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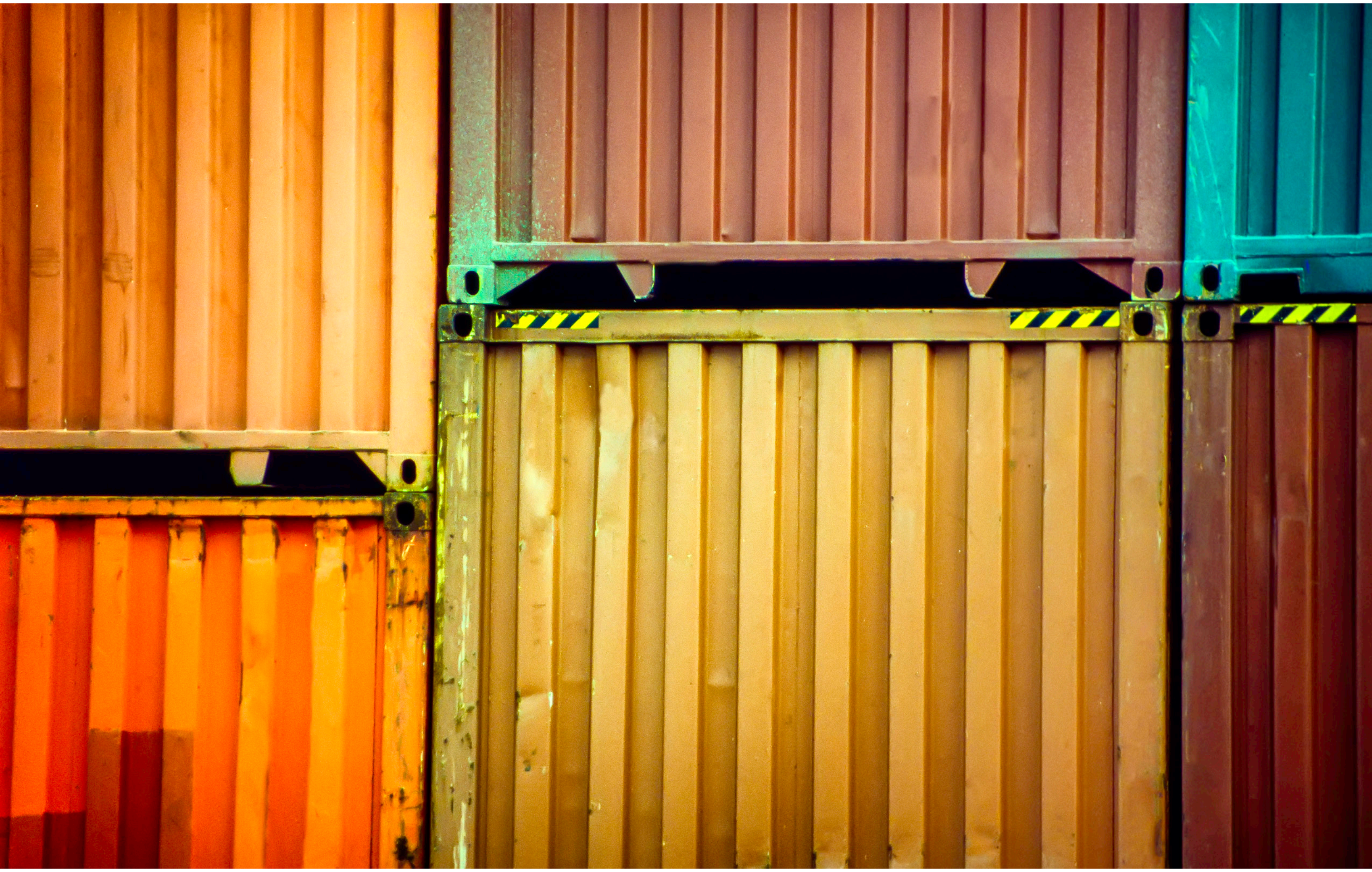

Life in the FASTLANE:

Recommendations for Improving Federal Freight Grants

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Eno Center for Transportation

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About Eno and the Freight Working Group

The Eno Center for Transportation (Eno) is an independent, non-partisan think tank that promotes policy innovation and leads professional development in the transportation industry. As part of its mission, Eno seeks continuous improvement in transportation and its public and private leadership in order to improve the system's mobility, safety, and sustainability.

