# FAST ACT

A GUIDE TO PUBLIC TRANSPORTATION AND RAIL-RELATED PROVISIONS

APTA
AMERICAN PUBLIC TRANSPORTATION ASSOCIATION

FIXING AMERICA'S SURFACE TRANSPORTATION ACT

## APTA EXECUTIVE COMMITTEE



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## INTRODUCTION

This guide provides a summary of key provisions related to public transportation and passenger rail programs under the new Fixing America's Surface Transportation (FAST) Act, which authorizes funding for federal transit, rail, and highway programs through Fiscal Year (FY) 2020. On December 3, 2015, the U.S. House of Representatives and the Senate approved the conference report on the FAST Act (H.R. 22). The bill was signed into law by President Obama, on December 4, 2015 (Public Law 114-94), completing a legislative process that spanned several years and numerous extensions of the previous authorizing law, MAP-21.

The fast Act builds on and modifies previous surface transportation laws; the Moving Ahead for Progress in the 21st Century (MAP-21; P.L. 112-141); the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU; P.L. 109-59); the Transportation Equity Act for the 21st Century TEA 21; P.L. 105-178); and the Intermodal Surface Transportation Efficiency Act (ISTEA; P.L. 102-240).

The FAST Act includes many of APTA's recommendations on federal public transportation authorizing law which were developed by APTA's Authorization Task Force, APTA's High-Speed and Intercity Passenger Rail Committee, and the APTA Legislative Committee. The recommendations were reviewed by APTA's Legislative Committee and ultimately approved by APTA's Board of Directors in December of 2013.

For information on the FAST Act or issues related to public transportation, contact TaNeesha Johnson at TJohnson@apta.com.

## OVERVIEW

The FAST Act authorizes $61.1 billion over the five fiscal years (FY) 2016 through 2020 for programs administered by the Federal Transit Administration (FTA). The law authorizes $11.8 billion for public transit programs in FY 2016, and increases the total authorization to $12.6 billion in FY 2020, an increase of 17.7 percent over the FY 2015 level.

Under the new law, much of the federal transit program structure remains in place. It retains the urban and rural formula programs that distribute mostly capital assistance based on need and a program for new fixed guideway starts and extensions. It preserves the state of good repair formula program, a formula program for seniors and individuals with disabilities, and the formula programs for growing states and high-density states. The measure maintains the existing bus and bus facilities formula program, and it creates a new bus and bus facilities competitive grant program that grows federal investment levels in buses and bus facilities.

The new law retains authority for small transit systems in large urban areas to use a portion of their formula funds for operating costs, and includes demand response-only fleets in determining which systems may use a portion of those funds for operating. The FAST Act maintains the small transit intensive cities (STIC) formula program and increases its Urban Formula set-aside in 2019. The law creates a Pilot Program for Innovative Coordinated Access and Mobility, and it consolidates transit research programs under the Public Transportation Innovation program. Funding for a portion of this program, including the Transit Cooperative Research program (TCRP), will now come from the Mass Transit Account rather than general funds. The bill creates a pilot program under the Capital Investment Grant program, which streamlines the regulatory process for project sponsors willing to receive a smaller federal share, and it reduces the maximum federal match for projects with full-funding grant agreements from 80 percent to 60 percent. The law increases procurement flexibility for rolling stock, and it reduces current regulatory impediments related to vehicle leasing.

The measure places the Transportation Infrastructure Finance and Innovation Act (TIFIA) and the Railroad Rehabilitation and Improvement Financing programs under a single agency in the U.S. DOT and conforms some standards under the two programs. It continues the transit safety program established under MAP-21 that gave FTA greater authority over state safety oversight agencies.

Funding for programs under the Mass Transit Account (MTA) of the Highway Trust Fund (HTF) are fully funded for the five years authorized under the bill. Revenues deposited into the MTA over the life of the bill, from both existing federal motor fuel excise taxes and general fund deposits into the MTA with one-time offsets provided under the bill will fully fund MTA authorized transit programs through FY 2020. However, those one-time offsets deposited into the MTA will not provide a sustainable source of funding for current service spending after the bill expires. Maintaining even a current services level after the bill's expiration will require additional revenues into the MTA and the HTF.

Finally, the Act includes a rail title that restructures the Amtrak program, and authorizes separate funding under three separate rail investment programs, with total funding rising from $200 million in FY 2016 to $650 million in FY 2020.

### Table 1: FAST Act Authorization Levels

| Program | FAST Act Authorizations | | | | | |
|---|---|---|---|---|---|---|
| | FY 2016 (Millions of Dollars) | FY 2017 (Millions of Dollars) | FY 2018 (Millions of Dollars) | FY 2019 (Millions of Dollars) | FY 2020 (Millions of Dollars) | Five-Year Total (Millions of Dollars) |
| **Total All Programs** | **11,789.41** | **12,175.51** | **12,175.16** | **12,381.18** | **12,592.15** | **61,113.40** |
| **Total Funded from the Mass Transit Account** | **9,347.60** | **9,733.71** | **9,733.35** | **9,939.38** | **10,150.35** | **48,904.39** |
| § 5305 Planning | 130.73 | 133.40 | 136.20 | 139.09 | 142.04 | 681.46 |
| § 5307 and § 5336 Urbanized Area Formula | 4,538.91 | 4,629.68 | 4,726.91 | 4,827.12 | 4,929.45 | 23,652.07 |
| § 5310 Seniors and Individuals with Disabilities | 262.95 | 268.21 | 273.84 | 279.65 | 285.57 | 1,370.22 |
| § 5311 Rural Basic Formula | 552.56 | 564.71 | 577.72 | 591.13 | 604.83 | 2,890.95 |
| § 5311(b)(3) Rural Transportation Assistance Program | 12.40 | 12.65 | 12.91 | 13.19 | 13.47 | 64.61 |
| § 5311(c)(1) Public Transportation on Indian Reservations | 35.00 | 35.00 | 35.00 | 35.00 | 35.00 | 175.00 |
| § 5311(c)(2) Appalachian Development Public Transportation | 20.00 | 20.00 | 20.00 | 20.00 | 20.00 | 100.00 |
| § 5312 Public Transportation Innovation Basic | 20.00 | 20.00 | 20.00 | 20.00 | 20.00 | 100.00 |
| § 5312(h) Low or No Emission Component Assessment | 3.00 | 3.00 | 3.00 | 3.00 | 3.00 | 15.00 |
| § 5312(i) Transit Cooperative Research Program | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 | 25.00 |
| § 5314 Technical Assistance and Workforce Development Basic | 4.00 | 4.00 | 4.00 | 4.00 | 4.00 | 20.00 |
| § 5314(c) National Transit Institute | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 | 25.00 |
| § 5318 Bus Testing Facility | 3.00 | 3.00 | 3.00 | 3.00 | 3.00 | 15.00 |
| § 5335 National Transit Database | 4.00 | 4.00 | 4.00 | 4.00 | 4.00 | 20.00 |
| § 5337 State of Good Repair | 2,507.00 | 2,549.67 | 2,593.70 | 2,638.37 | 2,683.80 | 12,972.54 |
| § 5339(a) Bus and Bus Facilities Formula Grants | 427.80 | 436.36 | 445.52 | 454.96 | 464.61 | 2,229.25 |
| § 5339(b) Bus and Bus Facilities Competitive Grants Basic | 213.00 | 228.60 | 246.51 | 267.06 | 289.04 | 1,244.21 |
| § 5339(c) Low or No Emissions Grants | 55.00 | 55.00 | 55.00 | 55.00 | 55.00 | 275.00 |
| § 5340(c) Growing States | 272.30 | 279.13 | 286.13 | 293.31 | 300.67 | 1,431.54 |
| § 5340(d) High Density States | 263.96 | 265.30 | 266.65 | 268.00 | 269.36 | 1,333.29 |
| § 3006(b) of FAST Act Coordinated Access and Mobility | 2.00 | 3.00 | 3.25 | 3.50 | 3.50 | 15.25 |
| § 3028(a) of FAST Act Positive Train Control | 0.00 | 199.00 | 0.00 | 0.00 | 0.00 | 199.00 |
| § 20005(b) of MAP-21 Pilot Program for TOD Planning | 10.00 | 10.00 | 10.00 | 10.00 | 10.00 | 50.00 |
| **Total Funded from General Revenues** | **2,441.80** | **2,441.80** | **2,441.80** | **2,441.80** | **2,441.80** | **12,209.01** |
| § 5309 Fixed-Guideway Capital Investment | 2,301.79 | 2,301.79 | 2,301.79 | 2,301.79 | 2,301.79 | 11,508.93 |
| § 5312 Public Transportation Innovation | 20.00 | 20.00 | 20.00 | 20.00 | 20.00 | 100.00 |
| § 5314 Technical Assistance and Workforce Development | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 | 25.00 |
| § 5324 Emergency Relief | (a) | (a) | (a) | (a) | (a) | (a) |
| § 5326 Transit Asset Management – FTA | 2.00 | 2.00 | 2.00 | 2.00 | 2.00 | 10.00 |
| § 5327 Project Management Oversight | (b) | (b) | (b) | (b) | (b) | (b) |
| § 5329 Public Transportation Safety – FTA | 3.00 | 3.00 | 3.00 | 3.00 | 3.00 | 15.00 |
| § 5334 FTA Administration | 110.02 | 110.02 | 110.02 | 110.02 | 110.02 | 570.08 |

(a) Such sums as are necessary.

