precedence that allows State and local governments to spend their general tax revenue as they see fit?

Mr. PATTERSON. I don't have any knowledge. I have knowledge, but I can't really comment on that. I think the mayor would be better suited for this answer.

Mr. REED. Congresswoman, I am on your side. And I don't think I could have said it better than you just said it.

Mrs. NAPOLITANO. Well, it is an infringement upon the local control, as far as I am concerned.

Thank you, Mr. Chair, I yield back.

Mr. GRAVES OF MISSOURI. Mr. Smucker.

Mr. SMUCKER. Thank you, Mr. Chairman.

As a business owner of a construction company for 25 years prior to serving in the State legislature and then here, I understand the importance of a good highway/bridge system with infrastructure to move goods and employees to job sites, and the importance of infrastructure to our economy, essentially.

And then when serving in the State legislature, we were one of those States that were able to pass a bill that provided for additional sustainable funding for our highway and bridge system. In our case, it was a wholesale gas tax that had a cap on it tied to the price of gas. We essentially lifted the cap. But generated billions of dollars of additional funding, mostly for maintenance and repair of our current system, in some cases, adding additional capacity. But we had the highest number of structurally deficient bridges of any State, I believe, at the time, and there was a real need.

But the reason I bring that up—and, Mayor Reed, maybe this question will be directed to you—it was really important for us—let me back up. So it was a Republican legislature, both Houses, and a Republican Governor at the time. And I just mention that because you mentioned that in Georgia, but also mention it because at the same time that we were able to gather support for that, we were looking at all aspects of our budget. And, in fact, were cutting back in other areas, because we really believed that we needed to focus on the core functions of Government, and were able to make the case to the people of Pennsylvania that infrastructure is not only a core function of Government. It is something you have to do at that level, but also was critically important to people who were caught in traffic, in congestion, and critically important to the economy.

And it took a concerted effort, it took a lot of hearings, it took a lot of discussion with the public to gain that support that was required to pass that. And I think that is something that we will need to do here. And I support finding a way for sustainable funding. I think the point was brought up earlier, it is so important to not only the States and local municipalities to have that dependable, sustainable source of funding, but to all of the businesses that rely on this. It is critical for efficient delivery to know we can plan ahead.

So, Mayor, I guess a question to you: Can you give us some insight? I think, if I understood your testimony correctly, while you were there, you essentially passed a 1-percent sales tax that went to infrastructure. And you said also Georgia was doing that at the same time. What can we learn from that in terms of building the public support for investment in our infrastructure?

Mr. REED. Congressman, I think what we can learn is that the public is ahead of us. And I think that when we talk plainly and explain what the challenges are, the public will come on board as long as they believe that we are going to make good use of their funds. I imagine you experienced that in Pennsylvania.

In Georgia, our State is one of eight States in America with a AAA credit rating from all three rating agencies. One of the reasons is tight fiscal management, but also the decision that we made around transportation. We have grown to be the 10th largest State in the Union. The Atlanta metropolitan region is now the ninth largest metro in the country, with a GDP of $335 billion. And we have gone from a really low credit rating to AA plus, from Standard and Poor's, Moody's, and Fitch. So I think the arguments that you make is—and we have had an absolute jobs boom.

And what we are all concerned about is who is going to win the war for talent. And I think that folks like you and I have to just get out and make the case. And I thought it was really important that a Republican Governor, Republican House, and Republican Senate passed $1 billion for transportation, because our folks were stuck in traffic like you all. And then on the transit side, we are doing the biggest transit expansion in the history of our system. And it will be one of the seventh largest transit expansions in America, but we did it with 71 percent voter support at the ballot. I think that was a nice bipartisan collaboration.

Mr. SMUCKER. Thank you. I was hoping to get input from the other panelists as well, but I see that I am out of time.

Mr. REED. I apologize. Thank you for the question.

Mr. SMUCKER. Thank you.

Mr. GRAVES OF MISSOURI. Mr. Johnson.

Mr. JOHNSON OF GEORGIA. Thank you, Mr. Chairman.

Mayor Reed, you served in the Georgia Legislature for 10 years, both in the House and Senate. And so you know how conservative and fiscally restrained the environment is among our legislative friends in Georgia. But yet, back in 2015, Georgia increased its gas tax from 7.5 cents to 26 cents, and increased the diesel tax to 29 cents, and then indexed it so that every year it is adjusted in accordance with the Consumer Price Index.

Can you comment about the conditions that existed in Georgia that led to the passage of that gas tax increase? And also, what political fallout, if any, occurred as a result of passage, and then the benefits from passing that increase?

Mr. REED. Thank you for the question, Congressman. I think the bottom line is that if you want to lose an election in Georgia, you would be the person to lose the State's AAA credit rating. And I think that everybody acknowledged—everybody was experiencing the same thing. We were all sitting in traffic. We had tried to pass a regional bill. You remember that. The Governor and I worked to pass a regional transportation bill that was soundly rejected by the voters at the ballot.

So the problem of traffic in Atlanta—we have among the worst traffic in the United States—it was really starting to impact our ability to attract jobs and business when we were trying to fight our way out of the recession. And every meeting that the Governor and I went to when we were recruiting businesses and working to keep businesses in Georgia, they said, you have to do something about the traffic.

And so I think that it was a matter of having the right leader at the right time. He made the decision to move a bill through the Georgia General Assembly. And I am comfortable saying that 95 percent of the people who voted in favor of the $1 billion tax increase were all reelected. I would probably be comfortable saying 98 percent were reelected at the ballot. So the risks were minimal, but we did do a very good job of explaining the need. And then the city took the leadership on expanding transit within the city of Atlanta.

Mr. JOHNSON OF GEORGIA. Well, I want to ask you about that, because Atlanta has seen a number of Fortune 500 and Fortune 100 companies moving into Atlanta as a result of our investment in transit. Can you elaborate on what we have done, how it has affected our economy?

Mr. REED. Sure, Congressman. We have the third largest concentration of Fortune 500 businesses in the United States of America. And I think what the business community is doing is depoliticizing transit, as opposed to it being a Democrat/Republican issue. When State Farm sited 8,000 jobs outside of Atlanta in Dunwoody, they wanted it by a MARTA stop. When PulteGroup Homes moved their headquarters to Atlanta—it is the second biggest home builder in America—they wanted it by a MARTA stop.

So what we are seeing is the business community and millennials want to be near transit. And so it is lifting the transit conversation out of urban/rural politics, because everybody wants terrific jobs. And we have a generation of folks, unlike my generation and your generation, who are not interested in driving automobiles. And so, if you want to be first to the future, you will have to be in the transit business. And so Republicans and Democrats have gotten in line.

And I would suspect that Mr. Thomas sees the same thing. When you put down transit and infrastructure, business comes to it, because it is a permanent investment. And when you put it to voters, these items pass overwhelmingly. So I think it is really about being first to the future, Congressman. And you just have to decide whether you want to have well-paying jobs for your people or not. And, now, because of the business community's insistence on transit, and how well transit investments perform in terms of the economy that is built around it, it is helping us get out of this old argument of rural/urban, Democrat/Republican.

Mr. JOHNSON OF GEORGIA. Mr. Thomas, have you experienced the same thing in Dallas?

Mr. THOMAS. Absolutely. And as in Atlanta, we have a State Farm development also. And they did the same thing; they looked for a rail station to be close to. And the development around that particular station is phenomenal: 28 new restaurants, thousands of new residences, millions of square feet of office space that occur around that particular station. So the developers certainly understand the advantage of that transportation infrastructure they are looking at. Our communities understand it.

The debate in north Texas is where our resources, where those Federal resources end up going, because they know that when we go in and build that infrastructure, there is going to be development; there is going to be job opportunities; there are going to be the benefit to the people, not only from a transportation perspective, but also, all the ancillary benefits that happen around those stations.

Mr. JOHNSON OF GEORGIA. Thank you. I am out of time. I yield back.

Mr. GRAVES OF MISSOURI. Mr. Shuster.

Mr. SHUSTER. Thank you, Mr. Chairman.

Once again, I want to thank you and welcome all of you to the committee. I appreciate your testimony.

I am going to yield my time to Mr. LaMalfa, Doug, as we call him here, my time, because he has some more questions he would like to ask.

So, with that, I yield.

Mr. LAMALFA. Much appreciated, Mr. Chairman.

Again, I appreciate the discussion with the panel. And, Mr. Mayor, you know, you talk about the collaborative process you had in Georgia there with the Governor of your city and others where, you know, the AAA credit rating. You are doing things the right way. You are talking to people and they are expressing what it is they wish to see happening.

Right now in California, where we don't have a good credit rating, the legislature, I think really in more—well, total control terms, I will leave it at that—are forcing through at this moment, this week, a combined gas tax and car tax, which the people are against, especially in terms of—and I am going to direct a question to Mr. Patterson here in a moment. But we have a high-speed rail issue in California that is shown to be $55 billion short of funding, and we don't know where it is going to come from, yet we have crumbling bridges and roads down there that the people are going to be forced to pay a higher tax on their automobile registration and their gasoline. That is probably going to mean to a two-car middle income family around $500 per year additionally that they don't get to spend on their kids' education or whatever, for crumbling roads and bridges that, instead, they are seeing billions and billions being spent on high-speed rail at a point where nobody in the State other than people that make money off it seem to want it.

And then, the audacity that in this new funding that would come from this new tax, there are not even any upgrades for new additional lanes or additional capacity for roads and bridges.

So I think what is going on out there is not a collaborative process and it is really tone-deaf to what the needs of middle income families are. So I would like to see, where we can do it here, a much more streamlined process to get dollars to projects that do relieve traffic and do repairs.

So for Mr. Patterson, you know, again, in my own county up there in Butte County, we have State Highway 70 that could have been done. There are projects that could be done in the future or that have already been partially done faster and less costly if the environmental review process didn't have to take nearly as long for issues environmentally that are already well-known. This isn't a brand new concept here that we add a lane on the next segment that you are going to, you know, have issues that are already well-known on previous studies in the same type of terrain.

So what can we be doing to assist local agencies without having to be held hostage for some of these habitat tradeoffs, to have more efficient construction of transportation projects, whether it is rebuilding of, you know, older infrastructure or the additional capacity we all want and we all need as taxpayers?

Mr. PATTERSON. Thank you, Congressman. One of the things that this Congress did was provide for a better process when we are talking about, in your example, adding lanes to or adding additional capacity to already identified transportation corridors. And the intent of Congress at the time was to go from fence to fence, and that would be because it is already cleared as a transportation corridor.

Some of the guidelines that we have received from the Federal Highway Administration don't allow fence to fence, and so that is just pavement edge to pavement edge. And so we are having to work through some of those issues with the U.S. DOT and their rulemaking process. And I know the director in California, Malcolm Dougherty, is working very hard on that issue, as well as many other of my colleagues from around the country.

Mr. LAMALFA. Thank you for that. I would like to look more into that fence-to-fence provision you are talking about there, but I will I yield back the rest of my time. And please follow up with my office if you get the opportunity on that. Thank you.

Mr. PATTERSON. Yes, sir.

Mr. GRAVES OF MISSOURI. Ms. Titus.

Ms. TITUS. Thank you, Mr. Chairman.

We heard earlier Chairman Shuster mentioned something about 45 Members had a meeting with Secretary Chao. I would suggest that we invite her to meet with all members of this committee, so we can have a collaborative effort and continue to be bipartisan in our effort to put forward transportation policy. Maybe then they wouldn't have the problems that they had with the healthcare bill if we were all engaged from the beginning. So I would just make that suggestion.

Also, I would like to acknowledge—and he is gone already—but Mr. Davis from Illinois. He brought out our bill that we worked together on and became an amendment to the FAST Act, where we send more money to the local government as opposed to the State for it to be distributed. I think we need to continue down that path, because too often, the politics in the State capital around the DOT entities play a bigger part than good policy decisions. So the more we can send money to the local government, I think the better.

I would like to turn my attention a little bit, though, to another provision in the FAST Act that I worked on, and that was to have Complete Streets planning put into the bill. This is the first time this has ever been done in a Federal transportation program. I was very glad to see that in my district in Las Vegas. We have just had an increase in pedestrian deaths. And, so, having a policy that begins with the planning through the construction through the operation of transportation that includes all users, I think is very beneficial.

I know a number of States and local governments are incorporating that kind of Safe Streets planning. And I would like to ask you, Mayor Reed, under your leadership, I know Atlanta is kind of one of the stars in this area. Could you comment on the benefits of it, how it is working, some suggestions for other places to follow?

Mr. REED. I think that it has worked well, and I think that it is connecting communities and contributing to a sense of community that the people that created and developed the concept had in mind. It is what we thought it would be when well-executed. And so it is an approach that we are taking. It is a part of the reason that we had such success at the ballot when we went to voters for the four basis points for four-tenths of a penny during our recent referendum. Folks are asking for it. And it also gives a significant boost to businesses that are on Complete Streets corridors.

And, so, I think that the Complete Street approach is really bearing good fruit, and it is what we thought it was. And it needs to be pushed at every opportunity if you want your city or your community to be a leading one, because it is something people want when they are looking for a place to make a permanent home.

Ms. TITUS. Thank you. I believe it is not just for safety, but quality of life. You see more people on bicycles now, more people walking, all kinds of uses besides just cars and buses.

Mr. Patterson, would you talk about what some of the States are doing as they include this in their planning?

Mr. PATTERSON. Well, I know several States are working on Complete Streets. In Oklahoma, we are partnering with the city of Oklahoma City for a new downtown boulevard that includes bike lanes, pedestrian paths, as well as a new driving lane. It is where I–40 used to go through downtown Oklahoma City, and we relocated I–40 to the south of downtown, and we are putting in a boulevard that has the Complete Streets concept to it.

Ms. TITUS. And if you want to talk about businesses, we are seeing in downtown Las Vegas where they now have rent-a-bikes, and that is kind of part of that quality of living I was talking about. Would you like to comment on how it relates to businesses and improves that aspect of things, anybody?

Mr. PATTERSON. I can tell you in Oklahoma City, we have the rent-a-bike program going on there, and it is growing exponentially. We believe that once the new boulevard is in place, it will explode, much like you see here in Washington, DC.

Ms. TITUS. Mayor?

Mr. REED. Our Bikeshare program has been highly popular, and we are getting ready to expand it by 400 percent.

Mr. THOMAS. Congresswoman, I think the benefit—and you certainly are aware—is how all of the different modes of transportation work together in a single corridor, whether it be buses, bikes, pedestrians, automobiles. And that planning effort is what makes all that happen. And so often, the planning effort is skipped and bypassed. So thank you very much for making sure that it has been included in the FAST Act.

Ms. TITUS. Thank you. I yield back.

Mr. GRAVES OF MISSOURI. Mr. Lowenthal.

Mr. LOWENTHAL. Thank you, Mr. Chairman. And I join others in thanking our witnesses for joining us and educating us today.

I would like to raise an issue that is near and dear to my heart and extremely important to my district, which is the 47th Congressional District, which starts off with the Port of Long Beach, which is the second largest port in the United States. And that is freight funding, the funding for the movement of freight. As you know and have mentioned, the FAST Act included dedicated freight funding programs for the first time. This included a competitive grant program dubbed FASTLANE by DOT.

Mayor Reed, you have talked about the importance to your State and the city of economic development at the Port of Savannah, which received a $44 million grant for multimodal connectors, such as you have talked about.

Mr. Patterson, your department was granted $62 million last year for U.S. 69, U.S. 75, for rail grade separations. So your organization, AASHTO, also put out a report with the American Association of Port Authorities that showed the growing demand for multimodal projects. The report stated that an absolute minimum need of at least $20 billion for multimodal projects. Yet, the FAST Act only has a total funding for multimodal projects of slightly more than $1 billion, $1.13 billion, and that is over 5 years.

The question I have for you is, do you agree that there is a greater need for funding of multimodal projects?

Mr. PATTERSON. Congressman, absolutely. One of the things that we know, AASHTO knows, is that as we have looked at the Federal program over the years, since the completion of the Interstate Highway System, we really don't have a goal, something to hang our hat on, if you will. We were hoping, and we believe, that this freight program is the next goal. It is imperative that we be able to move freight across this country, by rail, water.

Mr. LOWENTHAL. I think you are doing it great. I just want to ask, because I have one more followup question and that is exactly what I wanted. Do you have anything more to add, for example, Mayor Reed? Do you believe it is imperative?

Mr. REED. The answer is absolutely.

Mr. LOWENTHAL. OK. Now, I have a proposal that I first introduced in the 114th Congress, will be doing again, that puts a user fee, which is paid for by the owners of the goods, on the cost of shipping goods by road or rail in the United States to directly fund freight infrastructure. So a user fee paid by the owners of the goods to directly fund freight infrastructure.

Maybe not this one, but would you support a similar proposal such as a user fee by the owners of goods to pay for freight infrastructure?

Mr. PATTERSON. Several years ago, a group of us at AASHTO got together and we were looking at ways to fund transportation in the future. Congressman, that is exactly one of the things that we had come up with was an additional surcharge and user fee, however you would want to label it, for freight movements and dedicated to a freight system.

Mr. LOWENTHAL. So it has to be dedicated. It would be sustainable paid by the users. It would be a dedicated funding stream to be used just for freight infrastructure.

Would you support that, Mayor Reed?

Mr. REED. I don't know. I would have to have the full proposal to consider it.

Mr. LOWENTHAL. OK. We are just talking about not so much a specific proposal, but just the concept that those who use the system would pay for the improvements in the system, dedicated, and some way to get both back to—you know, an appropriate way of distributing that fund.

Mr. PATTERSON. Yes.

Mr. LOWENTHAL. Thank you. And I yield back.

Mr. GRAVES OF MISSOURI. Mr. Lipinski.

Mr. LIPINSKI. Thank you, Mr. Chairman.

I thank all of our witnesses for being here today. As we talk about the FAST Act, which I want to thank all the members of this committee on both sides, the chairman of the subcommittee, the chairman of the full committee, Mr. Shuster, our Ranking Member Norton, and Ranking Member DeFazio. We all worked well together in getting the FAST Act together and moved. I am hopeful that we can do the same thing on a new big $1 trillion or more than $1 trillion infrastructure plan. Things that have been talked about by the last few people, Members who have spoken, about Complete Streets, about transit, I think it is important that those are included in a new infrastructure package. The importance of freight movement that Mr. Lowenthal was just talking about, I think that is also very critical to do.

I want to ask a question about something that I don't think anyone has yet asked about at this hearing about vehicle to infrastructure, or V2I technology and getting that into our infrastructure.

So not only V2V, vehicle to vehicle, but V2I technology is vital for maximizing the benefits of autonomous and connected vehicles, you know, benefits such as brake safety improvements, less congestion on our roads, and also increasing the efficiency of our vehicles.

So we really need to find creative ways to incentivize investment in vehicle infrastructure technology. We need to make targeted investments that best leverage capital, especially if we are going to be doing this big infrastructure package. Now, the FAST Act ensured that V2I infrastructure would remain eligible for funding, but we also need to consider Dig Once policies that promote installation of advanced systems that enable V2I during routine construction and maintenance projects, so we are not going back and doing it all over again.

I have asked witnesses at previous hearings about the state of local—about State and local investments in this technology. And some have said that they have been hesitant to make investments, because of the lack of both industry standards and Federal guidance. In January, FHWA released a new V2I guidance document that can help transportation agencies understand the regional impacts of V2I deployment, prepare for emerging V2I and V2V technologies, and leverage Federal aid funds to deploy them.

So after a long lead-up, I would just like to ask Mr. Patterson and Mr. Reed if you could discuss your experience with V2I technology, and whether or not there is sufficient Federal guidance to promote investments and what more can be done, so we make sure that we do prepare the infrastructure for this? Mr. Patterson, do you want to start?

Mr. PATTERSON. Thank you, Congressman. I think, from an overall perspective and given the advances in technology, it has been good that the States have taken a slow methodical approach to integrating V2I into the system. When you look at—technology doubles every year, and you look back 5 years ago when we really got into the discussion about V2I, it has changed. The guidance that came out is very helpful. We have several of our members who are very involved in leading the technology. I can tell you in Oklahoma, we are still learning. We are not as far advanced as some other States are in the discussion, but it is something we are beginning to understand and embrace. And it was that guidance and it is the support of AASHTO members that gets us to that point.

Mr. LIPINSKI. And, Mayor Reed, do you have anything to add?

Mr. REED. Congressman, we are developing a Smart Corridor along North Avenue near Georgia Tech and by the Coca-Cola Company that will be really testing all of these technologies at once. So, much like my colleague, we are in the very early stages of it. Candidly, we have been putting a great deal more energy into self-driven vehicle technology and we have been slower on V2I.

Mr. LIPINSKI. Is there anything the Federal Government can do to help to speed things along, make it easier for States and localities to do this?

Mr. REED. I think that rules of the road from Federal experts could shorten the learning curve for municipalities, because that is really the challenge for us. When these new kinds of technologies and relationships occur, we have to come up to speed on that and we have to put in a good amount of person power for that. So knowing where the Federal Government is going in the future in that regard would send an important signal to where we should be going.

Mr. PATTERSON. I think that collaboration and cooperation is going to be very important, as the mayor said, as we begin to develop our system in Oklahoma and as other States expand their V2I capabilities. If you think about it, this is really a turning point for all of transportation. It is almost as extensive as going from the horse and buggy to the Model T. So it is something that we are very interested in and our customers, the public, is going to demand that kind of reaction from us.

Mr. LIPINSKI. Thank you. I yield back.

Mr. GRAVES OF MISSOURI. Any other further questions?

Seeing none, I would like to obviously thank our witnesses for your testimony today, because your contribution to today's discussion, it has obviously been very informative and very helpful.

With that, I would ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided any answers to any questions that may be submitted to them in writing; and unanimous consent that the record remain open for 15 days for additional comments and information submitted by Members or witnesses, to be included in the record of today's hearing.

Without objection, that is so ordered.

And if no other Members have anything to add, then the subcommittee stands adjourned. Thank you all.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned.]

AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS

AASHTO

TESTIMONY OF

The Honorable Mike Patterson

Executive Director, Oklahoma Department of Transportation;
Chair of the Committee on Agency Administration,
American Association of State Highway and Transportation Officials

REGARDING

FAST Act Implementations: State and Local Perspectives

BEFORE THE

Subcommittee on Highways and Transit of the Committee on Transportation and Infrastructure of the United States House of Representatives

ON

April 5, 2017

American Association of State Highway and Transportation Officials
444 North Capitol Street, N.W., Suite 249
Washington, D.C., 20001
202-624-5800
www.transportation.org
info@aashto.org

INTRODUCTION

Chairman Graves, Ranking Member Norton, and Members of the Subcommittee, thank you for the opportunity to provide the perspectives of state departments of transportation (state DOTs) on implementation of the Fixing America's Surface Transportation (FAST) Act. My name is Mike Patterson, and I serve as the Executive Director of the Oklahoma Department of Transportation (ODOT) and as Chair of the Committee on Agency Administration at the American Association of State Highway and Transportation Officials (AASHTO). Today it is my honor to testify on behalf of the great State of Oklahoma and AASHTO, which represents the transportation departments of all 50 States, Washington, DC, and Puerto Rico.

I was appointed as Executive Director of ODOT by Governor Mary Fallin in April 2013. Prior to my current role, I served as the Deputy Director for the agency for three years as well as filling the role of Chief Financial Officer since September 1999. I have also served as ODOT's Comptroller for the preceding 15 years, having begun my career with the department as the Deputy Comptroller in 1980.

My testimony today will emphasize four main points:

- Progress is being made in FAST Act implementation but concerns remain;
- FAST Act funding levels must be honored as we look to identify a long-term revenue solution for the Highway Trust Fund;
- Any new infrastructure package must build on the foundation laid by the FAST Act, and;
- The federal surface transportation program must prepare for and harness significant technological advancements.

PROGRESS IS BEING MADE IN FAST ACT IMPLEMENTATION BUT CONCERNS REMAIN

I would like to first express appreciation to you on behalf of the state DOTs for your leadership, along with your Senate and House members in partner committees, in shepherding the FAST Act in December 2015. The FAST Act represented the first comprehensive, long-term surface transportation legislation since the Safe Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users Act in 2005.

Thanks to the FAST Act, the Oklahoma Department of Transportation (ODOT) has been able to initiate the process of filing NEPA documents electronically which helps with expediting document flow, expand the use of federal resource agency liaisons to improve permitting and review processes, and expand the use of Programmatic Agreements (PA) to accelerate project delivery.

In 2004 the system of bridges managed by ODOT was ranked as one of the worst in the country with 17% of the structures being classified as Structurally Deficient. At that time, the decision was made to focus ODOT's primary resources on improving our bridges with the goal of being one of the best in the country rather than one of the worst. While additional funding at the state level over the last decade has contributed significantly to ODOT's success, the speed at which Oklahoma's bridges have improved could only happen with the support of Congress' desire to engage process improvements.

For many years ODOT has enjoyed a valuable relationship with the U.S. Army Corps of Engineers who share the desire to improve the nation's infrastructure. In an effort to improve the process within the Corps, ODOT and the Corps entered into an agreement where a dedicated Corps employee has been funded by ODOT so that needed projects were not delayed because of a lack of staff. Under the FAST Act Congress has expanded that opportunity to other federal resource agencies which will continue to provide process improvements for all state DOTs.

Additionally, the provision of the FAST Act that provides for expanded use of Programmatic Agreements has been very beneficial for ODOT. One example is ODOT's Depression-era Bridge National Register of Historic Places Evaluation Study and Programmatic Agreement which initiated streamlined treatment measures for adverse effects to historic bridges that were constructed between 1933 and 1945. This PA was successfully used to assist in the delivery of a very important bridge project.

The Lexington Purcell bridge—the longest deck truss bridge in the state—was constructed using Works Progress Administration labor and funds. The structure was listed on the National Register of Historic Places (NRHP) in 2003 for these reasons, and ODOT's Cultural Resources Program considers this bridge to be one of the five most historically significant bridges in the state. On January 20, 2014, several cracks and defects were discovered in multiple spans on the tension chords of the bridge. At that time, it was noted that the deck trusses were constructed with a very brittle high-strength manganese alloy steel. The bridge was load restricted pending further inspection. On January 31, 2014, additional evaluations necessitated closure of the bridge. State-funded emergency repairs were then initiated to mitigate the cracks and defects, and to reinforce and strengthen the bridge to allow for safe vehicular and pedestrian access and the bridge was reopened, with a new urgency to replace the structure. On May 7, 2014, ODOT's Cultural Resources Program formally initiated consultation with the Oklahoma State Historic Preservation Office. ODOT completed consultation and resolved adverse effects to one of the most historically significant bridges in Oklahoma in approximately two years, using the PA for the treatment of adverse effects to New Deal-era bridges constructed under Federal Relief Works Programs. We were able to employ measures outlined in the PA which eliminated the need for an individual Memoranda of Agreement, while still meeting the intent of the National Historic Preservation Act, thus expediting project delivery. This bridge is scheduled to be let to construction in July, in line with our goal of moving from one of the worst to one of the best states for bridge condition.

As exemplified above, after decades of adding layers upon layers of legislative and regulatory oversight for transportation, both the FAST Act and the Moving Ahead for Progress in the 21st Century Act (MAP-21) have instituted major programmatic and policy reforms. However, there exists still further opportunity to improve the efficiency and effectiveness of transportation programs and project delivery while remaining responsible stewards of taxpayer resources and both human and natural environments.

Regulatory Burdens

Congress should encourage the USDOT to implement provisions in both MAP-21 and the FAST Act fully consistent with legislative intent. An example of a problematic USDOT regulatory action is the onerous and unanticipated requirement regarding metropolitan planning organization (MPO) coordination. Although state DOTs and MPOs already exemplify the kinds of coordination sought, the new regulation added significant additional legal and administrative requirements that would serve as barriers to constructive and flexible approaches to planning and programming being implemented by states and MPOs today. The rule epitomized the one-size-fits-all approach that does not allow flexibility to tailor processes and solutions to the diverse needs, opportunities, and constraints faced by states and MPOs across the nation. Along with the Senate's recent passage of companion legislation to repeal this rule, we appreciate your Committee's prompt action last week to bring this before the House floor.

In addition, AASHTO supports implementing statutorily authorized performance management frameworks for highway safety, bridge and pavement, system performance, and freight before current measures are changed or new ones are added. Owing to their extremely complex nature, key regulations originating from MAP-21 are yet to be finalized by the USDOT after four years, which means much work still remains to be done on implementation of current measures. For this reason, during consideration of the FAST Act, Congress decided not to add new performance measures. Given the robust activity currently ongoing to analyze, implement, and—over time—evaluate the MAP-21 performance measures, it is important that Congress and the Administration not add any new national-level performance measures to the federal surface transportation program.

Streamlining Program and Project Delivery

To build on the successful bipartisan policy reforms in MAP-21 and the FAST Act, AASHTO asks for the opportunity to continue improving the project delivery process. California, Florida, Ohio, Texas, and Utah are participating in the National Environmental Policy Act (NEPA) assignment program made available to all states in MAP-21. Based on our collective experience, some specific changes that will make this program increasingly efficient and more attractive to the states include:

- Simplifying the assignment application and audit process;
- Allowing states to assume all of the responsibilities of the USDOT with respect to engineering and other activities related to environmental review, consultation, permitting or other action required under any federal environmental law for project review or approval, and;
- Allowing states in this program to be solely responsible for the development of their policies, guidance and procedures so long as federal laws and the USDOT requirements and guidance are met.

Other expediting measures include decoupling fiscal constraint requirements from NEPA approval to allow construction-ready projects to proceed through environmental reviews and progress as money becomes available; ensuring that the statutory authority provided to adopt planning decisions in the NEPA process includes all of the flexibility previously provided in the planning regulations; and providing flexibility in developing project schedules and programmatic categorical exclusion agreements.

Beyond NEPA, many opportunities exist to streamline project delivery through updates to the Endangered Species Act, Section 4(f) reviews for historic sites, the Land and Water Conservation Fund Act, and transportation air quality conformity under the Clean Air Act. AASHTO welcomes the opportunity to provide specific recommendations for improvement in any of these areas. We also look forward to continued collaboration with the USDOT's Build America Bureau. This would build upon our robust existing partnership through the AASHTO Center for Excellence in Project Finance by closely engaging with the Bureau's Federal Infrastructure Permitting Dashboard that was created under your leadership in the FAST Act.

FAST ACT FUNDING LEVELS MUST BE HONORED AS WE LOOK TO IDENTIFY A LONG-TERM REVENUE SOLUTION FOR THE HIGHWAY TRUST FUND

The FAST Act's authorization of $305 billion for federal highway, highway safety, transit, and passenger rail programs from 2016 to 2020 could not have been timelier in spurring our economic growth and investing in our multimodal transportation infrastructure. In order to maximize the FAST Act's potential:

- The FAST Act's annual obligation authority must be fully honored in the FY 2017 appropriations process and beyond;
- Funding for transportation programs should not be reduced as proposed in the President's FY 2018 budget;
- Contract authority provided in surface transportation authorizations should not be rescinded, and;
- The structural cash flow deficit in the federal Highway Trust Fund (HTF) must be resolved for the long term.

<u>Honoring FAST Act Obligation Authority in Appropriations</u>
An important funding feature of the FAST Act was to authorize a 5.6 percent increase in highway funding from FY 2015 to FY 2016, with subsequent annual adjustments between 2.1 and 2.4 percent. For the mass transit program, the FAST Act authorized a 10.2 percent increase between FY 2015 and FY 2016, with subsequent annual increases up to 3.3 percent. In addition to avoiding a series of short-term extensions of program authorization because the FAST Act is in place until 2020, AASHTO is especially grateful to Congress for being able to build in increases in annual authorized funding levels above inflation.

There are two implementation challenges state DOTs currently face, however, due to the lack of a full-year Fiscal Year 2017 appropriations measure that honors the FAST Act funding levels you provided.

First, building on multiyear FAST Act apportionments of contract authority, states can't make good on their planned investments for any given fiscal year if a full year's worth of obligation authority is not provided on October 1. Continuing resolutions that provide only a portion of obligation authority mean that even if we are ready to proceed with our much-needed projects, we can only commit federal dollars to a small portion of those projects. Missing the construction window due to piecemeal availability of federal obligation authority—especially in cold-weather states—can mean that some projects are delayed until the following year.

Second, because continuing resolutions have placed a freeze on obligation authority at the FY 2016 level, the Federal Highway Administration (FHWA) is unable to provide amounts anticipated under the FAST Act. For FY2016, FHWA has been able to provide only $42.2 billion of obligation authority this fiscal year at an annualized rate as opposed to $43.2 billion expected under the FAST Act. This translates to states around the nation receiving over $1 billion less in federal highway funding, with corresponding reductions in funding at the state and local level that could have been put to important use throughout the country. In addition, operating under a continuing resolution has prevented transit and passenger rail agencies from accessing $199 million authorized for positive train control (PTC) in the FAST Act for FY 2017. Given that FY2017 is the only year for authorized PTC funding from the Mass Transit Account, this critical safety funding would lapse if continuing resolutions are extended for the rest of FY 2017.

<u>The President's FY 2018 Budget Outline</u>

The President's "skinny budget" released on March 16, 2017, proposed a 13 percent reduction in discretionary funding for the US Department of Transportation (USDOT) by eliminating federal subsidies on long-distance Amtrak routes and the Essential Air Services program administered by the Federal Aviation Administration, limiting the Federal Transit Administration's Capital Investment Grants to already-executed full funding grant agreements, and eliminating the National Infrastructure Investments account (otherwise known as the TIGER discretionary grant program).

For state DOTs, any action that results in a reduction to our nation's transportation system investment raises concerns. But we are anxious to see the President's full infrastructure investment package to put the proposals outlined in the FY 2018 budget in context and we look forward to working with this Committee and others in Congress on these issues.

<u>Rescission of Unobligated Contract Authority</u>

The FAST Act includes a provision which would rescind $7.6 billion of unobligated highway contract authority on July 1, 2020. In addition, the Senate Subcommittee on Transportation, Housing and Urban Development, and Related Agencies included a $2.2 billion rescission in its proposed FY 2017 appropriations package last year. Both of these rescissions exempt certain categories of funds, including suballocated Surface Transportation Block Grant Program funds used by localities, safety funds, and allocated programs such as earmarks, Federal Lands Highway, and TIFIA. As a result, $9.8 billion in rescissions would need to be absorbed by only $9.4 billion of unobligated contract authority currently estimated to be available from formula apportionments to the states. Further, both the FAST Act and Senate Appropriations rescissions require states to rescind contract authority in a proportional manner across all applicable program categories, regardless of the relative balance contained within each program category.

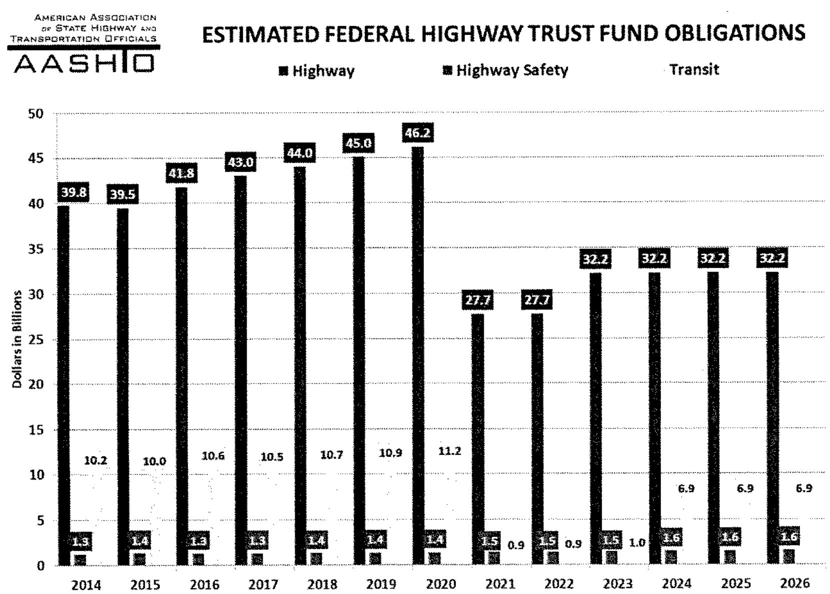
The balance of unobligated contract authority that state DOTs carry from year to year has provided important flexibility to apply scarce annual obligation authority to highway program categories of greatest priority based on each state's investment needs. We saw rescissions totaling some $21.2 billion of unobligated contract authority between 2002 and 2011. We ask Congress to remove rescissions from authorizing legislation like the FAST Act and any appropriations bills because they run the risk of reducing contract authority to the point where obligation authority cannot be utilized—resulting in dollars "left on the table" and a real loss of critically needed investments throughout the country.

Long-term Highway Trust Fund Solvency

It should be recognized that the FAST Act provides only a near-term, though absolutely necessary, reprieve when it comes to federal surface transportation funding. That is because the HTF continues to remain at a crossroads. The HTF has provided stable, reliable, and substantial highway and transit funding for decades since its inception in 1956, but this is no longer the case. Since 2008, the HTF has been sustained through a series of General Fund transfers now amounting to $140 billion. According to the January 2017 baseline of the Congressional Budget Office, HTF spending is estimated to exceed receipts by about $17 billion in FY 2021, growing to about $24 billion by FY 2027. Furthermore, the HTF is expected to experience a significant cash shortfall in FY 2021, since it cannot incur a negative balance.

Framing this HTF "cliff" in terms of federal highway obligations, AASHTO estimates that states may see a 40 percent drop from FY 2020 to the following year—from $46.2 billion to $27.7 billion in FY 2021. In the past, such similar shortfall situations have led to the possibility of reduction in federal reimbursements to states on existing obligations, leading to serious cash flow problems for states and resulting project delays. Perhaps more alarmingly, due to a steeper projected shortfall in the Mass Transit Account, new federal transit obligations are expected to be zeroed out between FY 2021 and FY 2023 excluding any "flex" of highway dollars to transit. Simply put, this is a devastating scenario that we must do all we can to avoid.

ESTIMATED FEDERAL HIGHWAY AND TRANSIT OBLIGATIONS BEYOND FY 2020 WITH NO ADDITIONAL REVENUES TO THE HIGHWAY TRUST FUND



ANY NEW INFRASTRUCTURE PACKAGE MUST BUILD ON THE FOUNDATION LAID BY THE FAST ACT

AASHTO and its member DOTs, like many in the transportation industry, recognize a special opportunity this year to enact a major infrastructure investment initiative given the high degree of interest from the Trump Administration and strong bipartisan support in Congress. As you and the President consider the design of this package for transportation infrastructure, we offer the following recommendations.

Utilize the Existing Formula-based Funding Structure

For over one hundred years—and as exemplified by the FAST Act—we as a nation have enjoyed the fruits of the federal government's highly successful partnership with state DOTs to build and maintain our nation's surface transportation system. From the Federal-aid Road Act of 1916 establishing the foundation of a federally-funded, state-administered highway program that has been well-suited to a growing and geographically diverse nation like ours, federal investment in all modes of transportation have allowed states and their local partners to fund a wide range of projects that serve the interest of the nation as a whole. Thanks to the federal surface transportation program's flexibility that defers project selection and investment decision-making to state and local governments based on extensive public input, diverse communities in rural, suburban, and urban areas of the country have all been able to help people get to and from work, and help goods get access to a larger market than ever before in a way that best meet their unique needs.

Based on the federal surface transportation program's long track record of efficiency and flexibility, we recommend that any increase in federal funds should flow through the existing FAST Act formula-based program structure rather than through untested new approaches that will require more time and oversight. Any effort that does not rely on the existing federal surface transportation program, such as an approach that chooses only certain projects based on a priority list, would leave most of the country behind no matter the size of such a list. In addition, I believe this type of a top-down approach from Washington will not only undermine the state and local prerogatives honored in the FAST Act, but also impede timely and successful delivery of the new infrastructure package.

Putting the program framework that built the Interstate Highway System and the National Highway System—the backbone of our national network of roads and bridges that drive our national economy—into work again to deploy additional federal resources represent the optimal approach to serve each and every corner of our country, improving mobility and quality of life in urban, suburban, and rural areas.

<u>Direct Funding Instead of Financing Tools</u>

Beyond fixing the HTF, it cannot be emphasized enough that any major transportation infrastructure package must focus on direct funding rather than on federal financing support. This is because financing tools that leverage existing revenue streams—such as user fees and taxes—are typically not viable for most transportation projects in the United States. Many of AASHTO's member DOTs appreciate the ability to access capital markets to help speed up the delivery of much-needed transportation improvements, and many states already rely on various forms of financing and procurement ranging from bonding, TIFIA credit assistance, state infrastructure banks, and public-private partnerships.

That being said, states fully recognize the inherent limitations of financing for the vast spectrum of publicly-valuable transportation projects. The reality is that most transportation projects simply cannot generate a sufficient revenue stream through tolls, fares, or other user fees to service debt or provide return on investment to private-sector equity holders. In 2014, such non-direct funding sources amounted to less than 18 percent of total capital outlays.

The state DOTs continue to support a role for financing and procurement tools such as public-private partnerships given their ability to not only leverage scarce dollars, but to also better optimize project risks between public and private sector partners best suited to handle them. But we also maintain that financing instruments in the form of subsidized loans like TIFIA, tax-exempt municipal and private activity bonds, infrastructure banks, and tax code incentives are insufficient in and of themselves to meet most transportation infrastructure investment needs we face.

Focusing on Transportation Investments that Produce Long-term Benefits

Though certainly significant, benefits from investment in transportation infrastructure goes well beyond short-term construction jobs created. A well-performing transportation network allows businesses to manage inventories and move goods more cheaply, access a variety of suppliers and markets for their products, and get employees reliably to work. American families benefit both as consumers from lower priced goods and as workers by gaining better access to jobs.

The FHWA estimates that each dollar spent on road, highway and bridge improvements results in an average benefit of $5.20 in the form of reduced vehicle maintenance costs, reduced delays, reduced fuel consumption, improved safety, reduced road and bridge maintenance costs, and reduced emissions as a result of improved traffic flow. Similarly, the American Public Transportation Association estimates that in the long term, a program of enhanced investment sustained over 20 years can have a total effect on the economy in the range of 3.7 times the amount being spent annually.

When we as a nation make significant investments our transportation infrastructure, it generates a multi-decade return on that investment to all sectors of the economy in the form of improved productivity and quality of life. The current fiscal environment does not require a rapid deployment of public dollars to resuscitate the national and global economy like what we saw in 2008. Rather, right now is the opportune time to secure our economic future for the long-term through modernized public capital stock in transportation. As such, the infrastructure package must focus on programs and projects that generate most benefits through the entire lifecycle, rather than mandating short spending deadlines which will lead to less efficient use of taxpayer dollars due to project sponsors' inability to address longer-term needs.

AASHTO and its member are well-prepared to work with Congress to take advantage of our strong, productive partnerships with federal and local governments to deliver on a major infrastructure initiative.

THE FEDERAL SURFACE TRANSPORTATION PROGRAM MUST PREPARE FOR AND HARNESS SIGNIFICANT TECHNOLOGICAL ADVANCEMENTS

I believe that we are at an inflection point in transportation that is as significant as when the engine was merged with the horse and buggy; today it's the merger of technology with the car and truck as we know it. This will change the way we move goods, services and people on our roads and highways. In the future, I view data as the new asset that will dramatically enhance public safety, save lives on our roadways, improve mobility, enhance program and operational efficiency, and create jobs. It is important now more than ever, that we maintain relationships from local, state and federal levels to ensure our transportation system is not a bottleneck of continued innovation. To that end, state DOTs appreciate your vision and leadership for the future articulated through the Advanced Transportation and Congestion Management Technologies Deployment Program in the FAST Act.

Governments will need to build, redesign, and adapt roads, highways, and bridges to accommodate the autonomous and connected vehicle. Traditional investments include providing better lighting, consistent roadway design, and better signage. Spectrum for vehicle-to-infrastructure systems using Dedicated Short Range Communications needs to be preserved, and rural broadband expanded. AASHTO also believes the National Highway Traffic Safety Administration must continue moving forward with industry on the proposal to establish a Federal Motor Vehicle Safety Standard for vehicle-to-vehicle communications (V2V). Cooperative V2V and vehicle-to-infrastructure (V2I) safety systems are needed to support fully automated vehicles, supported by robust research and deployment. Institutional capacity and workforce skills will need to be upgraded to operate, maintain and secure new smart roads and intelligent vehicles. States such as Florida, Michigan and Nevada have taken the initiative of policy changes at the state level, coupled with new guidance and standards at the national level, to effectively prepare for technological advancements in this space that will provide a greater overall public value in the future.

