Highlights of H.R. 22: Fixing America's Surface Transportation (FAST) Act

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Baker Donelson Preliminary Analysis

On December 1, a conference committee unveiled the FAST Act, which would authorize approximately $305 billion for highway, transit, rail and safety spending for the next five years, until September 30, 2020. The Act would provide $281 billion to the Highway Trust Fund for highway and transit programs. More than $20 billion could also be provided from the General Fund, but that would be subject to annual appropriations.

On December 3, both the House and Senate approved the legislation, which is now before the President for his signature. President Obama has until midnight tonight to sign the bill into law or risk a shutdown of the program. The FAST Act falls short of the $400 billion that Transportation Secretary Anthony Foxx says is needed to keep traffic congestion from worsening, it fails to address the long term solvency of the Highway Trust Fund, and many of the grab bag of pay-fors and offsets are controversial. However, the legislation has garnered strong bipartisan support and is expected to pass and be signed by the President.

This will mark the first time in a decade that Congress has delivered a long-term, fully funded highway and transit bill to the White House.

There were several proposals to increase the gas tax, including inflation indexing, but none of them made it to the floor for a vote. Receipts from the gas tax (18.4 cents per gallon), which hasn't been hiked since 1993, flow into the Highway Trust Fund to underpin the federal match for highway, bridge, road safety and transit projects across the country. But spending from the fund has outpaced dwindling gas tax receipts for several years, resulting in an average annual shortfall. Therefore, other sources of revenue have been necessary in recent years, and this bill continues that approach, which means that in a few years, lawmakers will be back to square one on the funding shortfall. Many hope that the Highway Trust Fund solvency question will be permanently dealt with in future Congressional action on tax reform.

The FAST Act would boost highway funding by 15 percent, and transit funding by 18 percent over the life of the bill. It also authorizes an additional $10 billion for Amtrak, $12 billion for mass transit and $1 billion for vehicle safety programs. However, this additional funding is subject to annual spending decisions by Congress rather than being paid for from the Highway Trust Fund.

Highlights of the FAST Act:

Highways

- Increases funding in the first year by about $2.1 billion above current levels. By the final year, 2020, the bump would be about $6.1 billion above the approximately $50 billion that has been spent annually in recent years.
- Establishes a new formula program for highway freight projects, and 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 (NSFHP) program. Both programs provide limited eligibility for intermodal and freight rail projects. The NSFHP program will facilitate the

construction of infrastructure projects that are difficult to complete solely using existing federal, state, local and private funds. Among other purposes, projects supported by this program will reduce the impact of congestion, generate national and regional economic benefits, and facilitate the efficient movement of freight. Encouraged are projects using new technologies to modify highways to provide additional freight capacity, including by physically separating passenger vehicles from commercial trucks. It will address significant bottlenecks across the country by providing substantial grant funding for infrastructure projects.

- Converts the Surface Transportation Program (STP) to a block grant program, maximizing the flexibility of STP for state and local governments. It also increases the amount of STP funding that is distributed to local governments from 50 percent to 55 percent over the life of the bill. The Act provides state and local governments with increased flexibility by rolling the Transportation Alternatives (TA) Program into STP, and allowing 50 percent of certain TA funding sub-allocated to local areas to be used on any STP-eligible project.
- Expands eligibility for the Transportation Infrastructure Finance and Innovation Act (TIFIA) program by allowing states to use National Highway Performance Program, STP block grant and NSFHP funds to pay the subsidy and administrative costs associated with providing TIFIA credit assistance.

Transit

- Increases spending on mass transportation from the current $8.6 billion annually to almost $10.6 billion in the year 2020.
- Creates a new program of competitive grants for bus transit systems and bus facilities, which would grow from $268 million in 2016 to $344 million by 2020. This program would include $50 million annually for no/low-emissions buses.
- Reduces the federal match for new starts projects from 80 percent to 60 percent, but preserves the 80 percent federal match for small starts and core capacity projects. Sponsors could continue to use funding from other DOT flexible programs toward the 80 percent federal match.
- Makes transit-oriented development (TOD) projects eligible to apply for TIFIA loans.
- Provides $1.6 billion a year for transit programs in high-density Northeast states.
- Increases the domestic content requirement for rolling stock under FTA Buy America rules. Domestic content requirements would increase from the current 60 percent to 65 percent in 2018, and to 70 percent in 2020. However, upon denial of a Buy America waiver, the Secretary would have to issue a written certification that the item is produced in the U.S. in sufficient quantity and quality, along with other information.