(b) Project Management Oversight funds are a variable percentage takedown from capital grant programs.

# SUMMARY OF PROVISIONS OF THE FAST ACT

## Public Transportation Programs

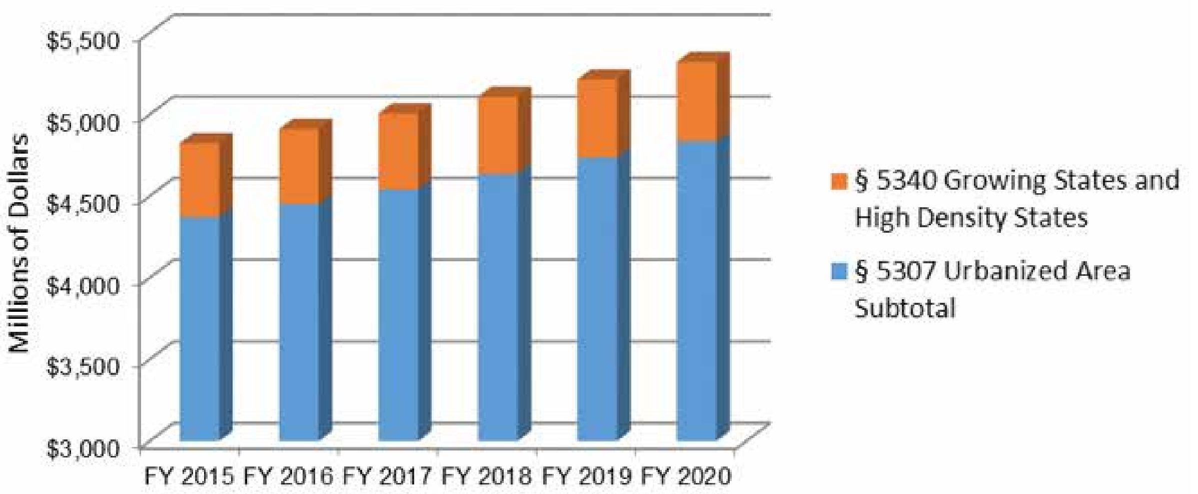
### URBANIZED AREA FORMULA PROGRAM (49 USC § 5307, § 5336, and § 5340)

*(Sections 3004 and of FAST Act)*
*Funded from the Highway Trust Fund/Mass Transit Account (HTF/MTA)*

Urbanized area formula grants remain the largest source of federal transit funding under the FAST Act, with $4.539 billion authorized in FY 2016 and $23.7 billion over the life of the bill. The FAST Act preserves the existing formula program and its distribution factors, including separate factors based on population growth and density, but it increases the percentage, from 10 percent to 20 percent, of formula funding that can be used for operating expenses associated with providing non-fixed route paratransit service under the Americans with Disabilities Act, under certain circumstances. The measure also makes clear that bus systems operating less than 100 buses during peak hour service, and demand response systems that are not providing complementary paratransit service, are both eligible to use a portion of their formula funds for operating expenses.

Otherwise, under the FAST Act, the basic structure of the urbanized area formula is maintained with funding apportioned based on bus vehicle revenue miles, bus passenger miles, fixed guideway vehicle revenue miles, and fixed guideway directional route miles, as well as population and population density.

**Figure 1: Urbanized Area Formula**




The FAST Act also retains the GROWING STATES AND HIGH DENSITY STATES FORMULA DISTRIBUTION (49 USC § 5340). The bill authorizes $536.3 million in 2016 and more than $2.7 billion over the five years for Section 5340. The measure increases the authorization for the Growing States formula by over 14 percent during the bill, while it increases funding for the High-Density States by only 2.4 percent over the life of the bill. Funds are made available under the Growing States program are apportioned by a formula based on state population forecasts for 15 years beyond the most recent Census. Amounts apportioned for each state are then distributed between urbanized areas and rural areas based on the ratio of urban/rural population within each state. The High Density States formula distributes funds to states with population densities in excess of 370 persons per square mile. High Density funds are apportioned only to urbanized areas within those states.

The new law continues the authorization for the SMALL TRANSIT INTENSIVE CITIES (STIC) [49 USC § 5336(i)] tier in the urbanized area formula program (UZAs) and increases the takedown from which the program is funded in FY's 2019 and 2020. These funds are distributed to small UZAs with fewer than 200,000 population that provide public transit service above a certain level based on six factors. The program is funded at 1.5 percent of all UZA formula funds annually in FY 2016 through 2018. In FY 2019 and 2020, the program would be funded with a 2 percent takedown from the urban formula program. The criteria remain unchanged: they are passenger miles traveled per vehicle revenue mile; passenger miles traveled per vehicle revenue hour; vehicle revenue miles per capita; vehicle revenue hours per capita; passenger miles traveled per capita; and passengers per capita.

### Table 2: Urbanized Area Program Authorization Levels

| Formula | FY 2016 (Thousands of Dollars) | FY 2017 (Thousands of Dollars) | FY 2018 (Thousands of Dollars) | FY 2019 (Thousands of Dollars) | FY 2020 (Thousands of Dollars) | Five-Year Total (Thousands of Dollars) |
|---|---|---|---|---|---|---|
| **Total § 5336 Authorized Amount a** | **4,538,906** | **4,629,684** | **4,726,907** | **4,827,118** | **4,929,452** | **23,652,067** |
| § 5327 Project Management Oversight (Administrative) | 34,042 | 34,723 | 35,452 | 36,203 | 36,971 | 177,391 |
| § 5307(h) Passenger Ferry Grants (Discretionary) | 30,000 | 30,000 | 30,000 | 30,000 | 30,000 | 150,000 |
| § 5329(e) State Safety Oversight Program (Rail Transit States) | 22,695 | 23,148 | 23,635 | 24,136 | 24,647 | 118,261 |
| § 5336(a) through (c) Bus and Fixed-Guideway Formulas | 4,247,282 | 4,332,818 | 4,424,429 | 4,495,608 | 4,591,537 | 22,091,674 |
| § 5336(i) Small Transit Intensive Cities Formula | 65,543 | 66,863 | 68,277 | 92,979 | 94,962 | 388,624 |
| § 5336(j) Low Income Individuals Formula | 139,344 | 142,131 | 145,116 | 148,193 | 151,334 | 726,118 |
| § 5340(c) Growing States – Approximate b | 194,692 | 199,578 | 204,585 | 209,717 | 214,978 | 1,023,550 |
| § 5340(d) High Density States | 263,964 | 265,304 | 266,651 | 268,004 | 269,364 | 1,333,287 |
| **Total Funds Apportioned by UZA Formulas c** | **4,910,826** | **5,006,695** | **5,109,057** | **5,214,500** | **5,322,177** | **25,563,255** |

a Includes all funds distributed by § 5327, § 5307(h), § 5329(e), § 5336(a) through (c), § 5336(i), and § 5336(j).

b A portion of § 5340(c) is distributed by the § 5311 Rural Program. Total § 5340(c) funding equals $272.3 million in FY 2016, $279.1 million in FY 2017, $286.1 million in FY 2018, $293.3 million in FY 2019, and $300.7 million in FY 2020.

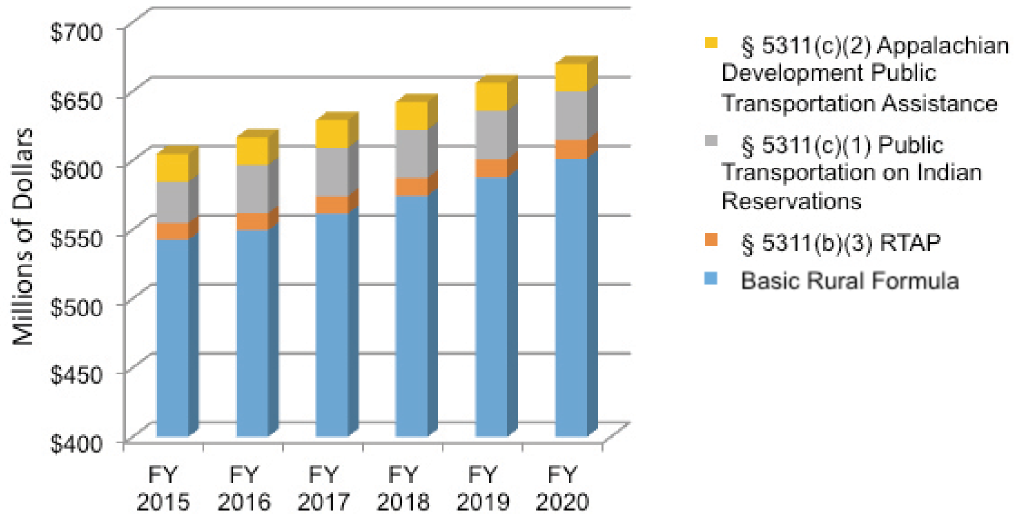
c Includes all funds from § 536(a) through (c), § 5336(i), § 5336(j), § 5340(c), and §5340(d).