This policy paper used input and feedback from Eno's Freight Working Group members to inform and refine its recommendations. The Freight Working Group is a standing advisory body made up of diverse stakeholders. They provide Eno staff with insights, knowledge, feedback, and guidance on how to approach some of the most challenging freight transportation problems of today. Being part of any of Eno's working groups does not mean an endorsement of all products, but the participants are invaluable resource for helping to shape pragmatic and effective policy recommendations. **Learn more here: www.enotrans.org/projects-overview/freight-working-group**

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Introduction

The 2015 federal surface transportation reauthorization, the Fixing America's Surface Transportation (FAST) Act, took a crucial step toward establishing a national freight infrastructure investment program. The creation of the FAST Act's "Nationally Significant Freight and Highway Projects" (NSFHP) was a key component of this law. The NSFHP, operating under U.S. DOT as the "Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies" (FASTLANE) grant program, provides funds for highway and intermodal freight projects around the country. The program is funded at approximately $800 million annually through 2020.

This paper is not intended to justify the need for a federal freight program or outline the benefits that such a program could bring. Think tanks, industry groups, and research organizations alike have extensively researched these topics. The overwhelming consensus is that the movement of freight is of inherent federal interest. Freight by its nature crosses state and national borders, it is enormously important to the U.S. economy, and has wide-ranging implications for jobs. A federal discretionary grant program, if designed correctly, can target limited funds to freight projects that relieve bottlenecks and improve reliability for freight movements across the country.

While FASTLANE is a significant step in creating a useful federal freight program there is ample room for improvement. Not only should the program provide funding for more than just highway projects (a small portion is set-aside for rail and intermodal projects), it needs to be structured in a way that can demonstrate its effectiveness and be funded in the long term. This paper examines the first round of FASTLANE projects and discusses several options for Congress and the Administration to improve upon the program.

The FASTLANE Program - Origins

The desire to have a federal freight discretionary grant program is decades old. Numerous organizations—including Eno, the Coalition for America's Gateways and Trade Corridors (CAGTC), the American Road and Transportation Builder's Association (ARTBA), the National Freight Advisory Committee, the Freight Stakeholders Coalition, the Advisory Committee on Supply Chain Competitiveness, and a House Transportation and Infrastructure Freight Transportation Panel—have all weighed in on the need for a multimodal federal program for freight investments.

The 2012 Moving Ahead for Progress in the 21st Century (MAP-21) Act eliminated almost all discretionary grant programs previously administered by the Federal Highway Administration (FHWA). But as the MAP-21 reauthorization cycle started, strong support began to emerge for a freight program focused on eliminating bottlenecks and fostering better intermodal transfers of containers from ship to train to truck. Section 1105 of the FAST Act of 2015 (Public Law 112-94) then created a new discretionary grant program for freight to be administered by FHWA. **(Full detail of the political compromise to reach FASTLANE is in Appendix A)**

As eventually enacted, the "nationally significant freight and highway projects program,"(codified at 23 U.S.C. §117) gave FHWA an average of $900 million per year in Highway Trust Fund contract authority over the five-year life of the bill. The U.S. Department of Transportation renamed the program Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE). The fiscal year 2016 grant selectees were transmitted to Congress on July 6, 2016 identifying 18 projects totaling $759.2 million in federal grant money.

The bill also included a freight program that distributes funding to states via formula for highway projects with a freight component. While this is an important aspect of the overall freight policy, it is not the focus of this paper.

The FASTLANE Program – Description

The Nationally Significant Freight and Highway Projects program, which the U.S. DOT dubbed FASTLANE, is codified at 23 U.S.C. §117. It is important to note that this program makes a variety of freight projects eligible for funding, but non-freight projects are specifically made eligible as well. **(A detailed description of the program, with extensive quotations from the statute, can be found in Appendix C.)**

FUNDING TOTALS

The FAST Act provides $4.5 billion in contract authority for the FASTLANE program over five fiscal years. But each year, FASTLANE and the other non-formula highway programs are reduced by a uniform percentage by the application of the annual obligation limitation on the entire highway program. In fiscal 2016, this reduction was 5.1 percent, which lowered the actual total of FASTLANE grant funding from $800 million to $759.2 million. This percentage is expected to rise slightly in future years, and the total usable amount of FASTLANE money will probably be in the $4.1 billion to $4.3 billion range over five years.

