

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 7025 PCB GAC 17-01 Federal-aid Highway Program
SPONSOR(S): Government Accountability Committee, Stone
TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|---------|--|
| Orig. Comm.: Government Accountability Committee | 22 Y, 0 N | Vickers | Williamson |

SUMMARY ANALYSIS

The Federal Highway Administration administers a series of transportation funding programs through the Federal-aid Highway Program. Many of these programs provide highway funds to the states using a series of formulas and provide specific guidelines for use of funds.

The memorial urges Congress to empower states to promote innovative, cost-effective solutions to address transportation problems. It also urges Congress to establish block grant funding for surface transportation systems which provides states with maximum discretionary authority and responsibility for the construction, operation and maintenance of transportation systems. The memorial specifically urges Congress to authorize the Federal-aid Highway Program to be allocated to the states in the form of block grants to provide states with greater control and flexibility. Finally, the memorial demands Congress to enact a prohibition on federal mandates that incentivize states to take certain actions in order to maintain federal transportation funding eligibility.

Copies of the memorial will be sent to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Federal Transportation Funding

Federal-aid Highway Program¹

Federal-aid highway funds are authorized by Congress to assist the states in providing for construction, reconstruction, and improvement of highways and bridges on eligible federal-aid highway routes and for other special purpose programs and projects. Most funds are apportioned to the states by formula and implementation is left primarily to state departments of transportation (DOTs). States are required to provide matching funds. Until the 1950s, each federal dollar had to be matched by an identical amount of state and local money. Currently, the federal share is 80 percent for non-Interstate System road projects and 90 percent for Interstate System projects.² Generally, federal money may be spent only on designated federal-aid highways, which make up roughly a quarter of U.S. public roads.

The Federal-aid Highway Program (FAHP) is an umbrella term for the separate highway programs administered by the Federal Highway Administration (FHWA). These programs are almost entirely focused on highway construction and generally do not support operations or routine maintenance. Each state is required to have a State Transportation Improvement Plan, which sets priorities for the state's use of FAHP funds. The FAHP generally establishes the policy priorities, while state DOTs determine which projects are funded based upon those priorities. More recently, metropolitan planning organizations (MPOs) have played a role in project decision making in urban areas, but federal project funding continues to flow through state DOTs.

Under the Fixing America's Surface Transportation Act (FAST Act),³ 92 percent of FAHP funding is distributed through five core programs, which are formula programs.⁴ For a formula program, each state's share of each program's total annual authorization is based on a mathematical calculation established in law. The remaining programs, generally referred to as discretionary programs, are administered more directly by FHWA, but the funding distribution of some of these programs is formulaic as well.

The FAHP, unlike most other federal programs, does not rely on appropriated budget authority. Instead, FHWA exercises contract authority over monies in the Highway Trust Fund (HTF) and may obligate funds for projects funded with contract authority prior to an appropriation. Once funds have been obligated, the federal government has a legal commitment to provide the funds.

Highway Trust Fund

The HTF is financed from a number of sources, including taxes on fuels, tires, truck and trailer sales, and a weight-based heavy-vehicle use tax. However, approximately 90 percent of trust fund revenue comes from excise taxes on motor fuels, 18.3 cents per gallon on gasoline and 24.3 cents per gallon on diesel.⁵ The HTF consists of two separate accounts—highway and mass transit. The highway account receives an allocation equivalent to 15.44 cents of the gasoline tax and the mass transit account

¹ See 23 U.S.C. and 23 C.F.R.

² Federal Highway Administration, *A Guide to Federal-Aid Programs and Projects*, Washington, DC, April 2016, <https://www.fhwa.dot.gov/federalaid/projects.pdf>.

³ See P.L. 114-94.

⁴ Federal Highway Administration, *Fixing America's Surface Transportation Act or "FAST Act,"* Washington, DC, July 2016, <https://www.fhwa.dot.gov/fastact/summary.cfm>.

⁵ Federal Highway Administration, *Financing Federal-aid Highways*, Washington, DC, June 2016, <https://www.fhwa.dot.gov/policy/olsp/financingfederalaid/fund.cfm>.

receives the revenue generated by 2.86 cents of the tax.⁶ Because the fuel taxes are set in terms of cents per gallon rather than as a percentage of the sale price, their revenues do not increase with inflation.