## RURAL FORMULA PROGRAM (49 USC § 5311) (Sections 3007 and of FAST Act)

*Funded from the Highway Trust Fund/Mass Transit Account (HTF/MTA)*

The rural formula program, known before MAP-21 as "non-urbanized" formula grants, experiences growth at rates similar to the growth of the urban formula program, with $619.96 million authorized in FY 2016 and $3.2 billion over five years. The program generally maintains the existing structure, providing funding to states for public transportation in rural areas, with most funding apportioned based on land area and population in rural areas. In addition, the bill authorizes funding for the Rural Transportation Assistance program (RTAP), for Public Transportation on Indian Reservations, and for the Appalachian Development Public Transportation program tier.

### Figure 2: Section 5311 Rural




### Table 3: Rural Formula Program Authorization Levels

| Formula | FY 2016 (Thousands of Dollars) | FY 2017 (Thousands of Dollars) | FY 2018 (Thousands of Dollars) | FY 2019 (Thousands of Dollars) | FY 2020 (Thousands of Dollars) | Five-Year Total (Thousands of Dollars) |
|---|---|---|---|---|---|---|
| **Total § 5311 Total Amount a** | **619,956** | **632,355** | **645,635** | **659,322** | **673,300** | **3,230,568** |
| § 5327 Project Management Oversight | 3,100 | 3,162 | 3,228 | 3,297 | 3,366 | 16,153 |
| § 5311(b)(3) Rural Transportation Assistance Program | 12,399 | 12,647 | 12,913 | 13,186 | 13,466 | 64,611 |
| § 5311(c)(1) Public Transportation on Indian Reservations | 35,000 | 35,000 | 35,000 | 35,000 | 35,000 | 175,000 |
| § 5311(c)(2) Appalachian Development Public Transportation Assistance | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 | 100,000 |
| § 5311(c)(3) Rural funds for Formula Distribution | 549,457 | 561,546 | 574,494 | 587,839 | 601,467 | 2,874,803 |
| § 5340(c) Growing States Distribution – Approximate | 77,605 | 79,552 | 81,548 | 83,594 | 85,691 | 407,990 |
| **Total Funds Distributed by Rural Formula b** | **627,062** | **641,098** | **656,042** | **671,433** | **687,158** | **3,282,793** |

a Includes all funds distributed by § 5327, § 5311(b), and § 5311(c)(1) through § 5311(c)(3).

b Includes all funds from § 5311(c)(3) and § 5340(c).

## FORMULA GRANTS FOR THE ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES (49 USC § 5310)

*(Section 3006 of FAST Act)*
*Funded from the Highway Trust Fund/Mass Transit Account (HTF/MTA)*

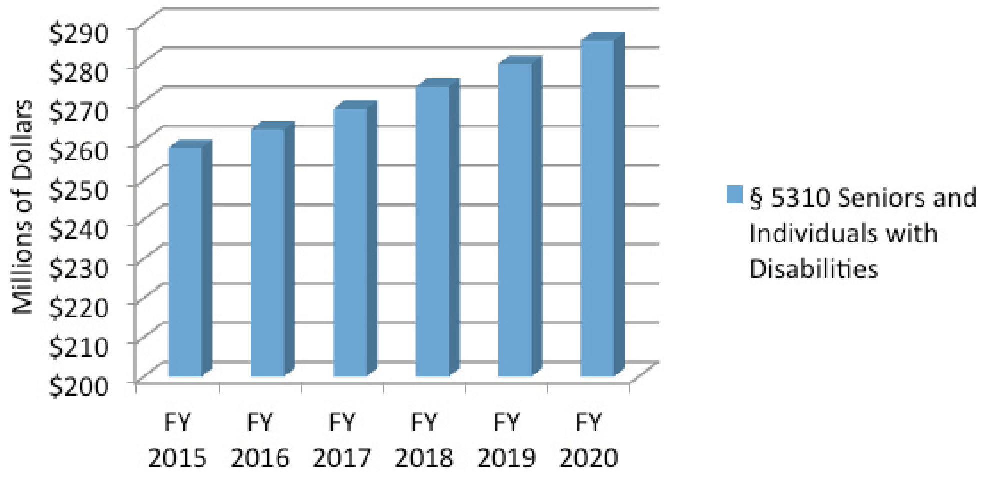
Under the FAST Act, the Section 5310 Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities program grows by 10.56 percent over five years compared to FY 2015 levels. A total of $1.370 billion is authorized over the life of the bill.

A programmatic change was made to the formula program under this section. State and local governments that operate public transportation and are eligible to receive direct grants under the Urbanized Area (Section 5307) or Rural (Section 5311) formula programs are now eligible to be direct recipients of 5310 formula funding.

Several other new provisions were also added to the 5310 section. A new Pilot Program for Innovative Coordinated Access and Mobility has been established. $15.25 million is authorized over the life of the bill for the pilot. Under this new discretionary program, grants can be made to 5310 recipients and sub-recipients to assist in financing innovative projects for the transportation disadvantaged that improve the coordination of transportation services and non-emergency medical transportation services. Additionally, the FAST Act mandates that the U.S. Department of Transportation publish a 5310 Best Practices Guide where innovative practices, program models, new service delivery options, and findings from other Department reports are highlighted. Lastly, this section requires the Interagency Transportation Coordinating Council on Access and Mobility, established under Executive Order No. 13330, to publish a new strategic plan by December 2016. The plan must:

1. Outline the role and responsibilities of each Federal agency with respect to local transportation coordination, including nonemergency medical transportation;
2. Identify a strategy to strengthen interagency collaboration;
3. Address any outstanding recommendations made by the Council in the 2005 Report to the President relating to the implementation of Executive Order No. 13330, including:
   - a cost-sharing policy endorsed by the Council; and
   - recommendations to increase participation by recipients of Federal grants in locally developed, coordinated planning processes;
4. To the extent feasible, addresses recommendations by the Comptroller General concerning local coordination of transportation services;
5. Examine and proposes changes to Federal regulations that will eliminate Federal barriers to local transportation coordination, including non-emergency medical transportation; and
6. Recommend to Congress changes to Federal laws, including chapter 7 of title 42, United States Code that will eliminate Federal barriers to local transportation coordination, including nonemergency medical transportation.

### Figure 3: Enhanced Mobility of Seniors and Individuals with Disabilities




## STATE OF GOOD REPAIR PROGRAM (49 USC § 5337)

*(Section 3015 of FAST Act)*
*Funded from the Highway Trust Fund/Mass Transit Account (HTF/MTA)*

The State of Good Repair Program saw significant increases in authorization levels, beginning at $2.507 billion in FY 2016 and rising to $2.684 billion by FY 2020. The FAST Act did not make a great deal of changes to this program that makes grants to finance capital projects to maintain fixed guideway public transportation systems in a state of good repair. The High Intensity Motorbus Vehicle State of Good Repair program continues to be funded at 2.85 percent of the total program.

The FAST Act does clarify that High Intensity Motorbus funds are to be used only for vehicle state of good repair costs, and may not be used on roadways. The Act also makes clarifications regarding the 80 percent federal share for this program as well as sources for the remaining costs.