We also see much potential when it comes to the use of drones, or Unmanned Aerial Vehicles (UAVs). As of this past year, AASHTO identified 17 state DOTs conducting research regarding the use of UAVs. The aircraft have assisted state DOTs with bridge inspections, accident clearance, surveying and identifying, monitoring and mitigating risks posed by landslides, rockslides and flooding.

Another area that has seen rapid gains is the use of "big data," which refer to volume (large amounts of data), variety (different data being combined), and velocity (the speed at which new data is being produced and added to the analysis), used to analyze data that reveal patterns, trends, and associations, especially relating to traffic patterns, human behavior, and interactions. An example can be seen in 17 states partnering with the Waze, a popular driving app. Under its Connected Citizens Program, there has been increased and ongoing partnership between Waze and various governmental agencies to share publicly-available incident and road closure data to facilitate smoother movement of vehicles and people.

Clearly, there is demand for greater funding support for research and innovation beyond those provided through the FAST Act. In addition, a balanced, soft-touch approach from the federal government when setting national goals and policy pertaining to the intersection of transportation infrastructure and technology will better enable state DOTs to harness and deploy a multitude of enhancements efficiently and effectively.

CONCLUSION

Implementing and further building on the FAST Act, state DOTs remain fully committed to assist Congress and the Administration in ensuring long-term economic growth and enhanced quality of life through robust multimodal transportation investments.

Just last month, hundreds of state DOT leaders from all corners of our country were only a few blocks away attending AASHTO's 2017 Washington Briefing. Over three days of productive discussions, many of my colleagues and I were on Capitol Hill meeting with the respective Congressional delegations. As we did then, and as I do again now, AASHTO and the state DOTs will continue advocating for the reaffirmation of a strong federal-state partnership to address our surface transportation investment needs.

I want to thank you again for the opportunity to testify today, and I am happy to answer any questions that you may have.

TESTIMONY OF

GARY C. THOMAS

PRESIDENT / EXECUTIVE DIRECTOR

DALLAS AREA RAPID TRANSIT (DART)

DART

On behalf of

THE AMERICAN PUBLIC TRANSPORTATION ASSOCIATION (APTA)

BEFORE THE

HOUSE TRANSPORTATION AND INFRASTRUCTURE SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

ON

"FAST Act Implementation: State and Local Perspectives"

April 5, 2017
10:00 a.m.

The American Public Transportation Association (APTA) is a nonprofit international association of more than 1,500 public and private sector organizations, engaged in the areas of bus, paratransit, light rail, commuter rail, subways, waterborne services, and intercity and high-speed passenger rail. This includes: transit systems; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA is the only association in North America that represents all modes of public transportation. APTA members serve the public interest by providing safe, efficient and economical transit services and products.

Introduction

Good morning Chairman Graves, Ranking Member Norton, and members of the Subcommittee. My name is Gary Thomas, and I thank you for the opportunity to offer my testimony. I serve as the President and Executive Director of Dallas Area Rapid Transit (DART) and previously served as Chair of American Public Transportation Association's (APTA) Board of Directors in 2011 and 2012.

About DART and APTA

DART was created on August 13, 1983, when North Texans, in and around the city of Dallas, voted to commit one percent of local sales taxes to fund public transportation. Today DART is a multi-modal transit agency operating North America's longest light rail system of 93 miles in the fourth largest metropolitan area in the United States. The 2.3 million residents of our 13-city, 700-square mile service area count on DART's network of bus, light rail, commuter rail, and paratransit programs to get where they need to go. I have been privileged to lead DART for 16 years, during which I have overseen tremendous expansion of our system and service. I have also witnessed the astounding economic impact DART has had on our region. New and planned transit oriented development along DART rail lines has generated more than $7 billion in economic growth. Moreover, in 2014 and 2015 this activity was responsible for more than 43,000 jobs, resulting in nearly $3 billion in wages, salaries, and benefits.

As the leader of a multi-modal transit agency, I can speak to the short and long-term operational, fiscal, and administrative challenges facing transit systems around the country. I am testifying today not only as a representative of DART, but also on behalf of APTA. APTA is a non-profit international association of more than 1,500 public and private member organizations, including transit systems and commuter rail operators; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations; and state departments of transportation.

Overview

I want to begin by telling the Committee that every transit General Manager I know strives to provide the best service to his or her community with the limited resources they have. Managing a transit system in any community is far more complex than simply getting the buses to run on time – though that is very important. Transit operating and capital revenues are derived from a variety of local and federal funds as well as fare box revenues paid by customers. Like many transit systems, DART faces limited funding, workforce challenges, as well as local, state, and federal regulatory requirements, while also preparing for potential social and technological changes.

Public transportation in the United States is a $66 billion a year industry. While the federal government provides almost 43 percent of the nearly $18 billion in capital investment annually, state and local governments, and riders through paid fares also support a significant portion of annual capital and operating expenses.

Fixing America's Surface Transportation Act Implementation

The passage of the FAST Act in December 2015 was a significant step forward for the transit industry and the communities we serve. After years of short-term extensions followed by a short authorization bill, Moving Ahead for Progress in the 21st Century (MAP-21), the FAST Act finally represented a source of stable funding critical for transit agencies to adequately plan for capital improvement projects. The law authorized $61.1 billion through fiscal year (FY) 2020 for programs administered by the Federal Transit Administration (FTA). These programs are funded through a combination of revenues from the Mass Transit Account (MTA) of the Highway Trust Fund (HTF) and the General Fund of the U.S. Treasury. The FAST Act also included a rail title that authorized and restructured the Amtrak program through FY 2020, and authorizes additional funding under three separate rail investment programs.

The FAST Act retained much of the existing federal transit program structure, but also provided additional financial resources and made several important program improvements. In particular, it established a new bus and bus facility discretionary grant program and authorized new funding to help commuter rail systems install positive train control (PTC), both of which were high-priority industry requests.

The FAST Act preserved and improved the primary transit capital assistance programs, which are critical to every transit agency in the country and funded through the MTA. The largest programs, the Urbanized Area and Rural Area Formula programs, allocate funding to regions based on factors such as land area, revenue-vehicle miles, low-income population, and, under certain conditions, allow funding to be used for limited operating expenses. In addition, the FAST Act continued the State of Good Repair program, which supports fixed guideway public transportation programs and high intensity motorbus vehicles, along with the Bus and Bus Facilities program that supports bus and bus facility replacement needs. We are particularly grateful for the addition of competitive grants to the bus program and for the continuation of the highly successful and competitive Low or No Emission Grants program. Other important HTF-supported formula programs support public transportation programs for seniors and individuals with disabilities.

The FAST Act reauthorized and strengthened General Fund programs, which are equally important. Programs funded out of the General Fund support new capacity and expansion projects as well as relatively small, but impactful research and workforce development programs. The law provided the Capital Investment Grants (CIG) program, which supports new and expanding fixed guideway rail and bus rapid transit systems, with additional financial resources and new flexibilities. Furthermore, the FAST Act made improvements to workforce development and technical assistance programs and consolidated several critical research programs into a new Public Transportation Innovation program.

Unfortunately, some of these programs are now at risk—jeopardizing the successful implementation of the FAST Act.

The President's Fiscal Year 2018 budget blueprint submitted to Congress on March 16, 2017 proposes phasing out the CIG program and reducing support for Amtrak, both of which are authorized through 2020 in the FAST Act. Congress must reject these proposals if the FAST Act is to be fully and successfully implemented.

The programs supported by the FAST Act and its predecessors are difference makers in North Texas. DART was able to build its 93 miles of electric light rail in just over 20 years because the federal government has been a partner, providing three FTA Full Funding Grant Agreements as part the CIG program, which the Trump administration proposes eliminating. Our most recent one, awarded in 2006 for $700 million, supported the construction of our light rail Green Line.

If you were to join me on the Green Line, you would see neighborhoods undergoing transformations. We are connecting residents in communities desperate for jobs to new employment opportunities. Educational institutions and internationally recognized healthcare centers on that line are now more accessible. You would see sleepy downtowns coming to life.

Federal support has helped us complete the conversion of our bus fleet to compressed natural gas. In addition, we are using funds from the low and no-emission bus program to purchase seven electric buses, which will be in operation next year.

Our work is far from done. We are advancing plans for a second light rail line in Downtown Dallas that we hope will be partially funded by a Core Capacity Grant, which would be unavailable to us under the President's budget proposal. We are also bringing an old railroad corridor, the Cotton Belt, to life with a new commuter rail line – adding a new rail connection to Dallas/Fort Worth International Airport. In response to local demand, we are now accelerating that project by more than a decade and beginning the application for a Railroad Rehabilitation and Improvement Financing (RIFF) loan from the Federal Railroad Administration.

It is critical that Congress keeps these commitments and reject the proposed cuts to public transportation programs that were authorized little more than one year ago.

Safety

The public transportation industry mantra is "safety first." The FAST Act and its predecessor, MAP-21, granted the FTA new safety oversight authority related to the certification of State Safety Oversight Agencies and mandated the establishment of minimum safety standards for safe transit operations. In addition, it provided FTA statutory authority to issue nationwide safety directives and regulations as well as withhold or direct funds for recipients that do not comply with federal safety laws or regulations.

As these provisions were developed and are now being implemented, we remain appreciative that this Committee recognized safety standards and rules should reflect the wide diversity of our industry. A "one-size fits all" approach to safety is unworkable, ineffective, and would be a disservice to our riders and employees.

The FAST Act directed the Secretary of Transportation to initiate a rulemaking on driver assaults, which take place at an alarming rate across the country. It also required the Transportation Research Board of the National Academies to conduct a study and evaluate whether it is in the public interest to withhold certain safety-sensitive data from discovery or admission into evidence during lawsuits. The industry looks forward to reviewing these outstanding FAST Act requirements as they are implemented.

The safety of transit riders and workers is the industry's top priority. Public transportation remains one of the safest modes of transportation, but we must always strive to be even better.

Innovation and Public Private Partnerships

Congress and this Committee are rightly focused on innovation and building a 21st century transportation system that will support our nation's long-term economic competitiveness. The public transportation industry shares this goal, is committed to harnessing new technology to provide better and more cost-effective service, and is grateful for the innovations supported by the FAST Act.

Specifically, the FAST Act made a number of process improvements, such as allowing agencies to purchase capital assets like buses through cooperative procurements administered by the state, and by leveraging non-profit purchasing organizations to establish three pilot programs. The law also supported the industry adoption of innovative technologies, allowing lease agreements to cover zero emission vehicle power sources, which are batteries that must be replaced within the useful life of vehicle. It improved financing programs for public transportation, and created a national surface transportation finance bureau in the U.S. Department of Transportation (DOT) to streamline the process for accessing the Transportation Infrastructure Finance and Innovation Act (TIFIA) and RRIF credit programs. Lastly, it allowed agencies to use revenues from value capture financing to meet local match requirements, supporting this innovative financing mechanism.

However, not all public-private partnerships involve credit assistance programs. There are other ways in which we can partner with the technology industry. The Dallas-metro area has a vast transportation system and is committed to bringing new options for our customers through innovative partnerships with emerging transportation platforms and the private sector. DART was one of the first transit agencies to actively engage car and ride-sharing companies. Our first partnership was with ZipCar, a nationwide car-sharing company that approached us in 2015 about placing two cars at one of our rail stations. That station quickly became one of our most popular stops. Shortly after our alliance with ZipCar we began a collaborative effort with Uber. We have also partnered with Mothers Against Drunk Driving to encourage safe transit and travel connections during the very popular annual St. Patrick's Parade. Today DART customers can access both Uber and Lyft services through DART's GoPass mobile ticketing app, which utilizes the latest technology to provide a seamless, integrated payment system for the complete trip. We are currently using a federal Sandbox grant to make it even easier for car and ride-sharing customers to connect with transit.

The public transportation industry is committed to maximizing our limited resources by leveraging innovative financing mechanisms and public-private partnerships, when appropriate. However, it is important to note that not all public transportation projects lend themselves to these financing tools. We have seen successful public-private partnerships, but they are simply not workable for many public transportation projects. The fact is that we will not solve our infrastructure deficit through innovative financing tools alone. The existing federal public transportation programs, as supported by this Committee, reflect the fact that direct federal funding remains essential.

Ongoing Challenges

There are several major issues still facing the public transportation industry as the FAST Act continues to be implemented.

Perhaps the most significant is the new challenge posed by the President's FY 2018 budget blueprint. The proposal to eliminate the FAST Act's CIG program threatens more than 55 projects in communities all around the country that have expended resources planning new projects with the expectation that the federal government would uphold the commitments made in the FAST Act.

Second, while the FAST Act provided modest growth and funding predictability through FY 2020, the law did not address the long-term solvency of the Highway Trust Fund. In January, the Congressional Budget Office released its latest estimate of the fiscal condition of the Highway Trust Fund and found that after FY 2020 existing user fees – including federal gas and diesel taxes – will not provide sufficient revenues to maintain baseline spending. An additional $120 billion would be needed to fund a six-year surface transportation bill at only current baseline levels for FY 2021-2026. APTA strongly encourages Congress to identify a sustainable revenue mechanism to provide for the long-term solvency of the Highway Trust Fund.

Third, the benefits of the FAST Act will not be fully realized unless Congress approves full-year appropriations, starting with an FY 2017 bill. In December, Congress passed a continuing funding resolution (CR) to keep the federal government operating at FY 2016 levels through April 28, 2017. While FTA was able to make partial-year apportionments of formula grant dollars, the prorated amounts were based on FY 2016 levels rather than the higher levels authorized by the FAST Act for FY 2017. FTA was unable to allocate discretionary grants, including Capital Investment Grants.

If Congress fails to finish its work on a full-year FY 2017 transportation appropriations bill and instead passes another CR at FY 2016 levels, federal transit programs funded by the HTF will not receive the full funding authorized by the FAST Act. Additionally, the $199 million authorized for FY 2017 to install PTC at commuter rail systems is at risk. With commuter rail systems under a congressionally-imposed deadline to install PTC safety systems, we urge Congress to fund this important program as soon as possible.

Lastly, the FAST Act increased the Buy America domestic content requirements for transit rolling stock from 60 percent to 65 percent in FY 2018, and ultimately to 70 percent in FY 2020. We appreciate the orderly transition to higher domestic content requirements as directed by the FAST Act and implemented by FTA and remain committed to complying with these higher standards. However, we caution against any efforts to further increase domestic content requirements during the implementation period as the industry, including the network of manufacturers and suppliers, adapts to these new changes.

Moving Forward Together

As we look to the future of public transportation, and Congress and the administration work to develop proposals for an infrastructure initiative, we urge the Committee to keep in mind the important economic benefits of public transportation, the strong public support for public transportation investments, and the significant unmet needs that remain.

Public transportation is an essential part of the nation's surface transportation system. It provides access to jobs and personal mobility. Public transportation helps reduce congestion, makes the entire transportation system work more efficiently, and spurs economic growth in communities. Every $1 invested in transit generates approximately $4 in economic returns[1]. A recent study released by APTA found that nearly 90 percent of public transportation trips directly impact the economy either through work commute or consumer spending[2]. In addition, 70 percent of government public transportation funding flows directly into the private sector, supporting millions of jobs[3].

In recent years, several states have raised motor fuels taxes and localities have raised other taxes that help pay for surface transportation, including public transit. During the most recent elections, voters approved nearly 70 percent of transit-related ballot initiatives, raising almost $170 billion in future revenues for public transportation. However, it is important to keep in mind that the success of these local initiatives depends on a strong federal partnership.

Despite the significant resources made available by the FAST Act and local funding increases, the U.S. DOT estimates there remains a backlog of $90 billion, up from $86 billion, in capital investment needs just to bring the existing public transportation system into a state of good repair. In addition, the demand for CIG far exceeds the available resources for new capacity and expansion projects around the country.

Industry Principles

In an effort to support the efforts of Congress and the Administration as they work to develop new proposals to reinvest and rebuild our nation's infrastructure, APTA convened its members last fall to develop consensus industry recommendations.

APTA continues to advocate for increased investment in public transportation from all levels of government, but the federal partnership remains paramount. We believe that public transportation should be a significant part of any federal initiative investing in the nation's infrastructure. Any new infrastructure initiative should build on the existing FAST Act programs to ensure that the best and most useful projects get funded. Funding should go to communities throughout the nation, including urban, rural, and suburban areas. Investments must address unmet needs associated with

---

[1] *Economic Impact of Public Transportation Investment* http://www.apta.com/resources/reportsandpublications/Documents/Economic-Impact-Public-Transportation-Investment-APTA.pdf

[2] *Who Rides Public Transportation* http://www.apta.com/mediacenter/pressreleases/2017/Pages/Who-Rides-Public-Transportation.aspx

[3] *2016 Public Transportation Fact Book* http://www.apta.com/resources/statistics/Documents/FactBook/2016-APTA-Fact-Book.pdf

buses and bus facilities; aging rail systems under the state of good repair program; new capacity projects; urban, rural, and other formula programs; intercity passenger rail and PTC; and workforce development and research programs.

Our transportation mobility challenges are difficult, but can be solved. We have before us a unique opportunity to tackle these challenges in a meaningful way. People in communities everywhere are working on solutions that meet their unique needs. They have the vision and the desire, but require federal leadership and support. We believe there is a role for local communities and the federal government to work together to support those visions with substantial, sustainable, and predictable funding.

However, eliminating existing public transportation infrastructure programs, as envisioned in the President's budget, is a step in the opposite direction. It is not only inconsistent with the calls from the President and the Congress to invest in our infrastructure through a new initiative, but also would be devastating to our city, our region, our state, and the industry as a whole. The members of this Committee authorized the CIG program and support for Amtrak under the FAST Act through 2020. Successfully implementing the law requires Congress reject the budget proposal and fulfill the commitments made to invest in public transportation. Similarly, a successful infrastructure package must build upon those investments, not abandon them.

We are grateful for the efforts of this Committee in working with us to improve federal public transportation programs and advance our mutual objectives.

Statement of

Atlanta Mayor Kasim Reed

on behalf of

The United States Conference of Mayors

before the

House Transportation and Infrastructure

Subcommittee on Highways and Transit

hearing on

"FAST Act Implementation: State and Local Perspectives"

April 5, 2017

Chairman Graves, Ranking Member Holmes Norton and Members of the Subcommittee, I am Kasim Reed, Mayor of Atlanta.

I thank you for this opportunity to appear before you and this Subcommittee on behalf of The United States Conference of Mayors, the national, bipartisan organization of mayors, representing the nearly 1,400 U.S. cities with a population of 30,000 or more.

I am pleased to speak about implementation of the FAST Act, emphasizing that mayors and other representatives of local governments invest in, own and manage most of the nation's surface transportation infrastructure. I can assure you that my local colleagues fully appreciate the need for additional financial and programmatic responses to the challenges before us in addressing our nation's surface transportation needs.

In my testimony before this Committee to prepare for MAP-21, I emphasized then that the issues before all of us are not unlike what we face each day in our cities. How do we secure more value and better performance from our investment of taxpayer dollars, and how do we find additional resources to grow and expand our investments in core assets, like infrastructure, and the other critical services that fuel economic growth and ensure future prosperity for our citizens? These values drive all of us in public service, and represent responsibilities that we cannot shirk. These same questions are squarely before us today.

And, as a mayor of a city in a region with an already substantial and ever-growing economic output and population, there are challenges before us that go beyond aging infrastructure. According to IHS Global Insight, our U.S. metro areas are estimated to grow by nearly 66.7 million people over the next 30 years. Growth in the Atlanta region is projected to be substantially higher, as our region's population is estimated to grow from 5.8 million to more than 8.6 million (or 48.7 percent).

When we look to the future, with our success so important to our state and the nation, we must have all transportation options on the table so we can sustain our economic growth and do so cost effectively and efficiently.

Looking more broadly at our metro economies, these areas today account for 86 percent of the country's population, 88 percent of national employment, 89 percent of real income, 91 percent of wage income, and 91 percent of overall Gross Domestic Product (GDP). In 2015, 96.5 percent of all new jobs were created in metro areas. Consider that the total Gross Metropolitan Product (GMP) of America's top 10 metro areas – New York, Los Angeles, Chicago, Dallas-Fort Worth, Houston, Washington D.C., San Francisco, Philadelphia, Atlanta, and Boston – totals more than $6.24 trillion, larger than the combined economic output of 37 states.

These numbers show us, Mr. Chairman, that we must prepare for this future growth and our new transportation needs now, or we will literally choke on our own congestion and cause undue hardship on our business community and households and the nation's economy.

This economic and population data underscores why the Conference of Mayors and its mayors (and other local elected leaders) continue to urge policy reforms to ensure that local elected officials have more say over how available federal resources are invested.

We also believe this greater emphasis on local decision-making will actually help us find those productivity gains that we are looking for in our transportation investments to help the U.S. economy grow faster.

FAST Act

As we confront these challenges, we are fortunate to have the FAST Act providing the broad framework for a strong and continuing partnership with us locally and our state government partners. This bipartisan measure strongly affirmed the importance of a balanced federal partnership that mostly empowers us as local and state officials.

On behalf of the Conference of Mayors, we want to applaud this Subcommittee and the full Committee, notably the efforts of Chairman Bill Shuster and Ranking Member Peter DeFazio, for coming together to craft a bipartisan framework to guide our shared federal/state/local partnership into the future.

There are many features of the new FAST Act but here are a few especially important ones:

- Funding flexibility continues, allowing us to craft solutions that work for the broader economy and our local areas and communities;
- Balanced investment in highways, transit and other travel alternatives, providing funding certainty for highway, transit and transportation alternatives, and underpinning future project planning and delivery;
- Increased resources to local areas, recognizing the growing importance of delivering more resources to those elected leaders who for more than a generation have led all governmental partners in bringing new revenues to our nation's highway and transit needs; and
- Commitments to emerging transportation challenges, whether it is responding to growing freight demands and bottlenecks or deploying new technologies for advanced vehicles or for other mobility needs.