FAST Act

The FAST Act represents the first long-term comprehensive surface transportation legislation since 2005. The FAST Act authorizes federal highway, highway safety, transit, and rail funding programs for five years from federal fiscal years (FY) 2016 through 2020. It authorizes \$305 billion from both the HTF and the General Fund of the United States Treasury.⁷ It also provides \$225 billion in HTF contract authority over five years for the FAHP, increasing funding from \$41 billion in 2015 to \$47 billion in 2020.

The FAST Act includes five core programs that address specific objectives. The FAST Act does not use separate formulas to determine each state's apportionments under each core program. Instead, the act provides for a single gross apportionment to each of the states, which is then divided up among the programs. The five core programs include the National Highway Performance Program, Surface Transportation Block Grant Program, Highway Safety Improvement Program, Congestion Mitigation and Air Quality Improvement Program, and National Highway Freight Program. States receiving federal funding under the FAST Act may only use the funds as authorized by its programs.

*National Highway Performance Program (NHPP)*⁸

The NHPP is the largest of the federal-aid highway programs, with annual authorizations averaging over \$23 billion.⁹ The program supports improvement of the condition and performance of the National Highway System (NHS), which includes Interstate System highways and bridges as well as virtually all other major highways. NHPP funds projects to achieve national performance goals for improving infrastructure condition, safety, mobility, and freight movement, consistent with state and metropolitan planning; construction, reconstruction, or operational improvement of highway segments; construction, replacement, rehabilitation, and preservation of bridges, tunnels, and ferry boats and ferry facilities; inspection costs and the training of inspection personnel for bridges and tunnels; bicycle transportation infrastructure and pedestrian walkways; intelligent transportation systems; and environmental restoration, as well as natural habitat and wetlands mitigation within NHS corridors.

*Surface Transportation Block Grant Program (STBG)*¹⁰

The STBG is the federal-aid highway program with the broadest eligibility criteria. Funds can be used on any federal-aid highway, bridge projects on any public road, transit capital projects, routes for non-motorized transportation, and bridge and tunnel inspection. The FAST Act authorizes an annual average of almost \$11.7 billion for STBG.¹¹ The STBG replaces the former Surface Transportation Program. The Transportation Alternatives Program authorized under MAP-21, which funded such projects as bicycle paths and walkways, is effectively absorbed into the STBG. The FAST Act provides that \$850 million per year from the STBG apportionment be set aside for transportation alternative-like uses. States and MPOs obligating these funds are to develop a competitive process for local public entities to submit projects for funding. A portion of the set-aside is directed toward the recreational trails program, from which states may apply to opt out.¹²

⁶ Federal Highway Administration, *Fixing America's Surface Transportation Act or "FAST Act,"* Washington, DC, July 2016, <https://www.fhwa.dot.gov/fastact/summary.cfm>.

⁷ American Association of State Highway and Transportation Officials, *AASHTO Summary of the New Surface Transportation Bill*, December, 2015, http://www.dot.ca.gov/hq/transprog/map21/implementation/aashto_sum_fastact_121615v2.pdf.

⁸ See FAST Act s. 1106; 23 U.S.C. 119.

⁹ American Association of State Highway and Transportation Officials, *AASHTO Summary of the New Surface Transportation Bill*, December, 2015, http://www.dot.ca.gov/hq/transprog/map21/implementation/aashto_sum_fastact_121615v2.pdf

¹⁰ See FAST Act s. 109; 23 U.S.C. 133.

¹¹ Federal Highway Administration, *Fixing America's Surface Transportation Act or "FAST Act,"* Washington, DC, July 2016, <https://www.fhwa.dot.gov/fastact/summary.cfm>.

¹² *Id.*

*Highway Safety Improvement Program (HSIP)*¹³

The HSIP supports projects that improve the safety of road infrastructure by correcting hazardous road locations, such as dangerous intersections, or making road improvements such as adding rumble strips. Under the FAST Act, HSIP is funded at an annual average of \$2.556 billion.¹⁴ The Rail-Highway Grade Crossing Program continues as an HSIP set aside and averages \$235 million per year. The FAST Act broadened the eligibility to make vehicle-to-vehicle technology, median separations, and other infrastructure projects eligible. A smaller set aside of \$3.5 million annually is provided for discretionary safety grants.