### Table 4: State of Good Repair Authorization Levels

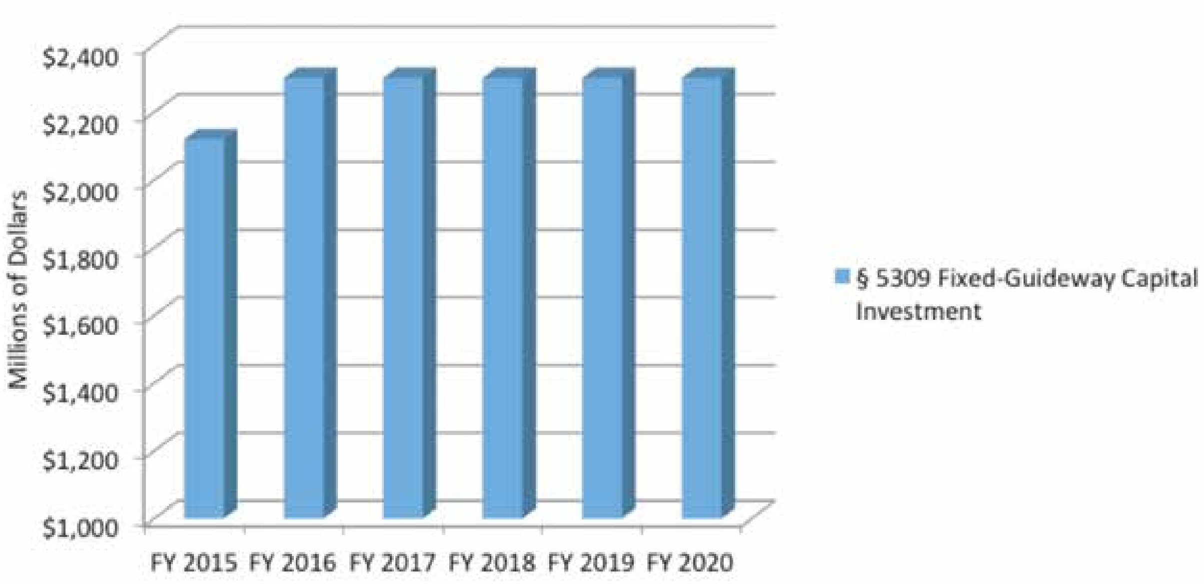
| Formula | FY 2016 (Thousands of Dollars) | FY 2017 (Thousands of Dollars) | FY 2018 (Thousands of Dollars) | FY 2019 (Thousands of Dollars) | FY 2020 (Thousands of Dollars) | Five-Year Total (Thousands of Dollars) |
|---|---|---|---|---|---|---|
| Total State of Good Repair Funds | 2,507,000 | 2,549,670 | 2,593,704 | 2,638,367 | 2,683,798 | 12,972,539 |
| § 5337(c) High Intensity Fixed Guideway State of Good Repair Formula Funds | 2,435,551 | 2,477,004 | 2,519,783 | 2,563,174 | 2,607,310 | 12,602,822 |
| § 5337(d) High Intensity Motorbus State of Good Repair Formula Funds | 71,449 | 72,666 | 73,921 | 75,193 | 76,488 | 369,717 |

## FIXED GUIDEWAY CAPITAL INVESTMENT GRANTS (49 USC § 5309)

*(Section 3005 of FAST Act)*
*Funded from the General Fund – subject to Annual Appropriations*

The FAST Act authorizes appropriations from the General Fund for Capital Investment Grants at $2.3 billion in FY 2016 and each year thereafter. This is a 20.7 percent first-year increase over the MAP-21 authorized level, but the level remains flat over the five years of the bill. Capital investment grants -- including New Starts, Small Starts, and Core Capacity -- are subject to the annual appropriations process. The appropriated funds go toward projects with existing full funding grant agreement obligations as well as for new projects in the federal pipeline that will meet growing demand for transit across the nation.

**Figure 4: Fixed Guideway Capital Investment**




*Federal Share*

Although there was some concern during the bill's development that federal matching funds would be restricted for Capital Investment Grants, many of these restrictions were rejected in the final bill. The FAST Act does make a change for New Starts full funding grant agreements (FFGA) by reducing the maximum Section 5309 FFGA federal share from 80 percent to 60 percent, but it maintains the maximum federal share of 80 percent for core capacity and small start projects. Other federal funds, including the Surface Transportation Program Block Grant Program (the new iteration of STP) and Congestion Mitigation and Air Quality Improvement Program (CMAQ), Transportation Infrastructure Finance and Innovation Act program (TIFIA), and Transportation Investment Generating Economic Recovery (TIGER) grant funds can still be "flexed" to supplement Capital Investment Grant projects up to 80 percent.

*Program of interrelated projects*

The FAST Act seeks to ensure that project sponsors have the option to compete for funding for programs that blend "new fixed guideway capital projects, core capacity improvement projects, and small start projects as well as a program of projects that are only new fixed guideway capital projects, core capacity improvement projects, or small start projects." To help achieve that, the Act adds Small Starts to the program of interrelated projects under the Capital Investment Grant program.

*Pilot program for public-private partnership projects with limited federal share*

The FAST Act includes a pilot program that streamlines regulatory steps for up to eight grant awards for new fixed guideway capital projects, core capacity improvement projects, or small start projects seeking a Federal funding level of 25 percent or less. These projects must be supported, at least in part, through a public-private partnership. This pilot replaces a similar pilot process that was authorized, but never used, under MAP-21.

*Other changes*

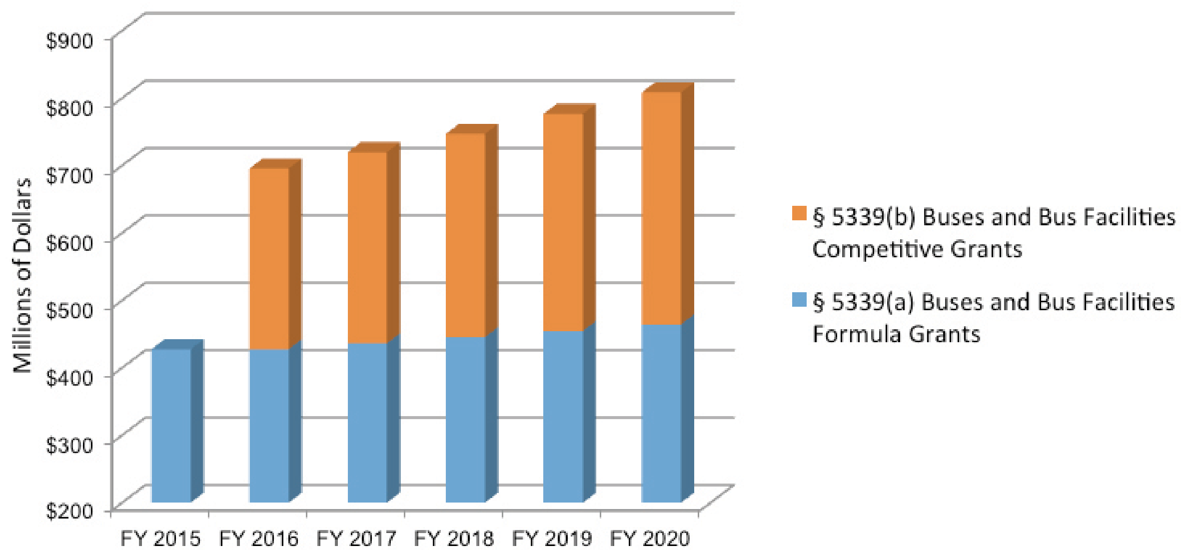
- The threshold for a small start project is increased so projects with a total cost of $300 million (changed from $200 million) and a federal share of $100 million (changed from $75 million) will qualify.
- The FAST Act allows an optional early rating for small start projects after completing the NEPA review process.
- Additional flexibility is provided under the definition of a small starts corridor-based bus rapid transit project regarding weekend service.
- The Act creates a special rule mandating that the costs of art and landscaping elements must be included when calculating the cost effectiveness of a project.
- Joint public transportation and intercity passenger rail project costs would be eligible for funding under the Fixed-Guideway Capital Investment program. However, funding is limited to the costs associated with the public transportation project only.

## BUSES AND BUS FACILITIES GRANTS (49 USC § 5339)

*(Section 3017 of FAST Act)*
*Funded from the Highway Trust Fund/Mass Transit Account (HTF/MTA)*

First, this program is renamed to be the "Buses and Bus Facilities Program" to emphasize the intention to support large scale procurements. To that goal, the FAST Act creates a new competitive grant program that did not exist under MAP-21 to support the existing formula grants. The overall program grows at a much higher rate than other major transit programs. Buses and Bus Facilities is authorized at a funding level of $696 million in FY 2016, increasing to $809 million by FY 2020. This is a 62.5 percent increase over the current funding in the first year and 89 percent over the life of the bill.

**Figure 5: Buses and Bus Facilities**



*Formula Grants*
The FAST Act continues the formula grants program, increasing funding from $428 million in FY 2016 to $465 million in FY 2020. Grants may be used to finance capital projects to replace, rehabilitate, and purchase buses and related equipment, including technological changes or innovations to modify low or no emission vehicles or facilities, and to construct other bus-related facilities. Grants must be made in accordance with the grant requirements in section either 5307 or 5311, depending on whether the grant is made in an urban or rural area.

The Act allows state and local government entities that operate fixed route bus service to be direct recipients of these funds, regardless of their designated recipient status. The Act also ensures that each state is allocated at least $1.75 million (from $1.25 million). The Act did not change the territory minimum allocation.

The Act includes a voluntary pilot program that allows states to pool Buses and Bus Facilities formula funding for urbanized areas with populations between 200,000 and 1 million. Under this pilot, states would be able to set an allocation plan to target the variable (lumpy) purchases that are often required to support agency transit asset management (TAM) plans. (For example, funds might be shifted from Agency A to support a large purchase for Agency B in the first year, then shifted from Agency B to Agency A in a later year.) Although the allocation for a recipient in an individual year might be higher or lower under the state allocation plan, each recipient is assured of receiving the same amount of funding it would otherwise receive cumulatively for Fiscal Years 2016-2020.

*Competitive Grants*
The Buses and Bus Facilities competitive grant program grows from $213 million in 2016 to $289 million by 2020. The program has a 10 percent rural set-aside. FTA is largely responsible with determining the criteria for successful applications, though the Act does require consideration of "the age and condition of buses, bus fleets, related equipment, and bus-related facilities." FTA's metrics and evaluation procedures must be disclosed up front, and the final scores for selected projects must also be disclosed.