I am pleased to report that from the vantage point of mayors, the core program activities of the FAST Act are working well, and projects are moving forward with a degree of certainty and predictability. That said, we know there are still rulemakings implementing various elements of the new law still in the pipeline, and we will look to secure the benefits of these reforms as they become available.

On freight issues, I want to recognize and commend former Secretary Anthony Foxx for giving such priority to getting the new FASTLANE grants program up and running, a FAST Act initiative that has already provided the first round of this discretionary funding for projects addressing critical freight issues. We look forward to subsequent grant rounds under this new initiative.

At the same time, we have learned that some important features of the FAST Act are already being challenged. The outgoing Administration proposed a new rule on MPO designations that created unreasonable burdens for a number of regions, and we thank you, Mr. Chairman, and this Committee for acting on legislation to remedy this.

On another issue, the Conference is troubled that the new Administration is contemplating the eventual elimination of the Capital Investment Program (as initially described in its preliminary budget request).

Mr. Chairman, Members of this Subcommittee and the full Committee have worked hard with project sponsors and others to adopt major changes to address issues related to the continued federal support for these major transit investments. As mayors, we pledge to work with the Administration and urge them to revisit this proposal, making the case that these investments are critical elements of our transportation infrastructure and spur the growth of our metropolitan economies, which help drive our nation's economic success.

I now want to share some examples from my region that further animate these broader questions.

I-85 Collapse

The collapse of a bridge on Interstate 85 in Atlanta last week points to the need for transportation options, including robust transit service. Having alternatives – whether alternative roads or trains, among others – is a part of resiliency.

Emergency Relief Program funding, I am told, is already being deployed to help respond to this bridge collapse, and we thank you.

We are fortunate now that the State of Georgia in 2015 passed HB 170, which raised our state gas tax to provide for nearly $1 billion annually in bridge and road repair. But we need to do more and the City of Atlanta is showing the way.

MARTA & TSPLOST

The City of Atlanta is moving full speed ahead on providing the world-class transportation options that its residents and businesses continue to support, and demand, in overwhelming fashion. This is so critical to our city that our residents are willing to tax themselves to get this done.

Last November, the half-penny sales tax referendum on a $2.6 billion MARTA expansion passed with 71 percent approval. The accompanying TSPLOST (four-tenths of a penny) will raise an estimated $300 million for infrastructure projects. It won a 68 percent majority.

City residents are voting with their pocketbooks, and businesses are voting with their feet in order to improve their lives and bottom lines by locating near transit –

- NCR, Honeywell, GE Digital, UPS, EquiFax and Anthem are moving into Atlanta or expanding their presence here. They all want convenient access to MARTA.
- So does State Farm in Dunwoody and Mercedes-Benz in Sandy Springs, just north of the city limits, but still on the MARTA rail line.

For decades now, Atlanta's investment in transportation infrastructure has set the city above our regional competitors. Our landmark decisions to invest in MARTA and Hartsfield-Jackson airport have been critical factors in building Metro Atlanta into the dominant economic and cultural engine of the Southeast.

In the last two years, Atlanta taxpayers have doubled down on that investment, beginning in March 2015 with approval of the Renew Atlanta Infrastructure Bond program, which is already delivering $250 million in infrastructure improvements in a timely and efficient manner.

We are fixing roads and bridges; engineering more than 30 miles of Complete Streets projects, including bicycle lanes; and synchronizing traffic signals.

Thanks to the city's robust AA+ credit rating – its highest in 50 years -- we are funding these improvements at historically low rates.

MARTA's expansion means the potential is very real for new light-rail transit and flexible bus service that will connect with existing heavy rail and the Atlanta Streetcar.

Anti-transit voices often advocate for short-term fixes over long-term projects, like Bus Rapid Transit (BRT) over heavy or light rail. We recognize that BRT is part of the solution. But there's no question that our investments in rail have been a driving force in our region's growing economy.

The Atlanta BeltLine

The Atlanta BeltLine is a 22-mile loop on trails and transit and economic opportunity being built on abandoned rail lines around the City. It will connect 45 neighborhoods and 22 schools with sustainable transit, bike and pedestrian options.

Since 2009, the Atlanta BeltLine has leveraged $400 million in public investment into $3.7 billion of development within a half-mile of the corridor.

The Eastside Trail, completed in 2012, sees more than one million visitors each year and has contributed to the economic and cultural resurgence of its surrounding neighborhood. The $43 million Southwest Trail is currently under construction, representing the single largest expansion in BeltLine history.

As early as 2005, developers were transforming former industrial sites into mixed-use developments with new commercial, retail and residential space.

Even through the "Great Recession," development continued, in particular around new Atlanta BeltLine infrastructure such as Historic Fourth Ward Park.

New parks, trails and transit are expected to continue this trend as developers recognize the value of this new infrastructure and build denser, mixed-use urban developments that attract new residents to the city.

Partnership with Governor Deal

While our politics may be different, Governor Nathan Deal and I share a commitment to Georgia and its future. The things we choose to work together on, we agree 100 percent.

The deepening of the Port of Savannah doesn't happen without both of us. People may not realize it, but having that port deepened means the Savannah Port is going to be one of the top three ports in America. It's going to challenge New York/Newark.

I hope that our model of collaboration, between the Atlanta mayor and the Georgia governor, is one that will always survive politics. I hope it will inspire other blue and red cities and regions to cooperate.

If you look at the number of headquarters and business wins Governor Deal and I have had, we've pitched almost all that business together. The City of Atlanta has seen 17 corporate relocations in the last 42 months.

Last summer, Governor Deal and I were meeting the press at the Capitol almost every week to announce another tech company that was bringing thousands of new jobs to Midtown Atlanta – NCR, GE Digital, Honeywell, UPS, Anthem are all coming, bringing about 10,000 jobs with them.

It's very rare you walk into a room these days and you see all Republicans or all Democrats. So when Governor Deal and I walk into a room together, it definitely impacts the tone of whatever we're doing. There's a power in our unity that businesses are impressed to see. It saves a lot of time and money. When the Governor and I are on the same page, it eliminates the need for multiple meetings with businesses.

It also means Invest Atlanta works hand-in-hand with the state's economic development team, and we all proceed in a seamless fashion.

Port of Savannah

At least as far back as 2011, Governor Deal and I were working together on funding for the Savannah Harbor expansion because it supports jobs in Georgia, Atlanta, and all around the country. We traveled together to Washington to meet with then Transportation Secretary Ray LaHood to lobby for federal funding for the harbor deepening.

Deepening of the Port is underway with completion set for as early as 2020. It will have tremendous effect on Hartsfield-Jackson, where our logistics business is a major component. Our 24-hour cargo operation at Hartsfield-Jackson creates more than 27,000 jobs in Georgia.

The Port of Savannah saw record container volume growth in December 2016, a 12.3 percent increase – more than 32,000 units - over December 2015.

For every dollar spent on the harbor expansion, more than $5 is returned in economic benefits to the nation, according to study by the U.S. Corps of Engineers. Larger shipping vessels docking in Savannah translate to lower costs per container, meaning it's cheaper to ship goods to Atlanta.

Closing Comments

Mr. Chairman, we know our success as a nation is linked to how successfully we address our transportation and other infrastructure needs in our city and county metropolitan areas. As a leader of the Atlanta region, I can assure you that nothing is more important than investment in the basic infrastructures, especially our water and transportation systems, which underpin all of our prosperity.

We are fortunate to now have the FAST Act in place which is helping us at the local and state level make progress on our surface transportation infrastructure needs. We know there is much more to do, and addressing the deficit in the current Highway/Transit Trust Fund is foremost among the challenges before us.

In helping our cities and regions find a sustainable path to control sewer and storm overflows with green infrastructure and through permits rather than cost consent decrees, I want to convey the strong support of the Conference of Mayors for Representative Gibbs legislation (HR 465).

Finally, we know the new Administration is looking to make a sizable commitment to improving our nation's infrastructure, be it highways, bridges, transit, water and sewer, among others. We see this as an opportunity to catch up on these growing deficits, despite the sizable local commitments to these areas of infrastructure investment. We urge you to work with us to ensure that some portion of these additional funds actually reach local decision-makers to help you achieve the positive results you are seeking for your local areas and the nation.

Mr. Chairman, Ranking Member and Members of the Committee, I thank you for this opportunity to present the views of The U.S. Conference of Mayors and their member mayors, and to share perspectives from my city and region. Please know that the Conference of Mayors and the nation's mayors stand with you as you work to strengthen this important partnership with us on surface transportation.

Choctaw Nation of Oklahoma
PO Box 1210 • Durant, Oklahoma 74702-1210
(580) 924-8280

Gary Batton
Chief

Jack Austin, Jr
Assistant Chief

Sent electronically Murphie.Barrett@mail.house.gov and Helena.Zyblikewycz@mail.house.gov

April 10, 2017

The Honorable Sam Graves, Chairman
The Honorable Eleanor Holmes Norton, Ranking Minority
House Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure
U.S. House of Representatives
2165 Rayburn House Office Building
Washington, DC 20515
ATTN: Murphie Barrett, Majority Staff Director
Helena Zyblikewyck, Minority Staff Director

Re: Hearing on "FAST Act Implementation: State and Local Perspectives:

Dear Chairman Graves and Ranking Member Norton:

The Tribal Transportation Self-Governance Program (TTSGP) was authorized in the *Fixing America's Surface Transportation* (FAST) *Act* (P.L. 114-94, Section 1121). The FAST Act requires the Department of Transportation (DOT) to establish a TTSGP modeled largely by Title V, *Tribal Self-Governance Amendments of 2000*, of the Indian Self-Determination Education and Assistance Act (ISDEAA) (P.L. 93-638). It will extend to all programs available to Tribes within the DOT (e.g., allow Tribes to include Tribal Transit Program (TTP) funding, transit funding, discretionary grant funds, and Federal-aid funds transferred by a state agency in their funding agreements). It also requires the development of regulations pursuant to a negotiated rulemaking process, thus providing Tribes an opportunity to participate in shaping the TTSGP's implementing regulations.

Section 1121 requires that in establishing this negotiated rulemaking committee, the Secretary applies the procedures of negotiated rulemaking under subchapter III of chapter 5 of title 5 (the Negotiated Rulemaking Act) in a manner that reflects the unique government-to-government relationship between the Indian Tribes and the United States. The negotiated rulemaking process began on August 16-18, 2016, eight months following enactment of the law on December 4, 2015. There were five meetings held in 2016, the last one was on December 6-8. While there were additional meetings scheduled in 2017, what was assumed to be a temporary hold on the proceedings, due to a change in the Administration, is now the fourth month in 2017 without a meeting of the negotiated rulemaking committee. ***We request that you urge the expedited***

continuance of the negotiated rulemaking process at DOT to allow Tribes to share in the opportunities and benefit from the improvements in the FAST Act.

The timeline to promulgate and finalize proposed regulations was included in the statute:

'(n) REGULATIONS.—

''(1) IN GENERAL.—

> ''(A) PROMULGATION.—**Not later than 90 days after the date of enactment of the FAST Act**, the Secretary shall initiate procedures under subchapter III of chapter 5 of title 5 to negotiate and promulgate such regulations as are necessary to carry out this section.
>
> ''(B) PUBLICATION OF PROPOSED REGULATIONS.—Proposed regulations to implement this section shall be published in the Federal Register by the Secretary **not later than 21 months after such date of enactment**.
>
> ''(C) EXPIRATION OF AUTHORITY.—The authority to promulgate regulations under subparagraph (A) **shall expire 30 months after such date of enactment**.
>
> ''(D) EXTENSION OF DEADLINES.—A deadline set forth in subparagraph (B) or (C) **may be extended up to 180 days if the negotiated rulemaking committee referred to in paragraph (2) concludes that the committee cannot meet the deadline and the Secretary so notifies the appropriate committees of Congress.**

Since the enactment of the ISDEAA, Tribes have taken every opportunity to exercise self-determination by asserting more local control over Federal Indian programs. Self-Governance has always been a Tribally-driven effort that was initially authorized in 1988 with an appropriation for a demonstration project of 10 Tribes in the Department of the Interior (DOI) – Indian Affairs (IA). In 1992, Congress extended the Self-Governance Demonstration Project to the Indian Health Service (IHS) in the Department of Health and Human Services. Permanent Self-Governance authority was enacted in 1994 for DOI (Title V) and in 2000 for IHS (Title V). Tribes have the option to assume funding for programs, services, functions and activities (or portions thereof) in both IA and IHS and manage them to best fit the needs of their Tribal communities. For the past thirty years, there has been tremendous growth and with the expansion to DOT, more Tribes are expected to participate in the most successful Tribal –Federal partnership in U.S. history. But we cannot implement a program without regulations.

According to the Bureau of Indian Affairs (BIA), only seventeen percent of the roads on Indian reservations are considered to be in acceptable condition. The remainder is considered to be in poor and unacceptable condition. According to the National Congress of American Indians, "these roads are among the most underdeveloped and unsafe road networks in the nation, even though they are the primary means of access throughout these communities. Tribal transportation infrastructure is a key component for Tribal governments to bolster their economies. Transportation programs are critical to ensure Tribal governments can provide for economic development and the social well-being of their Tribal citizens, as well as to ensure the safety of non-Tribal citizens who travel on Tribal roads.

The National Tribal Transportation Facility Inventory (NTTFI) consists of over 160,000 miles of public roads with multiple owners, including Indian Tribes, the BIA, states, and counties, as well as other Federal agencies. Of this amount, approximately 12,300 miles are planned or proposed roads of varying surface types and uses. There remains a great and continuing need to improve the transportation systems throughout Indian Country. Congress has viewed this as a joint responsibility including not only Federal agencies, but state and local governments with transportation investments in or near American Indian and Alaska Native communities, as well. Coordination among all of these stakeholders is required in order to maximize available resources to address transportation needs. Tribes are continuing to invest in transportation projects that are the responsibility of other public authorities. This creates jobs and contributes to the economy of local businesses that provide services and materials. Strengthening existing partnerships will continue to support the local economy and bring improved infrastructure to communities on or near Indian reservations and lands. In 2014, the BIA reported that, Tribes have planned transportation projects estimated to lead to approximately $270 million worth of investment in non-BIA and non-Tribal roads and bridges over the next 3 years. An investment in Tribal transportation is truly an investment in the local economy and safer roads and bridges.

Further delays in the negotiated rulemaking process compromises the ability of Tribes to participate in proceedings such as the Subcommittee's hearing on April 5th which translates to delayed opportunities for Tribes to share their perspectives with Congress on implementing the FAST Act, specifically under Section 1121.

Mr. Chairman, Madam Ranking Member and Members of the Subcommittee, we are in need of your immediate assistance to ensure that Tribes, valued and qualified stakeholders, are allowed to participate in the dialogue that will shape and guide the implementation of the FAST Act for all beneficiaries.

Thank you.

Sincerely,

Mickey Peercy

Mickey Peercy, Director, Self-Governance

Cc: The Honorable Kay Rhoads, Tribal Co-Chair, DOT-TTSGP Negotiated Rulemaking Committee
The Honorable Joe Garcia, Head Councilman, Ohkay Owingeh Pueblo, Tribal Co-Chair, DOT-TTSGP Negotiated Rulemaking Committee
SGCETC for Self-Governance Tribes

Sitka Tribe of Alaska

Tribal Government for Sitka, Alaska

April 10, 2017

The Honorable Sam Graves
Chairman
Committee on Transportation & Infrastructure
Subcommittee on Highway & Transit
2251 Rayburn House Office Building
Washington, DC 20515
Attn: Murphie Barrett
murphie.barrett@mail.house.gov

The Honorable Eleanor Holmes Norton
Ranking Member
Committee on Transportation & Infrastructure
Subcommittee on Highway & Transit
2251 Rayburn House Office Building
Washington, DC 20515
Attn: Helena Zyblikewycz
helena.zyblikewycz@mail.house.gov

RE: Subcommittee Hearing on "FAST Act Implementation: State and Local Perspectives"

Dear Chairman Graves and Ranking Member Norton:

Sitka Tribe of Alaska (STA) has been active in Tribal Self-Governance over 35 years and has been very supportive of the Self-Governance & Communication & Education Tribal Consortium (SGCETC). STA supports the SGCETC efforts to ensure that the Self-Governance authority is implemented in the Department of the Interior – Indian Affairs and the Department of Health and Human Services - Indian Health Service.[1] In 2015 the Self-Governance authority was expanded to the Department of Transportation (DOT) under the *Fixing America's Surface Transportation* (FAST) *Act* 23 U.S.C. § 207. The STA and Tribal representatives have been pleased to participate in the process of developing proposed regulations to implement this authority with Federal representatives from the DOT models. The statute, Section 1121, requires that in establishing this negotiated rulemaking committee, the Secretary will apply the procedures of negotiated rulemaking under Subchapter III of Chapter 5 of Title 5 (the Negotiated Rulemaking Act) in a manner that reflects the unique government-to-government relationship between the Indian Tribes and the United States.

The Tribal Transportation Self-Governance Program (TTSGP) Negotiated Rulemaking Committee has a statutory deadline of August 2017 to complete its initial proposed rule. The statute reads as follows:

"(n) REGULATIONS.—

"(1) IN GENERAL.—

> *"(A) PROMULGATION.—**Not later than 90 days after the date of enactment of the FAST Act,** the Secretary shall initiate procedures under subchapter III of chapter 5 of title 5 to negotiate and promulgate such regulations as are necessary to carry out this section.*

[1] Currently, of the 567 Federally-recognized Tribes in the United States, there are 250 Self-Governance Tribes in the Department of the Interior and 360 Self-Governance Tribes in the Department of Health and Human Services (some of these Tribes participate in Self-Governance in both Departments).

"(B) PUBLICATION OF PROPOSED REGULATIONS.—Proposed regulations to implement this section shall be published in the Federal Register by the Secretary ***not later than 21 months after such date of enactment.***

"(C) EXPIRATION OF AUTHORITY.—The authority to promulgate regulations under subparagraph (A) ***shall expire 30 months after such date of enactment.***

"(D) EXTENSION OF DEADLINES.—A deadline set forth in subparagraph (B) or (C) ***may be extended up to 180 days if the negotiated rulemaking committee referred to in paragraph (2) concludes that the committee cannot meet the deadline and the Secretary so notifies the appropriate committees of Congress.***

The TTSGP Negotiated Rulemaking Committee has been working very diligently up until the cancellation of the scheduled meetings in January, February, March and now April, 2017. The meetings are critical to fulfill the intent of Congress and develop draft regulations as required by the statute.

The Negotiated Rulemaking Committee, prior to the transition in the Administration, generated good momentum that would enable it to finish the first stage of the rulemaking process on schedule. However, the lack of convening these sessions in 2017, without an extension, will impact the outcome of this process. **We ask that the Subcommittee support the activities of the Negotiated Rulemaking Committee and encourage DOT to resume the work of this body as soon as possible to complete the rulemaking process and meet the statutory deadline.** Tribal governments need to be able to participate on an equal basis with states and other local stakeholders in the implementation of the FAST Act.

The SGCETC has served as an invaluable resource to the Self-Governance Tribes serving on the Negotiated Rulemaking Committee, and STA supports the SGCETC in this advisory role as we proceed with drafting these regulations.

If you would like to discuss this letter in further detail, please contact Gerry Hope, Transportation Director, STA at gerry.hope@sitkatribe-nsn.gov or at (907)747-3207 or email me at KathyHope.Erickson@sitkatribe-nsn.gov.

Thank you.

Sincerely,

Kathy Hope Erickson
Chairman

Cc: SGCETC Board of Directors
The Honorable Kay Rhoads, Tribal Co-Chair, TTSGP Negotiated Rulemaking Committee and Principal Chief, Sac and Fox Nation
The Honorable Joe Garcia, Tribal Co-Chair, TTSGP Negotiated Rulemaking Committee and Head Councilman, Ohkay Owingeh

KAWERAK, INC. • P.O. Box 948 • Nome, AK 99762
TEL: (907) 443-5231 • FAX: (907) 443-4452

SERVING THE VILLAGES OF:
BREVIG MISSION
COUNCIL
DIOMEDE
ELIM
GAMBELL
GOLOVIN
KING ISLAND
KOYUK
MARY'S IGLOO
NOME
SAVOONGA
SHAKTOOLIK
SHISHMAREF
SOLOMON
STEBBINS
ST. MICHAEL
TELLER
UNALAKLEET
WALES
WHITE MOUNTAIN

Sent electronically Murphie.Barrett@mail.house.gov and
Helena.Zyblikewycz@mail.house.gov

April 12, 2017

The Honorable Sam Graves, Chairman
The Honorable Eleanor Holmes Norton, Ranking Minority
House Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure
U.S. House of Representatives
2165 Rayburn House Office Building
Washington, DC 20515
ATTN: Murphie Barrett, Majority Staff Director
Helena Zyblikewyck, Minority Staff Director

Re: Hearing on "FAST Act Implementation: State and Local Perspectives:

Dear Chairman Graves and Ranking Member Norton:

The Tribal Transportation Self-Governance Program (TTSGP) was authorized in the *Fixing America's Surface Transportation* (FAST) *Act* (P.L. 114-94, Section 1121). The FAST Act requires the Department of Transportation (DOT) to establish a TTSGP modeled largely by Title V, *Tribal Self-Governance Amendments of 2000*, of the Indian Self-Determination Education and Assistance Act (ISDEAA) (P.L. 93-638). It will extend to all programs available to Tribes within the DOT (e.g., allow Tribes to include Tribal Transit Program (TTP) funding, transit funding, discretionary grant funds, and Federal-aid funds transferred by a state agency in their funding agreements). It also requires the development of regulations pursuant to a negotiated rulemaking process, thus providing Tribes an opportunity to participate in shaping the TTSGP's implementing regulations.

Section 1121 requires that in establishing this negotiated rulemaking committee, the Secretary applies the procedures of negotiated rulemaking under subchapter III of chapter 5 of title 5 (the Negotiated Rulemaking Act) in a manner that reflects the unique government-to-government relationship between the Indian Tribes and the United States. The negotiated rulemaking process began on August 16-18, 2016, eight months following enactment of the law on December 4, 2015. There were five meetings held in 2016, the last one was on December 6-8. While there were additional meetings scheduled in 2017, what was assumed to be a temporary hold on the proceedings, due to a change in the Administration, is now the fourth month in 2017 without a meeting of the negotiated rulemaking committee. ***We request that you urge the expedited***

<u>continuance of the negotiated rulemaking process at DOT to allow Tribes to share in the opportunities and benefit from the improvements in the FAST Act.</u>

The timeline to promulgate and finalize proposed regulations was included in the statute:

'(n) REGULATIONS.—
''(1) IN GENERAL.—

''(A) PROMULGATION.—**Not later than 90 days after the date of enactment of the FAST Act**, the Secretary shall initiate procedures under subchapter III of chapter 5 of title 5 to negotiate and promulgate such regulations as are necessary to carry out this section.