*Congestion Mitigation and Air Quality Improvement Program (CMAQ)*¹⁵

The CMAQ was established to fund projects and programs that may reduce emissions of transportation-related pollutants. In recent years, well over \$1 billion of the annual CMAQ funding has been transferred to the Federal Transit Administration. Under the FAST Act, CMAQ's average annual authorization is \$2.4 billion.¹⁶ The act expands eligibility to include port-related freight operations or projects to reduce emissions from port-related road or non-road equipment within a nonattainment or maintenance area.

*National Highway Freight Program (NHFP)*¹⁷

The NHFP is a new program to help states and MPOs remove impediments to the movement of goods. Annual apportionments for NHFP average \$1.249 billion annually through FY 2020.¹⁸ The FAST Act requires the FHWA to establish a National Highway Freight Network (NHFN) made up of the primary highway freight system, critical rural freight corridors, critical urban freight corridors, and any Interstate System highways not so designated.

State Transportation Funding

Florida DOT's work program is developed pursuant to s. 339.135, F.S., and is based on a complete, balanced financial plan for the State Transportation Trust Fund (STTF) and other DOT managed funds. The tentative and adopted work programs set forth DOT's proposed commitments and planned expenditures classified by major program and fixed capital appropriation categories to accomplish DOT's objectives included in the Florida Transportation Plan's program and resource plan.

In general, the tentative and adopted work programs are planned to deplete each fund's estimated resources. DOT may request an emergency reserve for the purpose of performing emergency work necessary in order to prevent the stoppage of travel over any DOT transportation facility. No anticipated funds estimated to be received from various federal-aid acts of Congress are budgeted in excess of the amount that may be earned by the state funds set aside for matching federal aid. State funds set aside for matching federal-aid funds are only used for such matching purposes. Prior to preparing its tentative work program, DOT ascertains the amount of apportionments of federal-aid funds that are estimated to be available for the fiscal years for which the tentative work program is prepared, and budgets sufficient funds for matching purposes.

DOT is not required to match federal-aid funds that are allocated for use on a project that is not on the State Highway System (SHS). If an MPO allocates available federal-aid funds for a project that is not on the SHS, DOT may not provide more than 50 percent of the nonfederal share. However, DOT may

¹³ The specific provisions pertaining to the HSIP are defined in section 1112 of MAP-21.

¹⁴ Federal Highway Administration, Fixing America's Surface Transportation Act or "FAST Act," Washington, DC, July 2016, <https://www.fhwa.dot.gov/fastact/summary.cfm>.

¹⁵ See FAST Act s. 1114; 23 U.S.C. 149.

¹⁶ Federal Highway Administration, Fixing America's Surface Transportation Act or "FAST Act," Washington, DC, July 2016, <https://www.fhwa.dot.gov/fastact/summary.cfm>.

¹⁷ See FAST Act s. 1116; 23 U.S.C. 167.

¹⁸ Federal Highway Administration, Fixing America's Surface Transportation Act or "FAST Act," Washington, DC, July 2016, <https://www.fhwa.dot.gov/fastact/summary.cfm>.

provide 100 percent of the nonfederal share of a transit project or transit-related project funded under the federal Congestion Mitigation and Air Quality Attainment Program.

To assure that no district or county is penalized for local efforts to improve the SHS, DOT allocates funds for new construction to the districts, except for the Florida Turnpike Enterprise, based on equal parts of population and motor fuel tax collections. Funds for resurfacing, bridge repair and rehabilitation, bridge fender system construction or repair, public transit projects, and other programs with quantitative needs assessments are allocated based on the results of the quantitative needs assessments. DOT may not transfer any funds allocated to a district to any other district except as provided by law. DOT allocates at least 50 percent of any new discretionary highway capacity funds to the Strategic Intermodal System. Any remaining new discretionary highway capacity funds are allocated to the districts for new construction.

Effect of the Memorial

The memorial urges Congress to empower states to promote innovative, cost-effective solutions to address transportation problems. It also urges Congress to establish block grant funding for surface transportation systems which provides states with maximum discretionary authority and responsibility for the construction, operation and maintenance of transportation systems. The memorial specifically urges Congress to authorize the FAHP to be allocated to the states in the form of block grants to provide states with greater control and flexibility. Finally, the memorial demands Congress to enact a prohibition on federal mandates that incentivize states to take certain actions in order to maintain federal transportation funding eligibility.

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Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This memorial does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The memorial does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.