Statewide applications are permitted on behalf of agencies within the state. A statewide application does not preclude individual agencies within that state from also submitting an application.

Low or No Emission Grants
The FAST Act also sets aside $55 million per year for grants to acquire or lease low and no emission buses. These funds can also be used to lease or construct new public transportation facilities, or rehabilitate or improve existing public transportation facilities, in order to accommodate low or no emission vehicles.

## PROCUREMENT

*(Section 3019 of FAST Act)*

The FAST Act contains provisions that are designed to give transit agencies new, voluntary procurement opportunities for making rolling stock purchases. The new procurement opportunities are targeted for small system operators, but are available to systems of any size. A major feature of the FAST Act provisions is that agencies may participate in the new procurement opportunities regardless of whether the parties to the contract are in the same state.

First, the FAST Act authorizes agencies to purchase capital assets through cooperative procurements administered by a state. Second, the Act requires that DOT establish a pilot program with at least three designated "nonprofit cooperative purchasing organizations" that will act in an administrative capacity to carry out cooperative purchasing contracts. While the General Services Administration (GSA) is not authorized to establish a schedule for transit rolling stock, these nonprofit organizations may establish what have been referred to as "GSA-type" schedules. Once established, participants in the contract will have to submit a nonbinding notice of intent to participate.

Third, the FAST Act instructs FTA to establish a "Joint Procurement Clearinghouse" that will allow grantees to aggregate planned rolling stock purchases and identify joint procurement participants. The Clearinghouse might collect information from agencies on desired specifications such as bus size, engine type, floor type, and other attributes that would help identify joint procurement opportunities. No agency will be required to submit information to the Clearinghouse.

Finally, the FAST Act removes some current regulatory impediments for leasing of public transportation vehicles. The lease may cover the costs of rolling stock, financing costs, maintenance costs, and other associated costs. The terms of a lease agreement are negotiated by the grantee. The Act allows the removable power sources for use in zero emissions vehicles to be leased by themselves, which is intended to drive down the up-front procurement cost for these vehicles.

The decision to participate in any new procurement opportunity under the Act is voluntary. Agencies may simply continue to use RFPs, joint procurements, assignment of options, or any other procurement method available under FTA rules prior to the FAST Act. The bill also eliminates a current requirement to prove or demonstrate that leasing is more cost effective than owning before leasing can be funded.

## BUY AMERICA

*(Section 3011 of FAST Act)*

The FAST Act increases the Buy America domestic content requirement for transit rolling stock from the current level of 60 percent to 65 percent in FY 2018 and to 70 percent by FY 2020. FTA regulations will set out the rules for contracts that span years with different domestic content requirements (for example, a contract that uses FY 2017 funds, but final delivery occurs in FY 2018). The legislation does not prescribe those details and leaves it for administrative regulations.

The FAST Act also requires the Secretary to include the cost of domestic iron or steel used in rolling stock frames and car shells not produced in the United States in the calculation of domestic content if the iron or steel is produced in the United States. Finally, the bill requires the Secretary, upon denial of a Buy America waiver, to issue a written certification that the steel, iron, or manufactured goods are produced in the United States in a sufficient and reasonably available amount, the item is of satisfactory quality, and include a list of known manufacturers in the United States from which the item can be obtained. Such waiver denials and written certifications must be publicly disclosed on the website of the Department of Transportation.

## PUBLIC TRANSPORTATION SAFETY PROGRAM (49 USC § 5329)

*(Section 3013 of FAST Act)*
*Mix of funding between General Fund and Highway Trust Fund/Mass Transit Account (HTF/MTA)*

The FAST Act continues a formula grant program, funded through a 0.5 percent takedown of urbanized area formula funds (Sec. 5307), to develop and operate state safety oversight programs. The Act clarifies and strengthens the authority given to Secretary of Transportation in MAP-21. Building on the national public transportation safety plan, the Act requires the establishment of Minimum Safety Standards for safe transit operations. The Act provides explicit authority to issue nationwide safety directives and clarifies FTA's authority to issue regulations that restrict or prohibit unsafe conditions or practices that create a substantial risk of death or personal injury. FTA is also given authority to withhold or direct federal funds for recipients that do not comply with Federal law regarding safety of the public transportation system.

The Act includes new instructions for FTA in instances where the FTA will temporarily administer a state safety oversight program until the state develops a compliant program that is certified by the Secretary. The Act clarifies that if a State Safety Oversight Agency (SSOA) fails to take sufficient corrective action, FTA may withhold funds for SSOA grants or take other appropriate corrective actions. The Act also specifies that if a state fails to achieve compliance within one year of FTA's determination, FTA may withhold Section 5307 funds.

## REVIEW OF PUBLIC TRANSPORTATION SAFETY STANDARDS

*(Section 3020 of FAST Act)*

The FAST Act requires FTA to assess the need for minimum safety standards where current standards may be determined to be insufficient. FTA will review existing industry safety standards and protocols in use by rail fixed guideway systems including: written emergency plans and procedures for passenger evacuations; training programs to ensure public transportation personnel compliance and readiness in emergency situations; approved coordination plans; maintenance, testing, and inspection programs; and certification requirements for train and bus operators and control center employees. FTA must also review rail and bus safety standards, practices, or protocols as they relate to rail and bus design; the reduction of blindspots; protecting rail and bus operators from the risk of assault; crash avoidance and worthiness; and plans for fatigue management, among other issues.

After the review, FTA must consult with representatives of the public transportation industry and evaluate the need to establish additional Federal minimum public transportation safety standards. By December 2016, the Secretary must report the findings and evaluation, as well as a comprehensive set of recommendations and actions that the Secretary will take to address the recommendations.

## STUDY ON EVIDENTIARY PROTECTIONS

*(Section 3021 of FAST Act)*

In MAP–21, Congress directed the Federal Transit Administration (FTA) to establish a comprehensive Public Transportation Safety Program that will include implementation of Safety Management Systems (SMS). Experts agree that in order to best protect the safety and security of public transportation riders, transit systems must be able to produce comprehensive, confidential analyses that will not result in increased exposure to litigation.

The FAST Act does not provide statutory protection of safety-sensitive data collected by transit agencies from Freedom of Information Act (FOIA) or state sunshine law requests or from admission into evidence during lawsuits. The FAST Act does, however, require a study on evidentiary protection for public transportation safety program information. The Transportation Research Board of the National Academies will conduct the study and will evaluate whether it is in the public interest to withhold certain safety-sensitive data from discovery or admission into evidence in lawsuits. The Transportation Research Board is required to solicit public comments, and the final report is due by June 2017.

## RULEMAKING PROCESS ON DRIVER ASSAULTS

*(Section 3022 of FAST Act)*

The Act requires the Secretary to initiate a rulemaking process on driver assaults. The notice of proposed rulemaking must consider different safety needs of drivers of different modes; differences in operating environments; the use of technology to mitigate driver assault risks; existing experience, from both agencies and operators that are already using or testing driver assault mitigation infrastructure; and the impact of the rule on future rolling stock procurements and vehicles currently in revenue service.

The notice of proposed rulemaking must be issued within 90 days of the issuance of the report required in Section 3020 (Review of Public Transportation Safety Standards).

## TRANSIT ASSET MANAGEMENT (49 USC § 5326)

*Funded from the General Fund – subject to Annual Appropriations*

The FAST Act doubles the amount of its Administrative funding it must spend on Sec. 5326, setting it at $2 million for each year FY 2016-2020, subject to appropriations. The Act did not make programmatic changes to this section.

The FAST Act creates a new voluntary opportunity for states to pool Buses and Bus Facilities formula funding to support transit asset management (TAM) plans for bus agencies. This program is described in the Buses and Bus Facilities section of this book.

## METROPOLITAN AND STATEWIDE AND NONMETROPOLITAN TRANSPORTATION PLANNING (49 USC §§ 5303, 5304, 5305; 23 USC §§ 134, 135)

*(Sections 3003 and 1201 of FAST Act)*
*Funded from the Highway Trust Fund/Mass Transit and Highway Accounts*

The FAST Act authorizes a total of $681 million from FY 2016 – 2020 for states and Metropolitan Planning Organizations (MPOs) to carry out transportation-related planning, design, evaluation, and technical study activities with funding from the Mass Transit Account of the Highway Trust Fund. The Act adds several new requirements including provisions that: expand the scope of the planning process to include resiliency and reliability of the transportation network, mandate statewide transportation plans to include performance measures and targets, and emphasis the need for states and MPOs to solicit input from a wide range of regional transportation stakeholders when developing transportation plans. The Act also clarifies the selection process and role of the regional public transportation representatives on the MPO board of governing body.

The U.S. Department of Transportation planning programs are jointly administered by the FTA and Federal Highway Administration (FHWA). As so, the Act also provides an estimated $1.7 billion from FY 2016 – 2020 under the Federal Highway Administration (FHWA) for metropolitan planning activities funded from the Highway Account of the Highway Trust Fund.