''(B) PUBLICATION OF PROPOSED REGULATIONS.—Proposed regulations to implement this section shall be published in the Federal Register by the Secretary **not later than 21 months after such date of enactment**.

''(C) EXPIRATION OF AUTHORITY.—The authority to promulgate regulations under subparagraph (A) **shall expire 30 months after such date of enactment**.

''(D) EXTENSION OF DEADLINES.—A deadline set forth in subparagraph (B) or (C) **may be extended up to 180 days if the negotiated rulemaking committee referred to in paragraph (2) concludes that the committee cannot meet the deadline and the Secretary so notifies the appropriate committees of Congress.**

Since the enactment of the ISDEAA, Tribes have taken every opportunity to exercise self-determination by asserting more local control over Federal Indian programs. Self-Governance has always been a Tribally-driven effort that was initially authorized in 1988 with an appropriation for a demonstration project of 10 Tribes in the Department of the Interior (DOI) – Indian Affairs (IA). In 1992, Congress extended the Self-Governance Demonstration Project to the Indian Health Service (IHS) in the Department of Health and Human Services. Permanent Self-Governance authority was enacted in 1994 for DOI (Title V) and in 2000 for IHS (Title V). Tribes have the option to assume funding for programs, services, functions and activities (or portions thereof) in both IA and IHS and manage them to best fit the needs of their Tribal communities. For the past thirty years, there has been tremendous growth and with the expansion to DOT, more Tribes are expected to participate in the most successful Tribal –Federal partnership in U.S. history. <u>But we cannot implement a program without regulations.</u>

According to the Bureau of Indian Affairs (BIA), only seventeen percent of the roads on Indian reservations are considered to be in acceptable condition. The remainder is considered to be in poor and unacceptable condition. According to the National Congress of American Indians, "these roads are among the most underdeveloped and unsafe road networks in the nation, even though they are the primary means of access throughout these communities. Tribal transportation infrastructure is a key component for Tribal governments to bolster their economies. Transportation programs are critical to ensure Tribal governments can provide

KAWERAK, INC. • P.O. Box 948 • Nome, Alaska 99762

for economic development and the social well-being of their Tribal citizens, as well as to ensure the safety of non-Tribal citizens who travel on Tribal roads.

The National Tribal Transportation Facility Inventory (NTTFI) consists of over 160,000 miles of public roads with multiple owners, including Indian Tribes, the BIA, states, and counties, as well as other Federal agencies. Of this amount, approximately 12,300 miles are planned or proposed roads of varying surface types and uses. There remains a great and continuing need to improve the transportation systems throughout Indian Country. Congress has viewed this as a joint responsibility including not only Federal agencies, but state and local governments with transportation investments in or near American Indian and Alaska Native communities, as well. Coordination among all of these stakeholders is required in order to maximize available resources to address transportation needs. Tribes are continuing to invest in transportation projects that are the responsibility of other public authorities. This creates jobs and contributes to the economy of local businesses that provide services and materials. Strengthening existing partnerships will continue to support the local economy and bring improved infrastructure to communities on or near Indian reservations and lands. In 2014, the BIA reported that, Tribes have planned transportation projects estimated to lead to approximately $270 million worth of investment in non-BIA and non-Tribal roads and bridges over the next 3 years. An investment in Tribal transportation is truly an investment in the local economy and safer roads and bridges.

Further delays in the negotiated rulemaking process compromises the ability of Tribes to participate in proceedings such as the Subcommittee's hearing on April 5th which translates to delayed opportunities for Tribes to share their perspectives with Congress on implementing the FAST Act, specifically under Section 1121.

Mr. Chairman, Madam Ranking Member and Members of the Subcommittee, we are in need of your immediate assistance to ensure that Tribes, valued and qualified stakeholders, are allowed to participate in the dialogue that will shape and guide the implementation of the FAST Act for all beneficiaries.

Thank you.

Sincerely,

MBahnke

Melanie Bahnke, President
Kawerak, Inc.

Cc: The Honorable Kay Rhoads, Tribal Co-Chair, DOT-TTSGP Negotiated Rulemaking Committee
The Honorable Joe Garcia, Head Councilman, Ohkay Owingeh Pueblo, Tribal Co-Chair, DOT- TTSGP Negotiated Rulemaking Committee
SGCETC for Self-Governance Tribes

The SHOSHONE-BANNOCK TRIBES

FORT HALL INDIAN RESERVATION
PHONE (208) 478-3700
FAX # (208) 237-0797

FORT HALL BUSINESS COUNCIL
P.O. BOX 306
FORT HALL, IDAHO 83203

April 12, 2017

The Honorable Sam Graves, Chairman
The Honorable Eleanor Holmes Norton, Ranking Minority House Subcommittee on Highways and Transit Committee on Transportation and Infrastructure
U.S. House of Representatives
2165 Rayburn House Office Building
Washington, DC 20515

ATTN: Murphie Barrett, Majority Staff Director, Murphie.Barrett@mail.house.gov
Helena Zyblikewyck, Minority Staff Director, Helena.Zyblikewycz@mail.house.gov

Re: Hearing on "FAST Act Implementation: State and Local Perspectives

Dear Chairman Graves and Ranking Member Norton:

Chairman Blaine J. Edmo respectfully requests that the Subcommittee urge Transportation Secretary Chao to resume without delay the negotiated rulemaking process for the Tribal Transportation Self-Governance Program initiated by the Department of Transportation (USDOT) in August 2016. This action is needed to permit USDOT to meet statutorily mandated rulemaking deadlines in the FAST Act, Pub. L. 114-94. Further, this would streamline the process of self-governance related to tribal transportation and highway safety and decrease agency red tape.

Passed on December 4, 2015, the FAST Act created the Tribal Transportation Self-Governance Program—extending the tribal self-governance program to USDOT and its modes—along with firm deadlines for agency rulemaking. Proposed regulations are due by September 2017 and USDOT's rulemaking authority expires in mid-2018. FAST Act, § 1121. Consistent with statutory requirements, the agency created a joint Federal-Tribal Negotiated Rulemaking Committee (Committee) and commenced the rulemaking process in August 2016 with specific aims to meet the statutory deadlines. The Committee last met in December 2016 and has not yet resumed negotiations.

The prompt resumption of the negotiated rulemaking process would help fulfill the shared goals of tribes and tribal organization and this administration. These include streamlining tribal administration of federal programs serving Indian country and eliminating wasteful and unnecessary regulations that impede infrastructure projects and the economic development that usually follows. At every opportunity, tribes and tribal organizations have elected to exercise self-governance, from BIA programs in the late 1980s to IHS demonstration projects in the early 1990s. Self-governance allows tribes and tribal organizations to step into the shoes of the Secretary to administer federal Indian programs, functions, services, and activities (PFSAs), here, those relating to transportation. Tribal officials know their members and communities best and are best positioned to apply limited funding to its greatest effect.

We certainly understand the need for President Trump and Secretary Chao to evaluate the necessity of agency rulemaking within the Department. But we are confident that they will agree that the negotiation and award of a single agreement between the Department and an Indian tribe to carry out contractible federal functions at the local tribal level, under one set of regulations, is far more efficient than the current regime of negotiating separate contracts and agreements under a myriad of regulations.

Chairman Edmo respectfully requests that, consistent with the FAST Act's requirements, this Subcommittee urge Secretary Chao to instruct Department officials to resume meetings of the Tribal Transportation Self-Governance Negotiated Rulemaking Committee without delay.

Respectfully,

Blaine J. Edmo, Chairman
Fort Hall Business Council
Shoshone-Bannock Tribes

cc: The Honorable Kay Rhoads, Tribal Co-Chair, DOT-TTSGP Negotiated Rulemaking Committee
The Honorable Joe Garcia, Head Councilman, Ohkay Owingeh Pueblo, Tribal Co-Chair, DOT- TTSGP Negotiated Rulemaking Committee
SGCETC for Self-Governance Tribes

POARCH BAND OF CREEK INDIANS

5811 Jack Springs Road • Atmore, Alabama 36502
Tribal Offices: (251) 368-9136
www.poarchcreekindians-nsn.gov

Written testimony to the Subcommittee on FAST Act Implementation: State and Local Perspectives held by the Subcommittee on Highways and Transit April 5, 2017

The Poarch Band of Creek Indians is pleased to provide testimony to the Subcommittee on Highways and Transit on the hearing held April 5, 2017 on "FAST Act Implementation: State and Local Perspectives."

The FAST Act improves our Nation's infrastructure, reforms federal surface transportation programs, refocuses those programs on addressing national priorities, and encourages innovation to make the surface transportation system safer and more efficient. The FAST Act provides non-federal partners – state departments of transportation, public transportation agencies, and local entities, among others – with the needed certainty to make significant investments in the Nation's surface transportation system and establishes new programs to promote the efficient movement of freight and support large-scale projects of national or regional significance, and 2 makes other policy changes and reforms.

As required by Section 1121 of P.L. 114-94, the Fixing America's Surface Transportation (FAST) Act, the DOT Secretary shall, pursuant to a negotiated rulemaking process, develop a Notice of Proposed Rulemaking (NPRM) that contains the regulations required to carry out the Tribal Transportation Self-Governance Program (TTSGP). Section 1121 also requires that in establishing this negotiated rulemaking committee, the Secretary will apply the procedures of negotiated rulemaking under subchapter III of chapter 5 of title 5 (the Negotiated Rulemaking Act) in a manner that reflects the unique government-to-government relationship between the Indian tribes and the United States. The statute reads as follows:

'(n) REGULATIONS.—
''(1) IN GENERAL.—

''(A) PROMULGATION.—**Not later than 90 days after the date of enactment of the FAST Act,** the Secretary shall initiate procedures under subchapter III of chapter 5 of title 5 to negotiate and promulgate such regulations as are necessary to carry out this section.
''(B) PUBLICATION OF PROPOSED REGULATIONS.—Proposed regulations to implement this section shall be published in the Federal Register by the Secretary **not later than 21 months after such date of enactment.**
''(C) EXPIRATION OF AUTHORITY.—The authority to promulgate regulations under subparagraph (A) **shall expire 30 months after such date of enactment.**
''(D) EXTENSION OF DEADLINES.—A deadline set forth in subparagraph (B) or (C) **may be extended up to 180 days if the negotiated rulemaking committee referred to in paragraph (2) concludes that the committee cannot**

meet the deadline and the Secretary so notifies the appropriate committees of Congress.

The work of the TTSGP negotiated rulemaking committee has been stalled since December 2016 and without the completion of this process, per the deadline in the statute, Tribes will not be able to implement Section 1121 as intended by Congress. Tribal representatives on the Committee would like to share their views about the delay in this process, which translates to delayed implementation which will allow them to join states and other local authorities the ability to implement the FAST Act under Section 1121.

As stated above, the concerns expressed in this email are specific to the **topic of the hearing** and on behalf of the 360 Tribes participating in Tribal Self-Governance, ask that the Subcommittee accept the written comments of Tribal Governments.

Comments of Solano Transportation Authority
Submitted to the House Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit
Hearing on FAST Act Implementation: State and Local Perspectives
April 5, 2017

The Solano Transportation Authority (STA) submits these comments for inclusion in the *Congressional Record* in connection with the hearing titled "Fast Act Implementation: State and Local Perspectives."

Solano Transportation Authority is a joint powers agency responsible for transportation planning, programing of funds and delivering projects in Solano County, California. Solano County is located mid-way between San Francisco and Sacramento along Interstate-80. The I-80 corridor serves as the only direct freeway connection between the two largest economic regions in Northern California, the San Francisco Bay Area and metropolitan Sacramento. It is the backbone for moving people, goods and services through the San Francisco and Sacramento mega- region, and is one of four California priority trade corridors. Addressing operational needs and improvements on the I-80 corridor through Solano County is vital to commuting, transcontinental freight and recreational traffic.

California Governor Jerry Brown's list of priority infrastructure projects that he submitted to the National Governor's Association in February included Solano County projects, including projects to improve highway interchanges and truck scales at the I-80/I-680 highway interchange and projects to construct express lanes to relieve Bay Area congestion for freight and major job centers along I-80, I-680 and I-880. Solano County has worked with the California Department of Transportation to Plan these projects which will enhance safety and relieve congestion.

STA commends the House Transportation and Infrastructure Committee for passing the FAST Act. The creation of new freight funding programs, restoration of discretionary grants for public transportation projects, direction of more funding to local governments and environmental streamlining reforms all benefit Solano County. While the FAST Act includes a modest funding increase, additional funding and programmatic reforms are needed to address our region and the country's infrastructure needs and ensure our economic vitality.

STA strongly supports the passage of legislation this year that provides increased funding for infrastructure, incentives to spur private investment and regulatory reforms to further streamline environmental review and permitting.

Funding

STA urges Congress to provide direct spending for infrastructure projects. STA has highway and transit project needs totaling $1.25 billion. Current funding levels have resulted in a backlog of projects. STA recommends that new funding be directed to priority projects, including those on the governors' lists. STA recommends that some funding be directed to local governments for priority projects and that funding be made available for both highway and transit projects. Solano County like other regions have multimodal needs and benefit from having flexibility to plan and carry out transportation across different modes. While STA does not currently have a Capital Investment Grant (CIG) project, it supports the continuation of that program since it meets a critical mobility need and is a key driver of transit oriented development. STA may in the future consider Bus Rapid Transit and believes there is a federal role in such projects.

STA supports efforts to encourage more private investment in infrastructure. STA is considering reconstructing the portion State Route 37 in Solano County with managed lanes through a Public Private Partnership in light of existing and projected traffic. The reconstruction of the road is necessary because the project is located in an area with a complex system of interrelated levees. STA is interested in exploring the tools that are available to lower the cost of financing and operating the roadway.

Regulatory Reforms

STA recognizes and appreciates Congress' efforts to streamline the environmental review and project permitting in the FAST Act. The FAST Act includes a pilot program that would allow states like California with stringent environmental review laws to substitute their state environmental review laws for NEPA. STA believes that it would benefit from the pilot and hopes that DOT will implement the program quickly. STA also urges Congress to take further steps to streamline the environmental review and permitting process, including imposing deadlines on agencies for action and deadlines for the filing of legal actions challenging projects. STA is committed to undertaking projects in ways that have the least environmental impacts, but supports program reforms that ensures that projects can be advanced as expeditiously and cost effectively as possible.

Conclusion

Thank you for your consideration. STA supports the Committee's mission and is hopeful that Congress can pass legislation making more money available for infrastructure projects and ensuring that state and local governments can expedite these projects so as to realize the economic benefits of having first class infrastructure.

AMERICAN ASSOCIATION
OF STATE HIGHWAY AND
TRANSPORTATION OFFICIALS

AASHTO

DAVID BERNHARDT, P.E., PRESIDENT
COMMISSIONER, MAINE DEPARTMENT OF TRANSPORTATION

BUD WRIGHT, EXECUTIVE DIRECTOR

444 NORTH CAPITOL STREET NW, SUITE 249, WASHINGTON, DC 20001
(202) 624-5800 • FAX: (202) 624-5806 • WWW.TRANSPORTATION.ORG

AASHTO IMPLEMENTATION PLAN FOR FAST ACT AND MAP-21

APRIL 2017

INTRODUCTION

Federal aid programs for highway, transit, highway safety, and other transportation investment are already complex. To accelerate the public benefits of job creation, economic development, and improved safety that will follow from state investment of the transportation funds Congress has provided through the Fixing America's Surface Transportation (FAST) Act in December 2015, AASHTO strongly recommends that the US Department of Transportation (USDOT) implements statutes in a way that does not add to requirements to the provisions of the laws themselves.

Taking an approach of maximizing flexibility will also assist USDOT in promptly resolving issues and finalizing rules and guidance. AASHTO also emphasizes that each State Department of Transportation (State DOT) is a governmental entity and, in addition to following Federal requirements, must follow state requirements and be responsive to its Governor, legislature, municipalities, the general public and other stakeholders, all of whom are regularly commenting on State DOT plans and projects. As the requirements already governing State DOTs are extensive, it is appropriate for USDOT to provide states with more flexibility than ever in implementing the FAST Act and other statutes including the Moving Ahead for Progress in the 21st Century (MAP-21) Act from 2012, particularly in the critical areas of performance management and asset management.

On the following pages, AASHTO sets forth a number of issues that warrant USDOT's attention in implementing the FAST Act and other statutes. **As further information becomes available, this document is updated each month to include any clarifications to noted issues.**

AASHTO deeply appreciates USDOT's careful consideration of AASHTO's concerns regarding these matters, and stands ready to consult and work with USDOT to make implementation of the FAST Act as successful as possible.

IMPLEMENTATION ISSUE AREAS

1. REVENUE AND FINANCE

FAST ACT PROVISIONS REQUIRING FURTHER CLARIFICATION

Interstate System Reconstruction and Rehabilitation Pilot Program

Question

For existing slot-holding states, what criteria will be used to determine demonstration of sufficient progress to allow them to extend their slot beyond the initial one-year limit? Criteria should be provided as soon as possible to allow existing slot-holding states adequate time to re-evaluate progress already made.

- The FAST Act sets time limits for a State with a provisionally-approved application for a pilot project to: (1) move from a provisionally-approved application to a complete application that fully satisfies the program's eligibility criteria and selection criteria; (2) complete the environmental review and permitting process under the National Environmental Policy Act (NEPA) for the pilot project; and (3) execute a toll agreement with DOT. These time limits are:
  - One year for provisional approvals in place prior to the enactment of the FAST Act (December 4, 2015); and
  - Three years for provisional approvals subsequent to enactment of the FAST Act.

  DOT may extend either provisional approval by an additional year if certain conditions are met. The State must demonstrate material progress toward the implementation of the project as evidenced by: (1) substantial progress in completing the environmental review and permitting process for the pilot project under NEPA; (2) funding and financing commitments for the pilot project; (3) expressions of support for the pilot project from State and local governments, community interests, and the public; and (4) submission of a facility management plan. [FAST Act § 1411(c); TEA-21 § 1216(b)(6)]

Railroad Rehabilitation & Improvement Financing (RRIF)

Questions

- Does a loan/guarantee of more than $75 million have to receive an investment grade rating from at least two rating agencies? The FAST Act states that an applicant *may* propose (as a basis for determining the amount of a credit risk premium) an investment-grade rating on the direct loan or loan guarantee, *except* if the total amount of the direct loan or loan guarantee is more than $75 million, in which case the applicant must receive an investment-grade rating from at least two rating agencies. How can the investment-grade rating for direct loans or loan guarantees of over $75 million be required if providing an investment-grade rating as a basis for determining the amount of a credit risk premium is optional?
- Can credit risk premiums no longer be returned upon the satisfaction of loan/cohort obligations? The FAST Act struck the provision requiring the Secretary of Transportation to return credit risk premiums plus interest to a cohort of loans once all obligations have been satisfied, yet page 513 of the Conference Report states that the FAST ACT "...requires the Secretary to pay back 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."
- How is the expanded eligibility to include commercial and residential economic development projects different from the newly-expanded TIFIA eligibility to support investments in transit oriented development?

National Surface Transportation and Innovation Finance Bureau

Questions

- Is the Bureau to "administer" the processes for the designated programs (TIFIA, State Infrastructure Banks (SIBs), Railroad Rehabilitation and Improvement Financing (RRIF) program, Private Activity Bonds (PABs), NSFHP, and what is the residual role of the currently-responsible offices and agencies (if any)?
  - The National Surface Transportation and Innovation Finance Bureau was launched on July 20th as the Build America Bureau (the Bureau). The Bureau combines the Build America Transportation Investment Center (BATIC), TIFIA and RRIF loan programs, PABs, and the new $800 million NSFHP, known as the FASTLANE grant program, under one roof within the Office of the Undersecretary for Transportation Policy. The Bureau has three sections, Outreach and Project Development, Credit Programs, and FASTLANE Grants.
    - The Credit Programs section combines TIFIA, RRIF, and PABs, administers the application process for these programs, performs underwriting and negotiations for loans, manages the portfolio of active loans, and manages the risks of the loan portfolios.
    - The FASTLANE Grants section administers the application process for FASTLANE grants and provides guidance on the FASTLANE application process.
  - Will the TIFIA Joint Program Office be eliminated and absorbed into the Bureau?
    - The TIFIA Joint Program Office has been absorbed into the Bureau.
  - Will FRA have any residual role in managing the RRIF Program?
    - The RRIF Program has been absorbed into the Bureau.
  - Will the MARAD Title XI credit program be run apart from the Bureau (not mentioned in the legislation)
    - The MARAD Title XI credit program will run apart from the Build America Bureau.
- How different or similar will the application processes be for TIFIA and RRIF? Since the legislative terms of the programs are now more alike, is the Bureau considering a single application, review, and approval process?
  - In January 2017, the Bureau published a Credit Programs Guide for TIFIA and RRIF. The Programs Guide describes how the Bureau's Credit Programs Office currently administers the TIFIA and RRIF Programs. The Bureau envisions that the applications processes described in the Program Guide are being consolidated and refined as the implementation of the Bureau continues.
- How much of the Bureau will be devoted to public private partnership (P3) issues versus non-P3 finance?
  - P3 issues will still be a focus area of the Bureau. The Outreach and Project Development section of the Bureau will build upon the work of the BATIC, which has served as a point of contact for project sponsors exploring ways to access private capital in public private partnerships.
- How will the Bureau coordinate and facilitate environmental reviews and permitting (including its anticipated role as liaison to CEQ and tracker of project permit reviews and decisions)?
- How is the new Council different from the current Credit Council?

Regional Infrastructure Accelerator Demonstration Program

Question

How will the mission of the newly created regional infrastructure accelerator program intersect with the mission of new and preexisting entities that promote capacity building in project finance (e.g., the work of the National Surface Transportation and Innovation Finance Bureau and AASHTO's Build America Transportation Investment Center (BATIC) Institute: An AASHTO Center for Excellence)?