Rail

- Authorizes Amtrak for the first time in seven years, and provides $1.45 billion for Amtrak in 2016, rising to $1.8 billion by 2020.
- Reforms Amtrak's business operations and planning with a new structure that provides separate funding authorizations for the Northeast Corridor and the National Network. This will allow Northeast Corridor net operating revenues to be re-invested into the Corridor's substantial capital investment needs.
- Encourages non-federal participation in certain elements of Amtrak's system by creating station development opportunities for the private sector, and explores the potential for new revenue streams through right-of-way development.
- Authorizes a new Consolidated Rail Infrastructure and Safety Improvements grant program to support a broad array of rail projects and activities. Also authorizes a Federal-State Partnership for State of Good Repair grant program designed to improve critical rail assets with a backlog of deferred maintenance, such as Northeast Corridor infrastructure.

- Directs the Secretary to apply to rail the expedited environmental review procedures already used for highways and transit. With respect to historic sites, it preserves existing requirements for important historic sites, such as historic stations, while ensuring expedited delivery of critical improvements to rail infrastructure.
- Unlocks the Railroad Rehabilitation Improvement and Financing (RRIF) program to encourage greater usage. New provisions would mirror the successful TIFIA program by making RRIF a more flexible lender and making it easier to develop partnerships that combine RRIF loans with other types of financing, including private financing. It also requires the Secretary to pay back the credit risk premium, with interest, to a borrower that has repaid its RRIF loan.

Miscellaneous Provisions

- Reauthorizes the Export-Import Bank.
- Does *not* include a plan to reauthorize health and compensation programs for 9/11 first responders. (This plan may be included in the omnibus bill or in a tax extenders package.)
- Triples the maximum fine the National Highway Traffic Safety Administration (NHTSA) can levy against an automaker that withholds information on safety defects, from $35 million to $105 million per violation.
- Scales back the pilot program allowing teen truckers, and limits the program to military reserve members and veterans who have received training.
- Restricts rental car leasing of recalled vehicles.
- Streamlines the environmental review and permitting process to accelerate project approvals, including reforms to align environmental reviews for historic properties. Also authorizes a pilot program to allow up to five states to substitute their own environmental laws and regulations for the National Environmental Policy Act (NEPA), assuming that the state's laws are at least as stringent as NEPA's.
- Provides about $200 million to help commuter railroads install positive train control technology to prevent collisions and derailments.
- Increases the total amount Amtrak can be forced to pay accident victims from $200 million to $295 million (and retroactively applies the changes to victims of the deadly Philadelphia derailment).
- Includes provisions amending various securities, banking and housing laws that financial industry groups promoted this year, some of which were previously approved or considered by the House Financial Services and Senate Banking committees. According to the conference report to the bill, these provisions are intended to provide "regulatory relief to facilitate capital formation, ensure greater consumer access to financial products and services, and provide for certain reforms relating to mint operations and housing." Statutes affected include:

  - Jumpstart Our Business Startups Act (JOBS Act)
  - Investment Advisers Act of 1940
  - Gramm-Leach-Bliley Act
  - Low Income Housing Preservation and Resident Homeownership Act
  - McKinney-Vento Homeless Assistance Act
  - Federal Home Loan Bank Act
  - Federal Deposit Insurance Act
  - Financial Stability Act of 2010
  - Commodity Exchange Act
  - Dodd-Frank Wall Street Reform and Consumer Protection Act
  - Secure and Fair Mortgage Licensing Act of 2008 (SAFE Act)
- Includes provisions to allow parties to petition the Consumer Financial Protection Bureau for designation as rural for purposes of federal consumer financial laws; to authorize the Department of

Housing and Urban Development (HUD) to establish a demonstration program for energy and water conservation performance-based agreements; and to authorize HUD to modify the timing of low income verifications.

Key Pay-Fors

- Federal Reserve surplus revenues and reduced dividends to member banks
- Customs fees levied on airline and cruise ship passengers
- Leaking Underground Storage Tank (LUST) trust fund fees
- Strategic Petroleum Reserves sales
- Amends the Internal Revenue Code with respect to:

  - Revocation or denial of passports in case of certain unpaid taxes.
  - Rules in connection with qualified tax collection contracts and the special compliance personnel program.
  - Automatic extension of the return due date for certain employee benefit plans.

NOTE: On the separate topic of aviation, which is not included in the surface transportation bill and which has its own separate authorization bill, Congressional leaders indicated this week that they would not unveil their long-awaited legislation until next year. The current aviation reauthorization extension expires at the end of March 2016, so given the limited legislative days left in 2015, the lawmakers' bumping consideration into the next session of Congress did not come as a surprise.

If you have any questions regarding the Transportation (FAST) Act, please contact Jan Powell, Senior Advisor.