## PUBLIC TRANSPORTATION INNOVATION (49 USC § 5312)

*(Section 3008 of FAST Act)*
*Mix of funding between General Fund and Highway Trust Fund/Mass Transit Account (HTF/MTA)*

The FAST Act authorizes $28 million each year for the Public Transportation Innovation program, totaling $140 million over the life of the bill. This section previously was appropriated $10.5 million in FY 2015, representing an increase of 166 percent. In addition to this funding, the FAST Act also authorizes an additional $20 million from the GF, which is subject to annual appropriations.

The eligible activities for this section include research; innovation and development; demonstration, deployment and evaluation; low or no emission vehicle component testing (low-no testing); and the Transit Cooperative Research Program (TCRP). The voluntary low-no testing program was a new program created in the FAST Act which requires FTA to publish a performance report on the assessments conducted. In the new law, TCRP was moved from funding through the GF to the MTA, which APTA has long advocated for. As such, the section where it was previously located, § 5313 was eliminated. The government share of the cost of a project under this section cannot exceed 80 percent, except in the case of low-no testing, which the government share cannot exceed 50 percent.

## TECHNICAL ASSISTANCE AND WORKFORCE DEVELOPMENT (49 USC § 5314)

*(Section 3009 of FAST Act)*
*Mix of funding between General Fund and Highway Trust Fund/Mass Transit Account (HTF/MTA)*

Under Section 3009, the FAST Act authorizes $14 million annually to carry out a range of technical assistance, workforce development, and education activities. Annual funding is provided to continue the operation of the National Transit Institute (NTI) at a public 4-year degree granting institution of higher learning. This section also allows for the Secretary to make grants to fund: the development of transit standards, technical assistance provided by qualified national non-profit organizations, employment training programs (including assistance to veterans and minority populations), apprenticeship programs, and other education programs. The Act also allows up to 0.5% of funding from § 5307 to be utilized form workforce development activities.

## BUS TESTING FACILITIES (49 USC § 5318)

*Funded from the Highway Trust Fund/Mass Transit Account (HTF/MTA)*

The FAST Act does not make any changes to Section 5318. The Bus Testing Facilities program continues to be funded at $3 million per year to operate one bus testing facility, currently located at the Altoona Bus Research and Testing Center in Pennsylvania. New bus models must comply with performance standards such as maintainability, reliability, braking, structural integrity, fuel economy, emissions, and noise.

## POSITIVE TRAIN CONTROL FUNDING

*(Section 3028 of FAST Act)*
*Funded from the Mass Transit Account of the Highway Trust Fund*

The FAST Act authorizes $199 million in Fiscal Year 2017 to assist in financing the installation of positive train control systems. Funding under this section may be used to provide grants, direct loans, and loan guarantees by September 30, 2018. Assistance provided as a grant may not exceed 80 percent of total project costs. An applicant can request that awarded funding be used to pay the credit risk premium of a Railroad Rehabilitation and Improvement Financing (RRIF) loan approved to finance a positive train control installation project.

## GENERAL PROVISIONS (49 USC § 5323)

*(Section 3011 of the FAST Act)*

The Act modifies the definition of 'small purchase' for purposes of determining whether a purchase qualifies for a general public interest Buy America waiver. The Act sets the threshold for small purchases at $150,000, which allows agencies to take advantage of simplified small purchase procedures. Also, the Act now permits a recipient of assistance under Chapter 53 to utilize revenues from value capture financing mechanisms to fulfill local matching requirements for capital projects and operating costs.

## PROJECT MANAGEMENT OVERSIGHT (PMO) (49 USC § 5327)

*(Section 3012 of the FAST Act)*

The Fast Act specifies that the Secretary must develop additional project management oversight regulations that: (a) stipulate compliance oversight be limited to quarterly reviews unless the Secretary finds the grant recipient requires more frequent oversight and (b) delineate a process whereby grant recipients under more frequent oversight may return to quarterly reviews.

## NATIONAL SURFACE TRANSPORTATION AND INNOVATIVE FINANCE BUREAU

*(49 USC § 116)*
*(Section 9001 of FAST Act)*

The FAST Act establishes a new National Surface Transportation and Innovative Finance Bureau within DOT to administer the application processes for the TIFIA and RRIF credit programs, the new discretionary Nationally Significant Highway and Freight Projects program, the Private Activity Bonds (PABs) program and the State Infrastructure Bank (SIB) program. DOT describes this as a "one-stop shop for state and local governments to receive federal funding, financing or technical assistance." The Bureau will require value-for-money or comparable analyses for projects receiving credit assistance and will make these analyses publicly available. The Bureau must develop innovative financing best practices and will work to make the permitting process more efficient.

## FEDERAL RAILROAD PROGRAMS

### Authorization of Appropriations of Federal Railroad Programs

The FAST Act is the first major surface transportation authorization bill to include a substantial rail title. The rail title authorizes high-speed, intercity, passenger, and freight rail funding and includes policy provisions addressing Amtrak organizational reforms, rail safety, and project financing and delivery.

**Table 5: Intercity Passenger Railroad Funding Levels**

| P.L. 114-94 Authorization Section and Program Name | FAST Act Authorizations | | | | | |
|---|---|---|---|---|---|---|
| | FY 2016 (Millions of Dollars) | FY 2017 (Millions of Dollars) | FY 2018 (Millions of Dollars) | FY 2019 (Millions of Dollars) | FY 2020 (Millions of Dollars) | Five-Year Total (Millions of Dollars) |
| **Total All Programs** | **1,672.00** | **1,872.50** | **2,046.00** | **2,296.50** | **2,472.00** | **10,359.00** |
| **Total Amtrak Funds** | **1,452.00** | **1,502.00** | **1,600.00** | **1,700.00** | **1,800.00** | **8,054.00** |
| § 11101(a) Northeast Corridor | 445.00 | 469.00 | 510.00 | 552.00 | 595.00 | 2,571.00 |
| § 11101(g) Northeast Corridor Commission | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 | 25.00 |
| § 11101(b) National Network | 998.00 | 1,024.00 | 1,083.00 | 1,141.00 | 1,198.00 | 5,444.00 |
| § 11101(f) State Supported Route Committee | 2.00 | 2.00 | 2.00 | 2.00 | 2.00 | 10.00 |
| § 11101(d) Gulf Coast Working Group (a) | 0.50 | 0.50 | --- | --- | --- | 1.00 |
| § 11101(i) Small Business Participation Study (a) | 1.50 | 1.50 | --- | --- | --- | 3.00 |
| **§ 11102 Consolidated Rail Infrastructure and Safety Improvements.** | **98.00** | **190.00** | **230.00** | **255.00** | **330.00** | **1,103.00** |
| **§ 11103 Federal-State Partnership for State of Good Repair** | **82.00** | **140.00** | **175.00** | **300.00** | **300.00** | **997.00** |
| **§ 11104 Restoration and Enhancement Grants** | **20.00** | **20.00** | **20.00** | **20.00** | **20.00** | **100.00** |
| **§ 11105 Amtrak Office of Inspector General** | **20.00** | **20.50** | **21.00** | **21.50** | **22.00** | **105.00** |

(a) Funded from funds made available for the Office of the Secretary of Transportation and the Federal Railroad Administration under P.L. 114-94, the FAST Act, Section 11310.

### HIGH-SPEED, INTERCITY, PASSENGER, AND FREIGHT RAIL GRANTS

*(Various sections of FAST Act)*
*Funded from the General Fund – subject to Annual Appropriations*

A total of $2.2 billion is authorized for Fiscal Years 2016 – 2020 for rail funding in the FAST Act through three main programs. Section 11102 (Consolidated Rail Infrastructure and Safety Improvements) authorizes $1.1 billion for grants for projects that aim to enhance safety, efficiency and reliability of passenger and freight rail transportation systems. There is broad project eligibility under Section 11102. Some eligible activities include deployment of railroad safety technology including positive train control systems, certain workforce development and training programs, rail-related research initiatives, rail line relocation and improvement projects, and regional rail and corridor service development planning.

Section 11103 (Federal-State Partnership for State of Good Repair) authorizes $997 million for grants for capital projects to replace or rehabilitate qualified railroad assets and ultimately reduce the current state of good repair backlog. Projects funded under Sections 11102 and 11103 may include enhancements to commuter rail service, however, each project, at a minimum, must demonstrate enhancements to intercity passenger rail service or assets.

Section 11104 (Restoration and Enhancement Grants) authorizes $20 million each year from FY2016 – 2020 for operating assistance to initiate, restore, or enhance intercity passenger rail service.

Lastly, section 11309 establishes new requirements for grants in excess of $1 billion awarded under 49 USC 244. Large capital project grant recipients must now: demonstrate that required funding for the applicable non-federal share is committed, submit a financial plan that identifies sources for required non-federal funding for subsequent segments of the current project, and demonstrate that the current project will result in an operationally independently segment, transportation facility, or transportation asset.