- The FAST Act authorized $12 million in General Funds for the newly created Regional Infrastructure Accelerator Demonstration Program; however, the funding was not appropriated. It is the intention that the Regional Accelerators will work with complementary entities such as the Build America Bureau and the BATIC Institute.

FAST ACT PROVISIONS OF CONCERN AND CORRESPONDING RECOMMENDATIONS

Rescission of Contract Authority

The FAST Act rescinds $7.6 billion of unobligated contract authority on July 1, 2020, which would be derived from Federal-aid Highway Program categories other than the Highway Safety Improvement Program (HSIP), Railway-Highway Crossings Program, Metropolitan Planning, and suballocated portions of the STBGP. In addition, non-exempt program dollars are required to be rescinded from unobligated balances remaining on that date on a proportional basis. As of the end of FY 2015, $15.2 billion of unobligated contract authority in all program categories was carried by all States.

- In addition to the FAST Act rescission, the Senate's FY 2017 Transportation, Housing and Urban Development Appropriations (THUD) bill would rescind an additional $2.2 billion, resulting in a total rescission of $9.8 billion by 2020. These rescissions, coming entirely from apportioned HTF programs used by State DOTs, would actually exceed the balance of $9 billion (as of 9/30/15) in the affected program categories.

Recommendations

- At a minimum, examine opportunities to increase administrative flexibility in implementing the rescission, and allow for states' optimization of contract authority balance well before the July 1, 2020 date.
    - AASHTO has requested the Senate to repeal the FY 2017 THUD rescission; if that is not possible, the Senate has been asked to provide as much administrative flexibility as possible, in addition to reducing the number of program categories exempt from the rescission.
- Provide annual reports starting on July 1, 2016 (and each year thereafter) with the unobligated balance and calculations of how the rescission would be implemented.

National Significant Freight and Highway Projects (NSFHP) Discretionary Grant Program

The FAST Act creates the NSFHP Discretionary Grant Program designed for major highway and freight projects funded at $4.5 billion over five years.

Recommendation

- DOT should be transparent in the criteria used to select projects to receive grants under this Program. In addition, USDOT should provide feedback on why projects were not selected.

Transportation Infrastructure Finance and Innovation Act (TIFIA)

The FAST Act funds TIFIA at $275 million in 2016, rising to $300 million in 2020. The TIFIA funding levels were greatly reduced from MAP-21 which funded TIFIA at $750 million in fiscal year 2013 and $1 billion for fiscal year 2014. MAP-21's redistribution of unobligated TIFIA dollars to STP/STBGP was eliminated. However, flexibility in "buying down" the TIFIA subsidy and administrative costs is increased, as National Highway Performance Program (NHPP) and NSFHP grant dollars can be applied. USDOT released the notice of funding availability (NOFA) for TIFIA on March 11, 2016. It states that "to ensure maximum leverage of TIFIA program funds and efficient allocation of TIFIA resources, the DOT encourages eligible recipients to consider use of the three sources of Federal-aid funds listed...[STBGP, NHPP, and NSFHP]...to cover the subsidy and administrative costs of the TIFIA credit assistance, as authorized in the FAST Act." Project sponsors will also be required to indicate in their Letters of Interest whether other Federal-aid funds are available to cover the subsidy and administrative costs of their requested TIFIA credit assistance.

Recommendations

- The determination by a project sponsor to consider or utilize other Federal funds in lieu of TIFIA program dollars to cover the subsidy and administrative costs should have no bearing on application evaluation and award of credit assistance.
    - On April 11, 2015, AASHTO submitted a comment letter to the docket in response to the TIFIA NOFA "Letters of Interest for Credit Assistance Under the Transportation Infrastructure Finance and Innovation Act (TIFIA) Program" (Docket Number DOT-OST-2016-0032) Notice of Funding Availability and Request for Comments (NOFA). In the letter, AASHTO stated that it, "believes that encouraging (or requiring) State DOTs to utilize their Federal-aid funds to pay for TIFIA loans while ample TIFIA subsidy funding remains available is neither efficient nor equitable....AASHTO believes the decision to utilize Federal-aid funding in lieu of or in conjunction with TIFIA subsidy to pay for credit assistance should be a decision of the project sponsor....In the event that a TIFIA program funding shortfall in a future year, a project sponsor with access to Federal-aid funding authorized to pay for credit assistance can decide whether to use its funding for that purpose or wait for additional subsidy funding to be provided by Congress (or decide to finance its project without TIFIA credit assistance)."

Ensure timely and transparent processing of TIFIA applications.

- In its comment letter to the docket, AASHTO stated that it supports the FAST Act requirement that the Secretary "make available an expedited application process or processes available at the request of entities seeking secured loans under the TIFIA program that use a set or sets of conventional terms." Furthermore, AASHTO stated that it "encourages the DOT to develop a simpler, faster and more reliable application process for all project sponsors but especially for the smaller projects with simpler terms."

National Surface Transportation and Innovation Finance Bureau Requirements for Public Private Partnerships

The FAST Act authorizes a new Finance Bureau, which requires project sponsors receiving credit assistance from DOT for public-private partnerships (P3s) to undergo a value for money analysis or a comparable analysis prior to deciding to advance the project as a P3. This analysis must be made publicly available and within three years project sponsors must review whether the private partner is meeting the terms of the agreement.

Recommendations

- State and local laws have different requirements for implementing P3s. As a result, project sponsors should have maximum flexibility to select an analysis for assessing whether to advance their project as a P3.
- Most transportation projects are still undergoing construction within three years of project commencement. Therefore, three years is not the ideal time to evaluate whether a private partner is meeting the terms of the agreement. Project sponsors should have maximum flexibility in determining when to assess whether the private partner is meeting the terms of the agreement.
- In developing guidance for this new requirement, USDOT should consult with State DOTs and other local project sponsors.
    - USDOT hired a consulting firm that interviewed and collected feedback from stakeholder groups and developed recommendations to USDOT on how to organize the Build America Bureau (the designated name for the National Surface Transportation and Innovation Finance Bureau).

National Surface Transportation and Innovation Finance Bureau Requirements for Procurement Benchmarks

The FAST Act authorizes a new Finance Bureau which is directed to promote best practices in procurement for projects receiving credit assistance from USDOT, including the development of procurement benchmarks to ensure accountable expenditure of Federal assistance over the life of the project. The FAST Act states that to the extent possible, the benchmarks should establish maximum thresholds for accountable project cost increases and delays in project delivery, establish uniform methods for states to measure cost and delivery changes over the life cycle of a project, and be tailored to various types of project procurements. The Bureau will collect data on the benchmarks and make them publicly accessible.

Recommendation

- Due to the varying nature of procurements and varying state and local laws surrounding procurement, it is critical that USDOT consult with project sponsors in the development of procurement benchmarks.

User-Based Alternative Revenue Mechanisms Demonstration Program

The FAST Act authorizes $95 million for five years for demonstration of user-fee based alternative revenue mechanisms to sustain the Highway Trust Fund over the long term ($15 million in FY16 and $20 million per year for FY17 through FY20). Grants may be awarded to states to test the design, acceptance, and implementation of user-based alternative revenue mechanisms. States must provide a 50 percent match. If USDOT does not award FY16 grant funds by August 1, 2016, the funding will revert to the research program under 23 USC 503.

- On August 30, 2016, USDOT announced the recipients of the FY 2016 grant funds. $14.2 million in grants were provided to eight projects that will pilot a variety options to raise revenue.

Recommendations

- Given that the NOFO for this grant program was released almost halfway into FY 2016, the NOFO's expression of DOT's "[interest] in funding larger scale pilots, rather than smaller scale proof of concept projects" will be a challenge. USDOT should consider smaller scale applications as they will not only obligate grant dollars faster, but also increase the likelihood of more robust and mature applications in the future years.
  - On March 22, 2016, USDOT issued a Notice of Funding Opportunity (NOFO) for the "Surface Transportation System Funding Alternatives (STSFA) Program." On July 1, 2016, AASHTO submitted a comment letter to the docket from the perspective of improving the implementation of the program. In soliciting comments from State DOTs, AASHTO did not identify USDOT's approach to funding larger scale projects as opposed to smaller scale proof of concept projects as a major issue. However, AASHTO did comment on USDOT's solicitation approach after the FY 2016 solicitation. The USDOT program guidance "Notice of Funding Opportunity (NOFO) Number DTFH6116RA00013, 'Surface Transportation System Funding Alternatives' issued on March 22, 2015, states that "USDOT anticipates issuing a second solicitation and making a second round of awards in FY 2017 that will commit the remaining anticipated funds for FY 2017-2020 (up to $80 million subject to availability), focused on demonstration projects.

    In its comment letter, AASHTO expressed concerns that given the challenges of a user-fee based pilot, some interested applicants may not be fully prepared to participate in the program in FY 2017, but given additional time and resources may be ready in subsequent years. AASHTO stated that "USDOT should evaluate whether disturbing the remaining $80 million of funding in FY 2017 versus through multi-year solicitations (FY 2017- FY 2020) may put some potential applications at a disadvantage. As a federally-supported effort, STSFA should be implemented in a way that facilitates strong proposals and geographic diversity throughout the nation."

- State resources already expended on the development of state user-fee based alternative revenue pilots should be eligible towards meeting the 50% match requirement. This would make the demonstration program more accessible for states and increase participation in the program.
  - The USDOT program guidance for the STSFA program states that "funds already expended (or otherwise encumbered" cannot be considered as contributions towards the match. However, non-federal funds, toll credits under 23 U.S.C., and soft match and in-kind services can be considered as contributions to the local match. In its comment letter to the docket, AASHTO "encourages USDOT to provide maximum flexibility in the consideration of these match options [toll credits, soft match] through the duration of the STSFA program."

2. FREIGHT

FAST ACT PROVISIONS REQUIRING FURTHER CLARIFICATION

Freight Planning
The FAST Act includes new provisions on freight planning. To access Highway Freight funding, within two years, State DOTs will have to develop multimodal state freight plans that are coordinated with the performance-based planning process.
Questions

- Determining if a State Freight Plan Meets the FAST Act Criteria Both in the Short and Long Term
  - Will USDOT issue guidance or a rulemaking on the development of the multimodal state freight plan including contents and scope?
    - Guidance has been released on State Freight Plans, visit https://www.federalregister.gov/documents/2016/10/14/2016-24862/guidance-on-state-freight-plans-and-state-freight-advisory-committees
  - Will USDOT issue interim guidance as final guidance or rulemaking is developed?
    - Guidance has been released on State Freight Plans, visit https://www.federalregister.gov/documents/2016/10/14/2016-24862/guidance-on-state-freight-plans-and-state-freight-advisory-committees
  - For State DOTs with an existing State Freight Plan, what will be required to show compliance?
    - Guidance has been released on State Freight Plans, visit https://www.federalregister.gov/documents/2016/10/14/2016-24862/guidance-on-state-freight-plans-and-state-freight-advisory-committees
  - Will the approval of a State Freight Plan take place at the Division level?
    - For consideration of compliance with FAST Act provisions of State Freight Plans, States should submit their State Freight Plans to the Federal Highway Division Office in their State.
- Identification of Critical Urban and Rural Freight Corridors
  - The FAST Act limits the number of miles that can be designated as part of the Critical Urban Freight Corridors in a state. In urban areas of 500,000 or more in population, this network is identified by the MPO in consultation with the State. For larger states with more MPOs of 500,000 or more, there is the possibility that the total mileage identified will be greater than the total mileage allowed. Even though each MPO must consult with the State DOT, the State DOT cannot make the decision on the identification of Critical Urban Freight Corridors in these very large MPOs. What guidance can USDOT provide should this situation arise?
  - What is the process USDOT envisions State DOTs and MPOs will use for designating critical urban and rural freight corridors?
    - The FHWA Administrator certifies critical urban and critical rural freight corridors. The FHWA Division Office is responsible for reviewing the certification and forwarding it to FHWA Headquarters (HOFM-1) within 10 business days of receiving certification documentation. In accordance with 23 U.S.C. 167(g)(2), each State or MPO that designates a corridor as a CRFC or CUFC must certify to the FHWA Administrator that the corridor meets the requirements of 23 U.S.C. 167(e) or 167(f), respectively. There is no deadline for designating and certifying CRFCs and CUFCs. These designations may occur at any time, may be full or partial designations of the CUFCs or CRFCs mileage, and the two types do not need to be designated at

the same time. Designations and certification may be provided to FHWA on a rolling basis. For more information, please refer to the guidance released in April 2016.

- Will MPOs have to develop a separate MPO-specific freight plan in order to spend funding associated with the Critical Urban Freight Corridors?
- FHWA needs to clarify the definition of *urbanized area* as the term is being used for "Critical Urban Freight Corridors". For transportation planning purposes, an urbanized area has a population threshold of 5,000. In the Highway Freight Program, the term *urbanized* is left open for areas with a population of less than 500,000, although there is a need to "consult with the representative metropolitan planning organization". Can areas between 5,000 and 49,999 be considered rural corridors?
    - USDOT released guidance on April 26, 2016 (and updated on May 23, 2016) regarding Critical Urban and Rural Freight Corridors. "The minimum population for an urbanized area is 50,000, as defined by the Census Bureau. Being located inside or outside an adjusted urbanized boundary determines whether the public road can be designated as a CRFC or a CUFC. CUFC routes must be within the adjusted boundaries of an urbanized area. CRFC routes must be outside the adjusted boundaries of any urbanized area." For more information, read the guidance released in April 2016.

- Will MPOs representing the larger urban areas that identify Critical Urban Freight Corridors within their planning boundaries have to report on making progress towards freight performance targets?

Nationally Significant Freight and Highway Projects
- FAST Act established this discretionary program—named FASTLANE grants by USDOT—funded from the Highway Trust Fund to provide financial assistance in the form of grants or credit assistance to nationally and regionally significant freight and highway projects. FASTLANE grant awards for FY 2016, totaling $759 million, were notified to Congress on July 1, 2016; the awards were finalized following the subsequent 60-day Congressional review period.
- On October 28, 2016, USDOT opened solicitation for applications to FASTLANE II grant program, which is authorized at $850 million in FY 2017. Applications are due on December 15, 2016, and projects selected by USDOT are subject to the 60-day Congressional review period before grants are finalized.

Data Limitations
Question
For the multimodal network, is waterborne data the only data used to classify ports? This leaves out rail-truck, rail-rail, truck-truck, truck-rail, and pipeline moves in which the goods never use the waterway.
- Yes, for the Interim NMFN is using the USACE's Waterborne Commerce Statistics Center data, specifically tonnage for US ports in 2014. USDOT determined that 113 US ports satisfy the 2,000,000 short ton threshold criterion and has also included three additional ports as strategic freight assets. In total, the Interim NMFN has identified 116 ports.

FAST ACT PROVISIONS OF CONCERN AND CORRESPONDING RECOMMENDATIONS

Primary Highway Freight System
Recommendation

USDOT should provide maps and shapefiles that have specific and accurate route listing of the Primary Highway Freight System in order for State DOTs to establish their respective portions of the PHFS.

- USDOT has provided maps for the National Highway Freight Network, which shows the primary highway freight system, plus remaining Interstates not on the PHFS.
    - National Highway Freight Network
    - National Highway Freight Network Shapefile and Data Description
    - National Highway Freight Network- Individual State Maps and Tables

Fiscally Constrained State Freight Plan

Recommendation

A State should be given maximum flexibility to meet this requirement by certifying that, after State consideration, the projects and programs included in the State's freight plan represent a fiscally constrained list. USDOT should allow a State to utilize other planning documents for purposes of satisfying fiscal constraint, such as by providing to FHWA/USDOT a list of projects already on its fiscally constrained Statewide Transportation Improvement Program (STIP) that it is incorporating into its State Freight Plan.

3. PROGRAM AND PROJECT DELIVERY

PROVISIONS NEEDING CLARIFICATION AND CORRESPONDING RECOMMENDATIONS

Coordinated and Concurrent Environmental Review and Permitting Process
FAST directs USDOT, in coordination with a steering committee consisting of various federal agencies, to develop within 1 year of enactment of the FAST Act, a coordinated and concurrent environmental review and permitting process for transportation projects initiating an EIS. The process must require "early concurrence or issue resolution" during the scoping process on purpose and need, and during the development of the environmental impact statement, on the range of alternatives for analysis.
<u>Question</u>
Clarify that this new process to be developed for USDOT in Title 49 does not apply to Title 23 projects as Title 23 contains a very specific environmental review process (23 USC 139). Alternatively, USDOT should construe that resolution of an issue under 23 USC 139 constitutes "issue resolution" within the meaning of 49 USC 310. The Title 23 process provides the lead agency discretion over purpose and need and range of alternatives. This clarification eliminates the conflict between these two provisions.

- As AASHTO requested, USDOT clarified in a meeting with AASHTO staff on May 13, 2016 that the new Title 49 process developed by USDOT will not apply to Title 23 projects.

Federal Permitting Improvement
FAST establishes the Federal Permitting Improvement Steering Counsel consisting of various federal agencies, including USDOT, to develop a new environmental review process.
<u>Question</u>
Clarify that this new process does not apply to Title 23, 26 and 49 projects (as provided in FAST Section 11503(b)).

- As requested by AASHTO, FHWA states in its *NEPA Implementation Q&As* that this new environmental review process does not apply to Title 23, 26, or 49 projects.

Planning and Environmental Linkages
FAST provides more *statutory* flexibility to adopting planning products and decisions in NEPA. Planning documents must be approved within 5 years of incorporation into NEPA.
<u>Questions</u>

- Clarify that the separate *planning and environmental linkages regulations* developed prior to Map-21 and FAST statutory authority may also be used to adopt planning products in NEPA.
- Clarify that the 5 year period applies to the date of initiation of NEPA. As such, if a NEPA study extends beyond 5 years, planning decisions adopted into NEPA would not need to be revisited.
- As requested by AASHTO, the FHWA/FTA planning regulations published May 27, 2016, recognize the FAST Act statutory authority as an additional authority for planning and environmental linkages, and states that the previously established planning and environmental linkages regulations may still be used. Although the final regulation has been published, AASHTO is requesting that FHWA clarify that the 5 year period applies to the date of NEPA initiation.

FAST ACT PROVISIONS OF CONCERN AND CORRESPONDING RECOMMENDATIONS

Alignment and Streamlining of Historical Analysis and NEPA

FAST requires USDOT, in coordination with the Department of Interior (DOI) and the Advisory Council on Historic Preservation (ACHP), to develop procedures to better align NEPA, Section 4(f) of the Department of Transportation Act and section 106 of the National Historic Preservation Act processes. USDOT must coordinate with DOI and ACHP to establish procedures within 90 days of enactment of the FAST Act.

Recommendations

- Clarify that USDOT has 90 days to initiate the coordination process, and then establish a reasonable later deadline for development of the procedures.
- Coordinate with state DOTs in the development of the procedures.
- Once the procedures are established, work with the Center for Environmental Excellence by AASHTO to develop a 106/NEPA/Section 4(f) Practitioner Handbook to provide states DOTs a procedural roadmap.
- As requested by AASHTO, USDOT clarified in its *Section 1301 Overview* that the 90 day requirement was to begin coordination with DOI and ACHP. Also, AASHTO has offered to collaborate with USDOT and its modal administrations on better aligning these processes.

FAST provides an alternative process for evaluating historic resources. If USDOT determines through the NEPA process that there is no prudent and feasible alternative to using the historic property, and the State Historic Preservation Office (SHPO), ACHP and DOI concur, 4(f) requirements are satisfied.

Recommendations

- Highlight that this alternative process is optional, not required.
- Clarify how notice of these determinations will be handled for categorical exclusions.
- Track the use of this provision, including challenges and opportunities for future streamlining.
- As requested by AASHTO, USDOT clarified in its *Section 1301 Overview* and related *Q & As*, that the alternative process for evaluating historic resources is optional. AASHTO is requesting that USDOT further clarify how these determinations will be handled for categorical exclusions and recommending that USDOT track the use of this alternative process.

USDOT Project Dashboard

FAST requires that within 18 months of enactment, USDOT must make publicly available on the dashboard, information related to progress and status of environmental reviews and permitting on projects requiring either an environmental impact statement or an environmental assessment. DOT must also issue reporting standards for the dashboard within this timeframe.

Recommendation

Ensure that these new reporting requirements are not burdensome to the state DOTs. Reporting should only be required for a few major project milestones- notice of intent, public hearing, DEIS, FEIS, ROD, permit issuance.

- FHWA issued Q & As on the environmental process changes. Joint Office of Management and Budget (OMB) and Council on Environmental Quality (CEQ) guidance issued on January 13, 2017.

Project Schedules

FAST requires lead agencies to establish project schedules for the completion of the environmental review processes for environmental impact statements and environmental assessments after *consultation with and the concurrence of each participating agency for the project*; MAP-21 made development of these project schedules optional. FAST also requires concurrence of participating agencies for changes to project schedules.

Recommendations

- As environmental processes are only one of many components in project schedules, require that only the environmental portion of the schedule needs participating agency concurrence.
- Coordination plans should contain only major project milestones and provide states the flexibility to establish schedule deadline ranges.
- Establish that schedule changes require the concurrence of only the affected federal agencies, not all participating agencies.
- Establish a deadline for agency responses; lack of response indicates concurrence.
- FHWA issued Q & As on the environmental process changes. The environmental process changes will be implemented by rulemaking.

Environmental Checklist

FAST requires that within 90 days of enactment USDOT must develop, in consultation with participating agencies, a new checklist of potential natural, cultural and historic resources in the area of the project and provide such list to the project sponsor.

Recommendations

- As most states already have databases and GIS data in cooperation and partnership with resource agencies, USDOT should collect and build upon this information, in coordination with state DOTs to develop the new checklist.
- Confirm that existing checklists may satisfy this requirement.
- The checklist should be developed on a program, rather than project basis, be flexible and allow for adaptability in each state.
- FAST contains two separate requirements for the development of an environmental checklist, one for Title 23 projects and one for Title 49 projects. USDOT developed an environmental checklist to fulfill the Title 49 requirement, and this checklist does not apply to Title 23 projects. The Title 23 checklist will be included in environmental process rulemaking.

Programmatic Categorical Exclusions

FAST requires USDOT to revise its regulations related to programmatic categorical exclusion (PCE) agreements and develop a template programmatic agreement. The regulations shall contain that programmatic agreements may include the CEs listed in FHWA regulation *as well as additional CEs that meet federal requirements.* Although MAP-21 provided the same flexibility, FHWA limited PCE agreements to only CEs listed in FHWA regulations.

Recommendations

- As the state DOTs already have functioning PCEs, USDOT should confirm that the states may solely determine whether to use the new template agreement or use an existing agreement.
- Ensure that FHWA/FTA regulations are updated to allow PCEs to include CEs listed in FHWA/FTA regulations *in addition to other CEs that meet federal standards.*
- USDOT should coordinate with the state DOTs in the development of additional categorical exclusions.
- This provision was implemented in a May 31 final rulemaking. The final rule indicates that States are not required to use the model agreement. Also, new CEs may be included in the agreements, however proposed new CEs must be documented, published for public comment, and be approved by USDOT and CEQ. FHWA posted a memorandum, Practitioner's Guide and model programmatic agreement on its website.

Coordination with State DOTs

In addition to the specific topics highlighted in this program and project delivery section, the State Departments of Transportation wish to collaborate with USDOT on FAST implementation more broadly to ensure that the FAST act is implemented to maximize streamlining measures. Such coordination should take place *prior to issuance of a proposed rules, guidance or procedures*. Also, coordination is particularly important for developing implementation strategies for the following FAST Act sections:

Recommendations

- Section 1304: USDOT must complete a rulemaking regarding programmatic compliance within 1 year of enactment of the FAST Act. USDOT must consult with federal and state resource agencies and state DOTs, Indian tribes and the public on appropriate use and scope of agreements.
  - Will be implemented through rulemaking.
- Section 1308: Requires USDOT to amend federal NEPA assignment audit and assignment termination processes.
  - FHWA memo issued on October 3, 2016.
- Section 1309: Requires USDOT, in consultation with CEQ, to establish a pilot program within 270 days of enactment of the FAST Act for states with NEPA assignment to allow these states to either substitute their State environmental review law(s) for NEPA or allow NEPA to substitute for their state environmental review law(s).
  - Will be implemented through rulemaking.
- Section 1313: Directs USDOT to convene inter-agency collaboration sessions to coordinate business plans, workload planning and workforce management. The collaboration shall ensure that agency staff is utilizing the flexibility in existing regulations, policy and guidance, identifying additional efficiencies, and working with local transportation agencies to improve processes and engaging stakeholders early in the permitting process.
- Section 1316: Requires USDOT to allow states to assume federal responsibility for project design, plans, specifications, estimates, contract awards and inspection of projects. In addition, DOT is required to work with the states to develop legislative recommendations for the delegation of additional authorities to the states, including real estate acquisition and project design.
  - On August 30, 2016, FHWA published in the Federal Register a request for input on additional Title 23 authorities that may be assigned to the states. AASHTO submitted comments on October 31, 2016.

PENDING MAP-21 IMPLEMENTATION ISSUES AND RECOMMENDATIONS

There are currently pending at USDOT a number of proposed rules developed to implement MAP-21. AASHTO filed detailed, common-sense comments pointing out many areas where aspects of the proposed rules were unduly burdensome and/or not required by statute.

Recommendations

USDOT should promptly incorporate AASHTO's recommendations on these proposed rules and then issue final rules. Below are some of those pending rulemakings:

- Section 1113: Prioritization of CMAQ funds; requires rulemaking on weighting factors. Proposed regulations issued on August 4, 2014.
- Section 1303: Requires amending contracting requirements to allow CM/GC contracting. Proposed regulations issued on June 29, 2015.
  - Final rule issued on December 2, 2016.
- Section 1305: Amends the environmental review process. Proposed regulations issued on November 20, 2015.
  - Will be implemented through rulemaking adding FAST Act requirements.

- Section 1310: Allows for planning decisions to be carried forward into NEPA. Proposed regulations issued on September 10, 2014.
    - FHWA/FTA issued the final planning regulations on May 27, 2016.
- Section 1311: Amends the planning statute to allow programmatic mitigation plans. Proposed regulations issued on June 2, 2015.
    - FHWA/FTA issued the final planning regulations on May 27, 2016.

4. PLANNING

FAST ACT PROVISIONS REQUIRING FURTHER CLARIFICATION

Freight Planning
See *Section 2. Freight.*

FAST ACT PROVISIONS OF CONCERN AND CORRESPONDING RECOMMENDATIONS

Performance Data Support Program
The FAST Act includes new provisions to enable the USDOT to better support the State DOTs, MPOs, and FHWA in the collection and management of data for performance-based planning and programming. These data-related activities are funded at $10m per year over the five year duration of the FAST Act.
Recommendation
AASHTO encourages USDOT to spend the money necessary to obtain the best data and tools possible for these programs as data collection and management is one of the biggest concerns of the State DOTs when it comes to implementing the MAP-21 performance management and performance-based planning provisions. AASHTO also encourages USDOT to work collaboratively with both the State DOTs and MPOs as the data and tool needs are identified and the program is implemented.

- AASHTO continues to encourage FHWA to develop robust performance data support program.
- FHWA included in the final PM3 regulation a commitment to work with state DOTs and MPOs to contribute to pooled-fund study to develop a national-level tool.

Eligibility and Use of Freight Funds
While the State and national freight plans are required to be multimodal, the FAST Act provides core freight funding only for the Highway portion of the freight network (with limited exceptions for rail or intermodal connectors), and has established some specific provisions of where such funding can be used. The Nationally Significant Freight and Highway Projects grants are geared primarily towards the very large freight projects.
Recommendations

- Until the start of FY2018 or until a State DOT has a FAST Act State Freight Plan, any project located on an eligible facility should be able to use freight formula funds.
- Freight funding should be eligible for any project that is prioritized within a FAST Act State Freight Plan.
- The eligibility to use Highway Freight Program funding is determined, in part, by what percentage of the overall Primary Highway Freight network a state has. All states should be eligible to use the funding on any portion of the Highway Freight Network.

PENDING MAP-21 IMPLEMENTATION ISSUES AND RECOMMENDATIONS

Publication of the Updated FHWA/FTA Metropolitan and Statewide Planning Regulations
MAP-21 made significant changes to the metropolitan and statewide planning requirements. While USDOT has published a draft of the new regulations, a final version has not been published and continues to be delayed. In fact, the FAST Act requires that the new multimodal state freight plans be

coordinated with the performance-based planning process established under MAP-21. These new performance-based planning regulations will have a significant effect on the planning process.

Recommendation

AASHTO encourages USDOT to continue to focus on the publication of the final regulations concerning the updates to the metropolitan and statewide planning process that were significantly changed as a result of MAP-21. Much of the FAST Act freight planning requirements are tied back to the MAP-21 planning changes which have not yet been published. As AASHTO filed extensive, common-sense comments on the proposed planning rules, USDOT is encouraged to promptly incorporate AASHTO's recommendations into its proposed rules and then issue final rules.

- The updated planning rule has been published.
- FHWA published a new MPO Coordination regulation that significantly changes the MPO boundary requirements.

Pavement and Bridge Measures Final Rule (PM2)

Recommendation

AASHTO filed extensive, common-sense comments on these proposed rules. As such, USDOT is encouraged to promptly incorporate AASHTO's recommendations into its proposed rules and then issue final rules.

- The final rule was published on January 18, 2017; effective date has been delayed to May 20, 2017.

System Performance Measures Final Rule (PM3)

Recommendation

AASHTO encourages USDOT to continue to focus on the publication of both the Notice of Proposed Rulemaking and then the final rule concerning the establishment of national-level system performance measures. The performance measure provisions of MAP-21 are new and will significantly affect State DOTs. AASHTO looks forward to working with FHWA in the implementation of the performance measure rules.

- The final rule was published on January 18, 2017; effective date has been delayed to May 20, 2017.

Publication of the Risk-based Asset Management Plan Regulations

Recommendation

AASHTO filed extensive, common-sense comments on these proposed rules. As such, USDOT is encouraged to promptly incorporate AASHTO's recommendations into its proposed rules and then issue final rules.

- The final rule was published on October 24, 2016.

Implementation Timeframe of Performance Management Provisions

AASHTO has stated in previous comments on the PM1, PM2, Risk-based Asset Management Plans and updated Joint Planning Regulation NPRMs that all of these rules implementing the performance management provisions of MAP-21 should be implemented using one effective date.

Recommendations

- AASHTO continues to recommend that FHWA implement these new requirements with one common effective date. However, AASHTO would like for FHWA to finalize and publish the rules as they are ready such that State DOTs can begin to prepare to implement the requirements. Moreover, given the complexity of integrating these new requirements into an already complex process, the rule should include a provision to allow a state to ask for and receive an extension of time to comply with the requirements so long as the state is able to show that it has made progress towards compliance and is working to achieve compliance.

- If a single effective date of implementation is not feasible, enough time needs to be made available to phase in the requirements before any penalties to go into effect. AASHTO proposed a phased-in approach that is laid out in more detail in AASHTO comments regarding the NPRM *National Performance Management Measures; Assessing Pavement Condition for the National Highway Performance Program and Bridge Condition for the National Highway Performance Program* submitted on April 23, 2015.
- The final two rules completing new CFR Part 450 were published on January 18, 2017. FHWA includes a phased-in approach.

5. PERFORMANCE MANAGEMENT

FAST ACT PROVISIONS OF CONCERN AND CORRESPONDING RECOMMENDATIONS

Reporting Cycle and Penalties

The FAST Act changes from two to one the number of reporting cycles after which penalties are imposed. The impact varies based upon the performance measure area. If a State DOT does not achieve or make significant progress toward achieving targets after one reporting cycle, they are required to provide a description of the actions they will undertake to achieve their targets in the future. In addition, the penalty for falling below the minimum condition levels for pavements on the interstate system is imposed after the first reporting cycle.

Recommendation

AASHTO supported the two reporting cycle provisions in MAP-21 and was disappointed to see it reduced to one as part of the FAST Act. The MAP-21 performance management provisions are new and it will take time for these provisions to be implemented. It is important that FHWA allow State DOTs flexibility to implement the provisions in such a way as to support success.

Performance Data Support Program

The FAST Act includes new provisions to enable the USDOT to better support the State DOTs, MPOs, and FHWA in the collection and management of data for performance-based planning and programming. These data-related activities are funded at $10m per year over the five year duration of the FAST Act.

Recommendation

AASHTO encourages USDOT to spend the money necessary to obtain the best data and tools possible for these programs as data collection and management is one of the biggest concerns of the State DOTs when it comes to implementing the MAP-21 performance management and performance-based planning provisions. AASHTO also encourages USDOT to work collaboratively with both the State DOTs and MPOs as the data and tool needs are identified and the program is implemented.

- AASHTO continues to encourage FHWA to develop robust performance data support program.
- FHWA included in the final PM3 regulation a commitment to work with state DOTs and MPOs to contribute to pooled-fund study to develop a national-level tool.

PENDING MAP-21 IMPLEMENTATION ISSUES AND RECOMMENDATIONS

FHWA Transportation Performance Management Technical Assistance Program

Recommendation

AASHTO fully supports FHWA's current efforts to implement a TPM Technical Assistance Program that will provide support to State DOTs and MPOs as the new performance management provisions are implemented. Already, the development of the TPM Toolbox as well as the TPM peer exchanges and workshops have been well received.

- AASHTO continues to work with FHWA in developing and implementing the TPM technical assistance program.

Implementation Timeframe of Performance Management Provisions

AASHTO has stated in previous comments on the PM1, PM2, Risk-based Asset Management Plans and updated Joint Planning Regulation NPRMs that all of these rules implementing the performance management provisions of MAP-21 should be implemented using one effective date.

Recommendations

- AASHTO continues to recommend that FHWA implement these new requirements with one common effective date. However, AASHTO would like for FHWA to finalize and publish the rules as they are ready such that State DOTs can begin to prepare to implement the requirements. Moreover, given the complexity of integrating these new requirements into an already complex process, the rule should include a provision to allow a state to ask for and receive an extension of time to comply with the requirements so long as the state is able to show that it has made progress towards compliance and is working to achieve compliance.
- If a single effective date of implementation is not feasible, enough time needs to be made available to phase in the requirements and for the penalties to go into effect. AASHTO proposed a phased-in approach that is laid out in more detail in AASHTO comments regarding the NPRM *National Performance Management Measures; Assessing Pavement Condition for the National Highway Performance Program and Bridge Condition for the National Highway Performance Program* submitted on April 23, 2015.
- The final two rules completing new CFR Part 450 were published on January 18, 2017. FHWA includes a phased-in approach.

Pavement and Bridge Measures Final Rule (PM2)

Recommendation

AASHTO filed extensive, common-sense comments on these proposed rules. As such, USDOT is encouraged to promptly incorporate AASHTO's recommendations into its proposed rules and then issue final rules.

- The final rule was published on January 18, 2017; effective date has been delayed to May 20, 2017.

System Performance Measures Final Rule (PM3)

Recommendation

AASHTO encourages USDOT to continue to focus on the publication of both the Notice of Proposed Rulemaking and then the final rule concerning the establishment of national-level system performance measures. The performance measure provisions of MAP-21 are new and will significantly affect State DOTs. AASHTO looks forward to working with FHWA in the implementation of the performance measure rules.

- The final rule was published on January 18, 2017; effective date has been delayed to May 20, 2017.

Publication of the Updated FHWA/FTA Metropolitan and Statewide Planning Regulations

MAP-21 made significant changes to the metropolitan and statewide planning requirements. While USDOT has published a draft of the new regulations, a final version has not been published and continues to be delayed. In fact, the FAST Act requires that the new multimodal state freight plans be coordinated with the performance-based planning process established under MAP-21. These new performance-based planning regulations will have a significant effect on the planning process.

Recommendation

As AASHTO filed extensive, common-sense comments on the proposed planning rules, USDOT is encouraged to promptly incorporate AASHTO's recommendations into its proposed rules and then issue final rules.

- The updated planning rule has been published.
- FHWA published a new MPO Coordination regulation that significantly changes the MPO boundary requirements.

Publication of the Risk-based Asset Management Plan Regulations
Recommendation
AASHTO filed extensive, common-sense comments on these proposed rules. As such, USDOT is encouraged to promptly incorporate AASHTO's recommendations into its proposed rules and then issue final rules.

- The final rule was published on October 24, 2016.

Provide Immediate Guidance on Effective Date of Penalties Associated with Bridge Condition Performance Measures
MAP-21 clearly articulated the penalties that would be imposed if a State DOT did not meet the minimum threshold for the condition of bridges on the National Highway System. Under section 1106 (23 U.S.C. 119(f)(2), MAP-21 § 1106(a)), the secretary establishes a date of determination for when the penalty would be imposed, if warranted. Through the FHWA MAP-21 fact sheets, FHWA established October 1, 2016 as the date when the penalty will be imposed and would use the preceding three federal fiscal year worth of bridge date to determine if the minimum condition threshold had been met.

AASHTO has significant concerns that this self-imposed date is not realistic for two reasons. First, given the fact that the regulations that would define the criteria for determining structurally deficient bridges (proposed CFR 490.411) has not been published and likely will not be published until July 2016 at the earliest. Second, the date of determination affords State DOTs no opportunity to implement a maintenance or rehabilitation program to effectively meet the minimum condition threshold.
Recommendation
AASHTO strongly recommends that the 3-year period be modified such that it is based upon the effective date of the Pavement and Bridge Measure Final Rule (PM2) such that State DOTs have enough time to assess the condition of their bridges (based upon the criteria to be defined in proposed CFR 490.411) and implement a maintenance and rehabilitation program in order to meet the minimum thresholds, if needed.

6. ASSET MANAGEMENT

PENDING MAP-21 IMPLEMENTATION ISSUES AND RECOMMENDATIONS

Publication of the Risk-based Asset Management Plan Regulations

Recommendation

AASHTO filed extensive, common-sense comments on these proposed rules. As such, USDOT is encouraged to promptly incorporate AASHTO's recommendations into its proposed rules and then issue final rules.

- The final rule was published on October 24, 2016.

Implementation Timeframe of Performance Management Provisions

AASHTO has stated in previous comments on the PM1, PM2, risk-based asset management plans and updated planning regulation NPRMs that the performance management provisions should be implemented using one effective date.

Recommendations

- AASHTO continues to recommend that FHWA implement these new requirements with one common effective date. However, AASHTO would like for FHWA to finalize and publish the rules as they are ready such that State DOTs can begin to prepare to implement the requirements. Moreover, given the complexity of integrating these new requirements into an already complex process, the rule should include a provision to allow a state to ask for and receive an extension of time to comply with the requirements so long as the state is able to show that it has made progress towards compliance and is working to achieve compliance.
- If a single effective date of implementation is not feasible, enough time needs to be made available to phase in the requirements and for the penalties to go into effect. AASHTO proposed a phased-in approach that is laid out in more detail in AASHTO comments regarding the NPRM *National Performance Management Measures; Assessing Pavement Condition for the National Highway Performance Program and Bridge Condition for the National Highway Performance Program* submitted on April 23, 2015.
- The final two rules completing new CFR Part 450 were published on January 18, 2017. FHWA includes a phased-in approach.

Pavement and Bridge Measures Final Rule (PM2)

Recommendation

AASHTO filed extensive, common-sense comments on these proposed rules. As such, USDOT is encouraged to promptly incorporate AASHTO's recommendations into its proposed rules and then issue final rules.

- The final rule was published on January 18, 2017; effective date has been delayed to May 20, 2017.

System Performance Measures Final Rule (PM3)

Recommendation

AASHTO encourages USDOT to continue to focus on the publication of both the Notice of Proposed Rulemaking and then the final rule concerning the establishment of national-level system performance measures. The performance measure provisions of MAP-21 are new and will significantly affect State DOTs. AASHTO looks forward to working with FHWA in the implementation of the performance measure rules.

- The final rule was published on January 18, 2017; effective date has been delayed to May 20, 2017.

Publication of the Updated FHWA/FTA Metropolitan and Statewide Planning Regulations
MAP-21 made significant changes to the metropolitan and statewide planning requirements. While USDOT has published a draft of the new regulations, a final version has not been published and continues to be delayed. In fact, the FAST Act requires that the new multimodal state freight plans be coordinated with the performance-based planning process established under MAP-21. These new performance-based planning regulations will have a significant effect on the planning process.

Recommendation

As AASHTO filed extensive, common-sense comments on the proposed planning rules, USDOT is encouraged to promptly incorporate AASHTO's recommendations into its proposed rules and then issue final rules.

- The updated planning rule has been published.
- FHWA published a new MPO Coordination regulation that significantly changes the MPO boundary requirements.

7. BRIDGE AND DESIGN STANDARDS

FAST ACT PROVISIONS REQUIRING FURTHER CLARIFICATION

- What constitutes "current guidance and regulation" and how does the flexibility associated with design standards provisions of the FAST Act impact the design exception process and the value engineering requirements for projects greater than $25 million?
- What is the mechanism for a state to allow the use of a differing design publication? (Sec 1404(b))
- Which local jurisdictions are direct recipients of federal funds under Sec 1404.b.1, and/or which programs would Sec 1404(b)(1) apply to?
- What roadway design publications are "recognized by the Federal Highway Administration?" (Sec 1404(b)(2)(A))
- What constitutes adoption of a roadway design publication by a local jurisdiction? (Sec 1404(b)(2)(B))

FAST ACT PROVISIONS OF CONCERN AND CORRESPONDING RECOMMENDATIONS

Design Standards

The FAST Act amended 23 USC 109, which provides general guidance on the design of roadways on the National Highway System and requires FHWA to establish specific design criteria. FHWA meets this requirement through periodic rulemakings that adopt various design standards and specifications from AASHTO and other organizations. This includes *A Policy on Geometric Design of Highways and Streets* (the Green Book) and the *LRFD Bridge Design Specifications*, among others. The most recent rulemaking was completed in October 2015.

Recommendations

- As the provisions in Sec 1404 have direct impact on the state DOTs and the safety of the traveling public, AASHTO requests that proposed changes be developed in consultation and coordination with the appropriate AASHTO committees.
- The FAST Act adds to the general guidance provided in 23 USC 109 by requiring that designs consider "cost savings by utilizing flexibility that exists in current guidance and regulations". Further clarification will be required to determine what form the consideration will have to take and what makes up "current guidance and regulations". AASHTO recommends a State be allowed to certify that it considered the matter; should USDOT insist on more, USDOT should require minimal documentation of this consideration.
- The FAST Act also requires that the FHWA specifically consider the *AASHTO Highway Safety Manual* and NACTO's *Urban Street Design Guide* when establishing design criteria. These publications were considered during the most recent rulemaking process, and neither were formally adopted. We anticipate that it will be at least a couple of years before FHWA conducts another design standards rulemaking. Until that happens, the standards adopted in October 2015 remain the official design standards for NHS roadways. FHWA has recognized and encouraged the use of other publications, including the NACTO Urban Street Design Guide, as design guidance, intended to supplement those standards and specifications adopted through rulemaking. For official standards and specifications, AASHTO recommends that FHWA continue its support of "the use of guides that national organizations develop from peer-reviewed research, or equivalent guides developed in cooperation with State or local officials..." – *Design Standards for Highways, FHWA Final Rule, 80 Federal Register 197 (October 13, 2015), p 61302*

- The FAST ACT provides for local jurisdictions to use different design standards than those used by the state on federally funded projects, provided certain provisions are met. These provisions require that the local jurisdiction be a direct recipient of federal funds for that project, and that the roadway standards to be used are recognized by FHWA and adopted by the local jurisdiction. While we are trying to locate a list of local jurisdictions who are direct recipients of federal funds, it appears to be a limited number who receive funds mainly through certain programs, such as TIFIA and TIGER. This provision does not appear to apply to localities serving as sub-recipients for receiving federal aid funds. Further clarification will be required to determine which roadway standards are "recognized" by FHWA and thus meet this requirement. AASHTO recommends that the local jurisdictions allowed use of different design standards be familiar with the FHWA requirements that normally fall to the states, and that the recognized roadway standards consist of published or easily accessible documents developed by national organizations from peer-reviewed research.

PENDING MAP-21 IMPLEMENTATION ISSUES AND RECOMMENDATIONS

Bridges
See *Section 5. Performance Management*.