### AMTRAK GRANTS

*(Section 11101 of FAST Act)*
*Funded from the General Fund – subject to Annual Appropriations*

A total of $8.05 billion of funding is authorized for Amtrak grants from FY2016 – 2020. The FAST Act departs from the previous Amtrak funding allocation method of capital and operating grants and now provides funding that corresponds with the primary Amtrak business lines – the Northeast Corridor and the National Network. A total of $2.596 billion is authorized for Amtrak projects associated with the Northeast Corridor and $5.454 billion for projects along the Amtrak National Network. Additionally, a total of $105 million is authorized from FY2016 – 2020 for the Amtrak Office of the Inspector General.

## AMTRAK REFORMS

*(Sections 11201 – 11215 of FAST Act)*

The Act also includes several Amtrak administrative and managerial reforms and organizational directives. Amtrak is required to develop a new accounting methodology that aligns revenues and costs of, at a minimum, activities of the Northeast Corridor and the National Network. This minimum requirement mirrors the new Amtrak grant allocation structure established in Section 11101.

Additionally, Amtrak must utilize an external, independent organization to develop and recommend objective methods for Amtrak to employ when determining their schedule of intercity passenger rail routes and services. The Amtrak Board of Directors will have the discretion to select which proposed methods are adopted. The bill also directs Amtrak to seek proposals from qualified entities to develop a plan to monetize and/or generate revenue from right of-way and real estate assets owned, controlled, or managed by Amtrak.

Next, the Act requires the Secretary of Transportation to establish a State-Supported Route Committee formed from representatives of Amtrak, the U.S. Department of Transportation, and States. The Committee will serve as a platform for all parties to discuss and plan rail service operations, cost-sharing, and related issues.

The bill also mandates that Amtrak publish a, fiscally restrained, 5-year business line plan and 5-year asset plan on February 5th of each year. The business plan will be comprised of individual plans for: (A) Northeast Corridor train services; (B) state-supported routes operated by Amtrak; (C) long-distance routes operated by Amtrak; and (D) ancillary services operated by Amtrak, including commuter operations. The asset plan will include the following asset categories: infrastructure, passenger rail equipment, stations, and national assets. Plans will be submitted to Congress and the U.S. Secretary of Transportation.

Lastly, Amtrak is required to submit a station development report to the Senate Commerce, Science, and Transportation Committee and the House Transportation and Infrastructure Committee. The report must include recommendations to expand economic development adjacent to Amtrak stations and terminals and to enhance accessibility into and within Amtrak stations and terminals. The report must also analyze the fiscal impact of establishing additional Amtrak stops.

## RAIL SAFETY PROVISIONS

The FAST Act includes several significant rail safety provisions affecting freight, intercity and commuter railroads. Key highlights include:

*Rail Safety Action Plans*
Section 11406 of the FAST Act mandates that all railroad carriers providing intercity passenger rail or commuter passenger rail service develop speed limit action plans that identify potential speed and approach hazards and propose warning and enforcement actions (i.e. modified train control or signal systems, installation of signage or alerters, etc.). Each plan must include milestones and target dates for implementing recommended speed control actions.

Section 11401 requires that certain states complete highway-rail grade crossing action plans. These plans must list highway-rail grade crossing locations where multiple or recent accidents have taken place or sites that may be at risk for accidents. Finally, each plan must identify specific strategies for improving safety at highway-rail grade crossings. Additionally, section 11404 directs the U.S. Secretary of Transportation to conduct a study of the possible effectiveness of positive train control and related technologies on reducing collisions at highway-rail grade crossings and submit the report to Congress.

*Rail Safety Rulemakings*
The Secretary is directed to promulgate a number of rules related to rail safety. Section 11407 calls for a rule to require a working alerter in the controlling locomotive of each intercity rail passenger or commuter rail passenger train. Alternative technologies or practices may be permitted if the Secretary deems them equivalent to or superior to the use of working alerters.

Next, section 11408 requires the Secretary to initiate a rulemaking to require the implementation of redundant signal protection for maintenance-of-way work crews who depend on a train dispatcher to provide signal protection. The Secretary can opt to exempt all track segments that operate under a certified positive train control system or other safety technology or practice equivalent or superior to redundant signal protection.

Section 11411 compels the Secretary to promulgate regulations to require all public intercity rail passenger and commuter rail passenger carriers to install inward- and outward-facing image recording devices in all controlling locomotive cabs and cab car operating compartments. This section also includes language regarding preservation of data, equipment tampering, and recording protections.

Lastly, the Secretary must evaluate current track inspection regulations and consider if commuter railroad operators providing service in high density areas should be required to complete more frequent track inspections than operators serving non-high density areas. The Secretary may promulgate rules to expand track inspection regulations if deemed necessary.

## FREIGHT-COMMUTER RAIL SHARED-USE STUDY

*(Section 11311 of FAST Act)*

The FAST Act mandates that the Secretary of Transportation complete a freight-commuter rail comprehensive shared-use study that will include an evaluation of rail liability requirements and arrangements. The rail liability portion of the study will consider: (a) whether to expand statutory liability limits to additional parties; (b) whether to revise the current statutory liability limits; (c) whether current insurance levels of passenger rail operators are adequate and whether to establish minimum insurance requirements for such passenger rail operators; and (d) whether to establish alternative insurance models, including other models administered by the Federal Government.

## PASSENGER RAIL LIABILITY CAP

*(Section 11415 of FAST Act)*

The FAST Act increases the maximum aggregate allowable award for all rail passenger claims for an accident from $200 million to $295 million per incident for Amtrak and commuter rail operators. This increased liability cap was made retroactively applicable to the May 2015 Amtrak derailment near Philadelphia, PA. The Act also mandates adjustments to the liability cap every five years to reflect changes in the Consumer Price Index-Urban. While the limit does not preempt or change existing state liability caps, some of which are lower, it effectively raises the cap for most commuter rail operations.

## RAIL PROJECT DELIVERY AND FINANCING PROVISIONS

*Project Delivery Enhancements*
*(Sections 11501 – 11504 of FAST Act)*

The Act includes provisions aimed at reducing federal administrative barriers that stifle and lengthen project delivery. Section 11502 (Treatment of Improvements to Rail and Transit Under Historic Preservation Requirements), eliminates added administrative processes often associated with completing projects near or within historic sites. Section 11503 (Efficient Environmental Reviews), permit the Secretary to incorporate those project expediting procedures that currently apply to Federal Highway Administration projects into the Federal Railroad Administration project review process. This section also requires the Secretary to promulgate rules to propose new categorical exclusion guidelines for railroad projects. And, section 11504 (Railroad Rights-of-Way), directs the Secretary to submit a proposed exemption of railroad rights-of-way from review to the Advisory Council on Historic Preservation, consistent with the exemption for interstate highways approved in March 2005.

## RAILROAD REHABILITATION AND IMPROVEMENT FINANCING (RRIF) PROGRAM REFORMS

*(Sections 11601 – 11611 of FAST Act)*

The FAST Act adds several provisions intended to enhance the accessibility and administration of the Railroad Rehabilitation and Improvement Financing (RRIF) credit program including provisions that mirror language governing the Transportation Infrastructure Finance and Innovation Act (TIFIA) credit program. The Act did not modify the statutory limitation on the amount of loans outstanding that the U.S. Department of Transportation is authorized to commit of $35 billion.

Section 11603 expands the program's pool of eligible applicants to now include joint ventures comprised of RRIF eligible applicants such as a railroad, local government, or state. Section 11604 expands the program's set of eligible activities to now include project planning and design. Certain transit-oriented development (i.e., commercial or housing development –physically or functionally related to a passenger rail or multimodal station) is also permitted if its project costs include private investment and a 25 percent non-federal match.

Section 11605 outlines various RRIF program administration improvements. All applicants will now be informed no later than 30 days after their application is received if their application package is complete or incomplete. Applicants will now also receive an approval or rejection notification within 60 days from the date their application was deemed complete. FRA will post a RRIF dashboard on their website, with monthly updates that provide project information on each application along with application status.

Section 11606 alters RRIF loan repayment terms. Previously, repayment terms were within 35 years from the date of loan execution and now are the lesser of 35 years from the date of project completion or the estimated useful life of the infrastructure. In addition, the Secretary is allowed to defer loan repayments up to a year if the borrower is unable to make scheduled payments. Also, RRIF loans now will not be allowed to be subordinated to other project debt in a bankruptcy-related event except under limited circumstances.

Section 11607 allows for non-federal sources such as states, local governments, or quasi-governmental entities to fund the upfront credit risk premium costs of RRIF loans. It also authorizes the Secretary to accept pledges of revenue streams and investment grade credit ratings – in addition to the value if tangible assets – in assessing loan risks and determining the amounts of required credit risk premium payments.

Section 11608 authorizes the Secretary to enter into a master credit agreement to make one or more direct loans (or loan guarantees) at future dates for a program of related projects. Such an agreement, which is intended to simplify the application process for a sponsor of a large, multi-faceted capital program or a bundle of smaller projects, would establish the maximum amount and other general terms and conditions of future loans. The commitment of loans (obligation of funds) would be contingent on those future projects satisfying all the usual federal requirements for RRIF-assisted projects.

Lastly, RRIF loan requests to fund the installation of positive train control systems will be given priority consideration.

## FEDERAL HIGHWAY PROGRAMS

### Authorization Of Appropriations Of Federal Highway Aid Programs

The FAST Act authorizes $225.2 billion from FY 2016 to FY 2020 for Federal-Aid Highway Program contract authority from the Highway Trust Fund. The authorization includes $43.1 billion in FY 2016, and increases to $47.1 billion in FY 2020. The Highway Program includes:

- National Highway Performance Program (NHPP)
- Surface Transportation Block Grant Program (STBG)
- Highway Safety Improvement Program (HSIP)
- Congestion Mitigation and Air Quality Improvement Program (CMAQ)
- National Highway Freight Program (new)
- Nationally Significant Highway and Freight Projects (new)
- Metropolitan Planning Program
- Surface Transportation Block Grant Program Set-Aside (Formerly Transportation Alternatives Program)

The funding distribution among states remains the essentially the same as MAP-21 apportionments. States will receive a 5.1 percent increase in contract authority in the first year, and subsequent annual increases ranging from 2.1 percent to 2.4 percent over the span of the bill.

### SURFACE TRANSPORTATION BLOCK GRANT PROGRAM (STBG)

*(23 USC § 133)*
*(Section 1109 of FAST Act)*

The Surface Transportation Program is renamed the Surface Transportation Program Block Grant Program (STBG). This program continues to be a flexible funding source for a range of transportation projects including transit capital projects and transit safety infrastructure improvements and programs. The bill retains project eligibility for any type of project that was allowed before passage of the FAST Act. Funding increases from $11.1 billion in FY 2016 to $12.1 billion in FY 2020.

The amount of funding that is sub-allocated to metropolitan areas on the basis of population increases from the current 50 percent to 55 percent over the term of the bill. The remaining funds can be used to fund projects anywhere in the state (regardless of population).

The Transportation Alternatives (formerly Transportation Enhancements) is now a set-aside within the STBG. It is funded at $835 million to $850 million per year. Previous eligibilities, such as infrastructure projects for improving non-driver access to public transportation and enhanced mobility, pedestrian, bicycling, and environmental projects continue to be eligible.

### CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT (CMAQ) PROGRAM

*(23 USC § 149)*
*(Section 1114 of FAST Act)*

The Congestion Mitigation and Air Quality Improvement (CMAQ) program supports surface transportation projects and other related efforts to help meet the requirements of the Clean Air Act. Funding is available for projects that reduce congestion and improve air quality. Along with the Surface Transportation Program, states and MPOs have the opportunity to "flex" CMAQ funds to help support transit projects.

This program is funded from $2.3 billion in FY 2016 to $2.5 billion in FY 2020. The FAST Act makes a small number of changes to the CMAQ program, including clarifying that funds may be to be used to maintain ambient air quality standards, not just to reach those standards. The Act also expands the diesel retrofit program to include port related equipment and vehicles, as well as providing a specific exemption for low population states for certain particulate matter requirements.

### TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT (TIFIA) (23 USC §§ 601-609)

*(Section 2001 of FAST Act)*

The Transportation Infrastructure Finance and Innovation Act program (TIFIA) provides credit assistance in the form of secured loans (and potentially loan guarantees and lines of credit) to help finance surface transportation projects of national and regional significance. Funding for TIFIA was significantly increased in MAP-21, peaking at $1 billion in FY 2014. The FAST Act funds the program at a much lower level, $275 million in FY 2016, increasing to $300 million in FY 2020. However, it is important to note that DOT has a large carryover funding balance from prior TIFIA authorizations that, together with the new FAST Act authorizations, will be available to fund a significant volume of new loans in coming years.

In general, TIFIA requires that projects cost at least $50 million to be eligible for credit assistance under the program, but the FAST Act adds a significant exception to this rule that transit oriented development (TOD) projects are only required to be expected to cost $10 million to be eligible. The reduced threshold is also set for rural projects and local infrastructure projects.

In line with APTA recommendations designed to make financing for small and rural transit projects more effective, the Act allows states to apply for TIFIA assistance to capitalize state infrastructure banks that establish rural projects funds. The Act also changes the definition of rural projects to be any area other than an urbanized area with more than 150,000 people (changed from a city with more than 250,000 people).

## FERRY BOAT AND FERRY FACILITIES

*(Various sections of the FAST Act)*

Section 1112 continues the Construction of Ferry Boats and Ferry Terminal Facilities formula program within the Federal Highway Administration (FHWA). The program is authorized annually at $80 million from FY 2016 – 2020 with funding from the Highway Trust Fund (other than the Mass Transit Account). Additionally, the Act continues the discretionary Passenger Ferry Boat Program within the Federal Transit Administration (FTA) with an annual authorization at $30 million from FY 2016 – 2020 with funding from the Mass Transit Account of the Highway Trust Fund. Lastly, Section 1109 establishes funding eligibility for ferry boats and ferry terminal facilities projects under the Surface Transportation Block Grant Program.

## NATIONAL HIGHWAY PERFORMANCE PROGRAM (23 USC § 119)

*(Section 1106 of FAST Act)*

The National Highway Performance Program (NHPP) is the largest federal-aid highway program, funded from $22.3 billion in FY 2016 to $24.2 billion in FY 2020. This program largely supports projects improve the condition and performance of the National Highway System. The FAST Act made only a few changes to this program, including allowing states to use NHPP funds to pay subsidy and administrative costs associated with TIFIA loans. The Act also added eligibility for some bridges not on the National Highway System.

## INTELLIGENT TRANSPORTATION SYSTEMS (ITS)

*(Title VI of FAST Act)*

The FAST Act is the first Surface Transportation bill to include an Innovation Title to set federal policy and funding for Intelligent Transportation Systems (ITS). ITS technology includes intelligent vehicles, intelligent infrastructure, and the creation of an intelligent integrated transportation system. The Title includes $100 million per year for ITS research; $72.5 million to $77.5 million per year for the University Transportation Centers (UTC) program; $67.5 million per year for a Technology and Innovation Deployment Program; $60 million per year Advanced Transportation and Congestion Management Technologies Deployment Program; $26 million per year for the Bureau of Transportation Statistics; and $24 million per year for Training and Education. ITS is also added as an eligibility for other FHWA programs, such as the Surface Transportation Block Grant Program and the National Highway Freight program.

## NATIONAL HIGHWAY FREIGHT PROGRAM (23 USC §167)

*(Section 1116 of FAST Act)*

The new formula National Highway Freight Program (NHFP) -- funded from $1.1 billion to $1.5 billion per year -- will support infrastructure improvements on a designated National Highway Freight Network. The Fast Act requires the Federal Highway Administration, states, and MPOs to designate a National Highway Freight Network. The network will include Interstates, rural and urban freight corridors, and other roads that are critical for freight movement. The FAST Act distributes NHFP funds to states by the existing formula as a set-aside of state formula apportionments.

States must develop a comprehensive freight plan and are directed to include multimodal freight components. States may obligate up to 10 percent of their NHFP funds for public and private freight rail, ports, and intermodal facilities in accordance with a state freight investment plan.

## NATIONALLY SIGNIFICANT HIGHWAY AND FREIGHT PROJECTS (23 USC §117)

*(Section 1105 of FAST Act)*

The FAST Act creates a new competitive discretionary grant program for freight projects of national or regional significance. These funds will primarily go toward large highway and bridge projects, though intermodal projects do have eligibility. This program is funded from $800 million in FY 2016 to $1 billion in FY 2020.

Unlike the TIGER discretionary grant program, which is appropriated with general funds, the Nationally Significant Highway and Freight Projects (NSFHP) program is funded out of the Highway Trust Fund. Project costs must be reasonably anticipated to exceed $100 million -- which is much larger than the minimum project costs for TIGER grants -- although 10 percent of the NSFHP funds are set-aside for smaller projects.

Eligible projects are limited to highway, bridge, railway-highway grade crossing, grade separation, freight rail, freight intermodal, or projects "within the boundaries of a public or private freight rail, water (including ports), or intermodal facility and that is a surface transportation infrastructure project necessary to facilitate direct intermodal interchange, transfer, or access into or out of the facility." The Act caps the total amount of funds that can go to intermodal projects to $500 million over the life of the bill.

The discretionary grant's share of the total project costs cannot exceed 60 percent, but other federal funds can be added for a maximum federal share of 80 percent. The Act also requires that 25 percent of the awards go to rural areas.

## ABOUT APTA

### Vision

Be the leading force in advancing public transportation.

### Mission

To strengthen and improve public transportation, APTA serves and leads its diverse membership through advocacy, innovation and information sharing.

### APTA Profile

The American Public Transportation Association (APTA) is a nonprofit international association of 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.