8. RESEARCH AND INNOVATION

FAST ACT PROVISIONS OF CONCERN AND CORRESPONDING RECOMMENDATIONS

Reduction in Funding for Existing Research Activities at the Federal level
While the FAST Act provides a slight increase in federal research and technology funding, it reduces the flexibility of that funding by designating three new efforts to be funded from Highway Research and Development (R&D) funds, the Technology and Innovation Deployment Program (TIDP), and/or the ITS Research program. These efforts include:

- Establishment of a program to deploy advanced transportation and congestion management technologies ($60 million per year);
- Grants to States to demonstrate user-fee-based alternative revenue mechanisms to ensure the long-term solvency of the Highway Trust Fund ($15 million in FY 2016, $20 million per year thereafter); and
- A study by TRB on needed upgrades and repairs to the Interstate Highway System to meet the demands of the next 50 years (up to $5 million).

In addition, USDOT is authorized to use *up to* $10 million per year to develop, use, and maintain data sets and data analysis tools to assist State and MPO performance management activities. (This was requested in GROW America, but was not intended to be funded from R&D.)

Because these new activities are mandated in the research title of the FAST Act without a commensurate increase in funding, existing federal research programs, as well as some programmatic efforts funded with research funding, will face funding constraints. After accounting for the three research funding emphasis areas newly specified by the Congress, the FAST Act reduces the level of discretionary funding in the R&D, TIDP, and ITS programs by approximately 25%, or from about $265 million per year to about $200 million per year.
<u>Recommendation</u>
Given the potential for the elimination or significant reduction in funding of current federal efforts funded through R&T programs (and their secondary impacts on related state research or other programmatic efforts), AASHTO recommends that FHWA coordinate with States prior to deciding which programs to delay, reduce, or eliminate funding for to help ensure that priority research and programmatic activities are not adversely impacted or can be accommodated through alternate means.

PENDING MAP-21 IMPLEMENTATION ISSUES AND RECOMMENDATIONS

Higher Federal Cost Share
23 USC 120(c)(3) allows USDOT to permit a higher Federal match (lower non-Federal match) for a project utilizing innovative project delivery. There have been instances where a project approach has been denied treatment as innovative, even though the approach is rarely used in the state, because it had been tried before, though hardly institutionalized.
<u>Recommendation</u>
USDOT should not discourage broader use of innovative project delivery through narrow application of its authority under 23 USC 120(c)(3) to increase project match for innovative delivery approaches.

9. HIGHWAY SAFETY

FAST ACT PROVISIONS OF CONCERN AND CORRESPONDING RECOMMENDATIONS

Certain HSIP Eligibilities

Recommendation

Though Section 1113(a)(1)(B) eliminates eligibility for projects to provide infrastructure and infrastructure-related equipment to support emergency services, given that 23 USC 148(a)(4)(B)(xi) "installation of a priority control system for emergency vehicles at signalized intersections" and 23 USC 148(a)(4)(B)(xv) "planning integrated interoperable emergency communications equipment, operational activities, or traffic enforcement activities (including police assistance) related to work zone safety," these activities should be considered eligible under the HSIP.

Non-infrastructure Eligibilities Under the Highway Safety Improvement Program

The FAST Act (section 1113) amended 23 USC 148 to revise the definitions of what is a Highway Safety Improvement Project. The change effectively restricts HSIP eligibility to only 28 strategies, activities or projects listed in the legislation, eliminating the ability to use HSIP funds for public awareness and education efforts, infrastructure and infrastructure-related equipment to support emergency services, and enforcement of traffic safety laws that are identified in the states' Strategic Highway Safety Plans. SAFETEA-LU and MAP-21 had provided the flexibility to deploy additional enforcement to problem areas and help reverse a trend of increasing crashes on specific highway segments. AASHTO understands FHWA will consider the change in Highway Safety Improvement Program eligibility to be in effective as of the date the FAST Act was passed and that further obligation of MAP-21 funds will need to follow the FAST Act requirements.

Recommendations

- Retain eligibility of unobligated pre-FAST Act HSIP dollars based on the statute under which the funding was originally provided.
- Allow any state to promptly amend its HSIP program to the extent needed to conform to new statutes.

10. PUBLIC TRANSPORTATION

FAST ACT PROVISIONS REQUIRING FURTHER CLARIFICATION

Bus and Bus Facilities Formula Grants

Questions

- For the Bus and Bus facilities competitive grants/ set aside for low and no emission vehicles: How can FTA help the State DOTs look at what has been effective deployment of low and no emission vehicles in rural settings?
- In MAP-21 (Section 20029. Bus and Bus Facilities Formula Grants), small urbans could not be direct recipients. In the FAST ACT (Section 3017. Grants for Bus and Bus Facilities), will new language allow for small urbans to be direct recipients, similar to pre- MAP-21?
  - FTA responded that they intended to have the direct recipient status the same as under the 5307 and 5311 programs. However, because Section 5339 says limit recipients to State and local government entities that "operate fixed route bus service," the small urbans can be direct recipients of 5339 funds as long as they are fixed route operators. The FAST Act language excludes demand response operators, but FTA is looking into the issue and may publish that information in the Federal Register.

Buy America Procurement

Question

How will the new Buy America requirements impact vehicle procurements?

Innovative Procurement

Questions

- How does this language differ from current FTA regulations?
- Many states already do statewide contracts for their subrecipients, following FTA regulations. What new authority and opportunities does this language provide?

Section 5310 Pilot Program for Innovative Access and Mobility

Questions

- How is FTA going to implement this?
- If through a NOFA, when and how many (one, more than one?
- How does FTA think state DOTS might take advantage of this funding opportunity on behalf of their Section 5311 and 5310 subrecipients?
- Is FTA planning on going beyond the specific provisions—specifically will the NOFA solicit "other" projects? (The law defines three project types: (A) deploy coordination technology; (B) create or exchange one call/one click and (C) Other projects as determined by appropriate by the secretary). Will the NOFA define type (C) projects?
- Will FTA encourage projects under this program to build on work that has been funded under the VTCLI, which was often used by state and regional agencies to create or enhance one call/one click centers?

Technical Assistance and Workforce Development—Innovative Public Transportation Frontline Workforce Development Program

Questions

- Does FTA have any thoughts on how State DOTs could take advantage of this funding opportunity on behalf of their Section 5311 and 5310 subrecipients?
- FTA has previously done workforce grants under the Ladders of Opportunity Program. Can FTA share, with AASHTO, information about any projects done by State DOTs for their subrecipients?

Improved Public Transportation Safety Measures

Questions

- Can FTA provide any insights into why Congress added this new requirement for a national rulemaking on protecting drivers from assault? What does FTA believer are the transit specific technologies/practices that can be *regulated* to reduce assaults? The FAST act language seems to presuppose the proposed regulations will deal largely with vehicle technology, such as what?
- The Fast Act language specifically allows FTA to address this rulemaking differently for rural bus systems than urban bus systems. What dialogue is possible between AASHTO's SCOPT and MTAP prior to FTA issuing the required NPRM under this section to ensure the proposed rules are relevant and appropriate for rural settings? What information and data does FTA have that defines the nature of the bus driver assault issue within rural areas?

FAST ACT PROVISIONS OF CONCERN AND CORRESPONDING RECOMMENDATIONS

Bus and Bus Facilities Formula Grants

In the Statewide applications for Bus and Bus Facilities section of the FAST ACT, a State may submit a statewide application on behalf of a public agency or private nonprofit organization for which the State allocates funds.

Recommendation

States should have the flexibility to apply for a lump sum (i.e. without defining specific projects and specific subrecipients) or to apply for a specific amount of funding for a specific project and subrecipient who are not eligible to apply directly.

PENDING MAP-21 IMPLEMENTATION ISSUES AND RECOMMENDATIONS

FTA Asset Management and Safety Rules

Recommendation

AASHTO filed extensive, common-sense comments on these proposed rules. As such, USDOT is encouraged to promptly incorporate AASHTO's recommendations into its proposed rules and then issue final rules.

11. RAIL TRANSPORTATION

FAST ACT PROVISIONS REQUIRING FURTHER CLARIFICATION

Rail Grant Programs in FAST ACT

Questions

- What criteria will be used in the establishment of these new grant programs for capital, operating and safety?
- Who will be the eligible recipients of the new grant programs?

AASHTO SURFACE TRANSPORTATION RULEMAKING TRACKER

APRIL 2017 / LISTED BY NPRM RELEASE DATE

NPRM Release Date	Proposed Rule	Description	AASHTO Committee	Comments Due Date	Final Rule Publication Date	Notes	Topic Areas: Aviation	Environment & Project Delivery	Finance	Freight	Operations	Performance Management	Planning	Rail	Safety	Transit	Water
1/12/17	Federal Motor Vehicle Safety Standards: V2V Communications	This document proposes to establish a new Federal Motor Vehicle Safety Standard (FMVSS), No. 150, to mandate vehicle-to-vehicle (V2V) communications for new light vehicles and to standardize the message and format of V2V transmissions. This will create an information environment in which vehicle and device manufacturers can create and implement applications to improve safety, mobility, and the environment. Without a mandate to require and standardize V2V communications, the agency believes that manufacturers will not be able to move forward in an efficient way and that a critical mass of equipped vehicles would take many years to develop, if ever. Implementation of the new standard will enable vehicle manufacturers to develop safety applications that employ V2V communications as an input, two of which are estimated to prevent hundreds of thousands of crashes and prevent over one thousand fatalities annually.	Subcommittee on Transportation Systems Management and Operations	4/12/17							X						
9/27/16	Commercial Activities in Rest Areas	The FHWA is gathering comments on "how certain provisions of the current law surrounding commercial activities in rest areas should be interpreted and applied in consideration of advancements in technology and the interests of the States." This has remained substantially the same over the past 30 years while in the past few years, technology related to vending machines has evolved significantly. According to the FHWA, "several State DOTs have raised questions about what constitutes a vending machine and consequently what can or should be allowed in Interstate rest areas."	Multiple	12/27/16					x								
9/23/16	Federal Automated Vehicles Policy	NHTSA invites public comment on the document, "Federal Automated Vehicles Policy." This document is intended as a starting point that provides needed initial guidance to industry, government, and consumers. It will necessarily evolve over time, changing based on public comment; the experience of the agency, manufacturers, suppliers, consumers, and others; and/or further technological innovation. NHTSA intends to revise and refine the document within one year, and periodically thereafter, to reflect such public input, experience, and innovation, and will address significant comments received in the next revision of this document.	Standing Committee on Planning	11/22/16									X	X			
8/30/16	State Assumption of Federal Responsibilities	As required by the FAST Act, FHWA is soliciting input on additional Title 23 authorities that may be assigned to the states. FHWA must submit these recommendations to congress.	Multiple	10/31/2016		The product will be a report to Congress on additional federal authorities that may be assigned to the states.		X									
8/30/16	Productive and Timely Expenditure of Funds	In accordance with the FAST Act, FHWA is seeking input on content for its new website on programmatic approaches to project delivery. FHWA is also seeking information and resources related to avoiding unnecessary delay, minimizing cost overruns and ensuring effective use of federal funds.	Multiple					X									
8/22/16	FEMA Floodplain Management and Protection of Wetlands	On 2/15/15, an NPRM was published by FEMA to update the implementing guidelines to include changes by EO 13690 and the FFRMS. The final rulemaking was issued on 10/8/15. This proposed rule will update FEMA's regulations (44 CFR Part 9) and procedures (FEMA Policy 078-3) based on the final guidance.	Multiple	10/22/16				X									
6/27/16	MPO Coordination	Proposes revisions to the transportation planning regulations to promote more effective regional planning by States and metropolitan planning organizations (MPO). The goal of the proposed revisions is to result in unified planning products for each urbanized area, even if there are multiple MPOs designated within that urbanized area.	Standing Committee on Planning	8/26/16; 10/25/16	12/20/16	On a 60-day hold under OMB review.							X				
6/6/16	Establishment of Interim National Multimodal Freight Network	Under the FAST Act, the Under Seretary is to establish a Multimodal Freight Network to assist states in strategically directing resources, to inform freight transportation planning, assit in the prioritization of Federal investment, and to assess and support Federal investments to acheive the national multimodal freight goals	Special Committee on Intermodal Transportation and Economic Expansion	9/6/16		Coordinating with the Subcommittee on Freight Planning				X			X				
4/22/16	System Performance Measure (PM3)	The measures proposed in this NPRM would be used by State departments of transportation and Metropolitan Planning Organizations to assess the performance of the Interstate and non-Interstate National Highway System for the purpose of carrying out the National Highway Performance Program; to assess freight movement on the Interstate System; and to assess traffic congestion and on-road mobile source emissions for the purpose of carrying out the Congestion Mitigation and Air Quality Improvement Program.	Standing Committee on Performance Management	8/20/16	1/18/2017 Effective Date delayed until May 20, 2017	The final rule effective date was further delayed until May 20, 2017						X					

AASHTO SURFACE TRANSPORTATION RULEMAKING TRACKER

APRIL 2017 / LISTED BY NPRM RELEASE DATE

NPRM Release Date	Proposed Rule	Description	AASHTO Committee	Comments Due Date	Final Rule Publication Date	Notes	Aviation	Environment & Project Delivery	Finance	Freight	Operations	Performance Management	Planning	Rail	Safety	Transit	Water
3/10/16	Draft National Freight Strategic Plan	MAP-21 required DOT to develop a NFSP. Before the draft NFSP could be finalized, FAST was signed into law. The FAST Act makes the NFSP multimodal in scope, links to the NMFN, and requires the NFSP to include identification of corridors providing access to manufacturing, agriculture, or natural resources.	Standing Committee on Planning	4/25/16						X			X				
2/5/16	National Public Transportation Safety Plan	FTA's proposed National Safety Plan is intended to guide the national effort in managing the safety risks within the Nation's public transportation systems.	Standing Committee on Public Transportation	4/5/16	1/18/2017								X			X	
2/5/16	Public Transportation Agency Safety Plan	This proposed rule would require operators of public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53 to develop and implement Public Transportation Safety Plans based on the SMS approach	Standing Committee on Public Transportation	4/5/16											X	X	
12/4/15	**Categorical Exclusions (CE) for Projects with Limited Financial Assistance**	FAST Act requires annual indexing of the financial thresholds for the categorical exclusion for projects with limited federal assistance, in accordance with the consumer price index.	Standing Committee on Environment	NA	5/31/16	FHWA deemed the notice and procedure process unnecessary under the Administrative Procedures Act, as the statutory language does not require		X									
12/4/15	**Programmatic CE Agreements**	FAST Act expands the CEs that can be included in the programmatic CE agreements and requires USDOT to develop a template programmatic agreement. The final rule indicates that States are not required to use the model agreement. Also, new CEs may be included in the agreements, however proposed new CEs must be documented, published for public comment, and be approved by USDOT and CEQ	Standing Committee on Environment	NA	5/31/16	FHWA deemed the notice and procedure process unnecessary under the Administrative Procedures Act, as the statutory language does not require regulatory interpretation to carry out its intent		X									
12/3/15	Public Transportation Safety Certification Program	The NPRM proposes to adopt the current interim safety certification provisions as the initial regulatory training requirements. The NPRM defines to whom the training requirements apply, describes recordkeeping requirements, provides administration provisions, and compliance requirements	Standing Committee on Public Transportation	2/1/16		Interim provisions have been in effect since May 2015. FTA is now reviewing comments received on the proposed rule which would make the interim prvisions permanent.										X	
11/18/15	Response to Comments on the National Transit Database	This notice responds to comments on a proposed expansion of FTA's NTD; requests comments on additional proposed reporting; and requests comments on updating the NTD's approval to collect information under the Paperwork Reduction Act	Standing Committee on Public Transportation	1/19/16												X	
9/30/15	Transit Asset Management; National Transit Database	This NPRM would establish a National Transit Asset Management System. The NPRM proposed admendments to the National Transit Database regulations to conform to the proposed reporting requirements for TAM.	Standing Committee on Public Transportation	11/30/15	7/26/16							X				X	
8/14/15	Public Transportation Safety Program	From MAP-21 Congress directed FTA to establish a Safety Program, this NPRM introduces the principles and practices of Safety Management Systems.	Standing Committee on Public Transportation	10/13/15	8/11/16	The final rule was issued on August 11, 2016. It becomes effective on September 12, 2016.									X	X	
2/20/15	Asset Management Plan	Proposes to establish a process for the development of a State asset management plan to improve or preserve the condition of the assets and the performance of the National Highway System as they relate to physical assets.	Subcommittee on Asset Management	5/29/15	10/24/16	Unsure how the delay in PM2, which defines the national-level bridge and pavement measures, will affect the timing and development of the national-level asset management plan.						X	X				
1/5/15	Pavement/Bridge Performance Measure (PM2)	This NPRM proposes to establish measures for State Departments of Transportation to use to carry out the National Highway Performance Program and to assess the condition on the following: pavements on the National Highway System (NHS) (excluding the Interstate System), bridges on the NHS, and pavements on the Interstate System.	Standing Committee on Performance Management	4/6/15	1/18/2017 Effective Date delayed until May 20, 2017	The final rule effective date was further delayed until May 20, 2017						X					
11/24/14	Early Acquisition of ROW	MAP-21 includes new flexibilities regarding real property aquisitions prior to NEPA completion. In addition to implementing MAP-21, FHWA is updating the real estate regulations to clarify the federal-state partnership, streamline processes and eliminate duplicative regulatory language.	Standing Committee on Environment / Subcommittee Right of Way, Utilities, and Outdoor Advertising Control	1/23/2015	8/23/2016			X									
9/10/14	Planning and Environmental Linkages (PEL)	FAST provides additional statutory flexibility to adopt planning products and decisions in NEPA.	Standing Committee on Environment / Standing Committee on Planning	11/10/14	5/27/16	The final rule recognizes the FAST Act statutory authority as an additional authority for PEL, and states that the previously established PEL regulations may still be used.		X							X		

AASHTO SURFACE TRANSPORTATION RULEMAKING TRACKER

APRIL 2017 / LISTED BY NPRM RELEASE DATE

NPRM Release Date	Proposed Rule	Description	AASHTO Committee	Comments Due Date	Final Rule Publication Date	Notes	Topic Areas: Aviation	Environment & Project Delivery	Finance	Freight	Operations	Performance Management	Planning	Rail	Safety	Transit	Water
8/4/14	CMAQ Weighting Factors	Although the MAP-21 language for the CMAQ funds that must be obligated for PM 2.5 projects (referred to in this NPRM as a "set-aside") instructs that the set-aside be calculated based on "weighted population" for PM 2.5, the statute does not specify the values to be applied to determine the weighted population. In this proposed rule, FHWA is requesting comments on a proposed weighting factor of	Standing Committee on Environment / Standing Committee on Planning	10/3/15		Sent to USDOT-Office of the Secretary for review on November 10, 2015		X									
6/2/14	FHWA/FTA Metropolitan and Statewide Planning	Proposes revisions to the regulations governing the development of metropolitan transportation plans and programs for urbanized areas, State transportation plans and programs, and the congestion management process.	Standing Committee on Planning	9/2/14	5/27/16	Unsure how the delay in PM2 and PM3 will affect schedule/timing of targets and significant progress assessment.							X				
6/2/14	Programmatic Mitigation	Implements MAP-21 and FAST Act requirements. Requires federal resource agencies to give "substantial weight" to recommendations in programmatic mitigation plans; previous langauge indicated "may use" mitigation plans.Also, the final rule makes clear these plans are optional, may be done as part of	Standing Committee on Environment	9/2/14	5/27/16			X									
3/28/14	Safety Performance Measure (PM1)	Proposes changes to Highway Safety Improvement Program regulations to address provisions in MAP-21 as well as to incorporate clarifications to better explain existing regulatory language.	Standing Committee on Performance Management	6/30/14	3/15/16	Unsure how the delay in PM2 and PM3 will affect schedule/timing of targets and significant progress assessment.						X			X		
3/28/14	Highway Safety Improvement Program (HSIP)	Proposes to establish measures for State departments of transportation to use to carry out the HSIP and to assess serious injuries and fatalities per vehicle mile traveled, and the number of serious injuries and fatalities.	Subcommittee on Highway Transport	6/30/14	3/15/16										X		
11/19/13	Designation of Primary Freight Network	This notice publishes the draft initial designation of the highway PFN and provides information about designation of Critical Rural Freight Corridor and the establishment of the National Freight Network.	Special Committee on Intermodal Transportation and Economic Expansion	2/15/14	10/23/15					X			X				
10/3/13	National Public Transportation Safety Plan, Public Transportation Agency Safety Plan and Public Transportation Certification Training Program; Transit Asset Management	This NPRM served as an Advanced Notice of Proposed Rulemaking for the National Public Transportation Safety Plan, the Public Transportation Agency Safety Plan, the Public Transportation Certification Training Program, and the Transit Asset Management.	Standing Committee on Public Transportation	1/2/14		Coordinated comment with SCOPM, SCOP, Subcommittee on Asset Management. No final rule will be published as it served as an advanced notice.									X	X	
10/3/13	Transit Asset Management Plans	This final rule requires public transportation providers to develop and implement out transit asset management (TAM) plans. This final rule also establishes state good repair standards and four state of good repair performance measures.	Standing Committee on Public Transportation / Subcommittee on Asset Management	1/2/14	7/26/16							X				X	
10/15/12	Interim Guidance on State Freight Plans and State Freight Advisory Committees	Directs the Secretary of Transportation to encourage each State to develop a comprehensive State Freight Plan that outlines immediate and long-range plans for freight-related transportation investments.	Special Committee on Intermodal Transportation and Economic Expansion	11/15/12	10/14/16					X			X				
TBD	**Environmental Review Process and Historic Considerations**	Updates to the environmental review process and the process for considering historic resources as required by the FAST Act, including applying the Title 23 environmental review process to rail projects.	Standing Committee on Environment			Proposed rulemaking will take the form of a supplemental NPRM from the November 2016 NPRM implementing environmental process and historic considerations from MAP-21.		X									
TBD	**NEPA Substitution Pilot Program and Updates to the NEPA Assignment Program**	FAST Act requires USDOT, in consultation with CEQ, to establish a pilot program within 270 days of enactment for states with NEPA assignment to allow states to either substitute their State environmental review law(s) for NEPA or allow NEPA to substitute for their state environmental review law(s). Also requires USDOT to amend federal NEPA assignment audit and assignment termination processes.	Standing Committee on Environment					X									