SUBDIVISION OF FUNDING

The FASTLANE program has several interlocking subdivisions of its total grant funding. 10 percent of each year's funding amount is "set aside" for small projects – federal grants of between $5 million and $25 million. In addition, at least 25 percent of each year's funding amount is set aside for projects in rural areas. These set-asides are not exclusive – a project can be large urban, large rural, small urban or small rural, so long as the totals add up to the minimum set-aside levels.

Since FASTLANE funding comes from the Highway Account of the Trust Fund, legislators were concerned about excessive amounts of funding being diverted for non-highway uses. This resulted in a multi-year ceiling on how much of the total funding amount can be used for intermodal, rail or port projects. This ceiling is $500 million out of the $4.5 billion total, or precisely one-ninth of the total amount of contract authority. The FY 2016 grants used $173.4 million of this $500 million five-year cap, or 35 percent of the total. U.S. DOT is not reducing the $500 million amount for application of the annual obligation limitation.

The large-small project distinction also affects project eligibility requirements:

LARGE PROJECTS	SMALL PROJECTS
No more than 90 percent of each year's FASTLANE total grant money.	At least 10 percent of each year's FASTLANE total grant money.
Projects must have a total cost of at least $100 million (or must exceed a fixed percentage of a state's total annual highway formula funding amount).	No minimum total project cost.
Minimum grant size of $25 million.	Minimum grant size of $5 million.
Projects must generate national or regional economic, mobility, or safety benefits.	No specific requirement.
Projects must be cost effective.	Projects must be cost effective.
Projects must contribute to national goals under 23 U.S.C. §150.	No specific requirement.
Projects must be based on the results of preliminary engineering.	No specific requirement.
Projects must have stable and dependable sources of non-federal funding.	No specific requirement.
Project cannot be easily and efficiently completed without federal money.	No specific requirement.
Project must be reasonably expected to break ground within 18 months.	No specific requirement.
No specific requirement.	Project must enhance mobility in the state and region.

FEDERAL SHARE

The FAST Act sets a maximum FASTLANE program share of 60 percent of project costs, and other federal funds can be used to pay for another 20 percent of project costs for a total maximum federal share of 80 percent.

ELIGIBLE PROJECTS

Eligible projects must be highway freight projects carried out on the National Highway Freight Network; highway or bridge projects carried out on the National Highway System; freight intermodal or freight rail projects; freight projects that are surface transportation infrastructure projects "necessary to facilitate direct intermodal exchange, transfer, or access" into or out of a public or private freight rail, water, port, or intermodal facility; or railway-highway grade crossing or grade separation projects. In the case of intermodal or rail projects, §117(d)(2) provides that projects must "make a significant improvement to freight movements on the National Highway Freight Network" and clarifies that the federal share of the project can only fund elements of the project that provide public benefits.

EVALUATION CRITERIA

These are not set in statute. The FY 2016 Notice of Funding Opportunity (NOFO) listed six criteria that U.S. DOT would use to evaluate projects, but did not state the relative weighting of each criteria. These criteria were: economic outcomes, mobility outcomes, safety outcomes, community and environmental outcomes, partnership and innovation, and low federal cost share.

NOTIFICATION TO CONGRESS

The FASTLANE program was created in an atmosphere in which Congress was reconsidering its 2011 self-imposed ban on earmarks. The original Senate version of a new discretionary grant program allowed Congressional committees to accept or reject individual project selections by U.S. DOT, but this may have been unconstitutional. The final statute requires U.S. DOT to submit its annual FASTLANE project recommendation list to Congress 60 days before U.S. DOT can make any grant announcements. This gives Congress time to enact a joint resolution of disapproval rejecting the entire list (if the total project list is unpopular enough and if two-thirds of Congress can override the veto that one has to presume would be coming from the President whose appointees selected the projects).

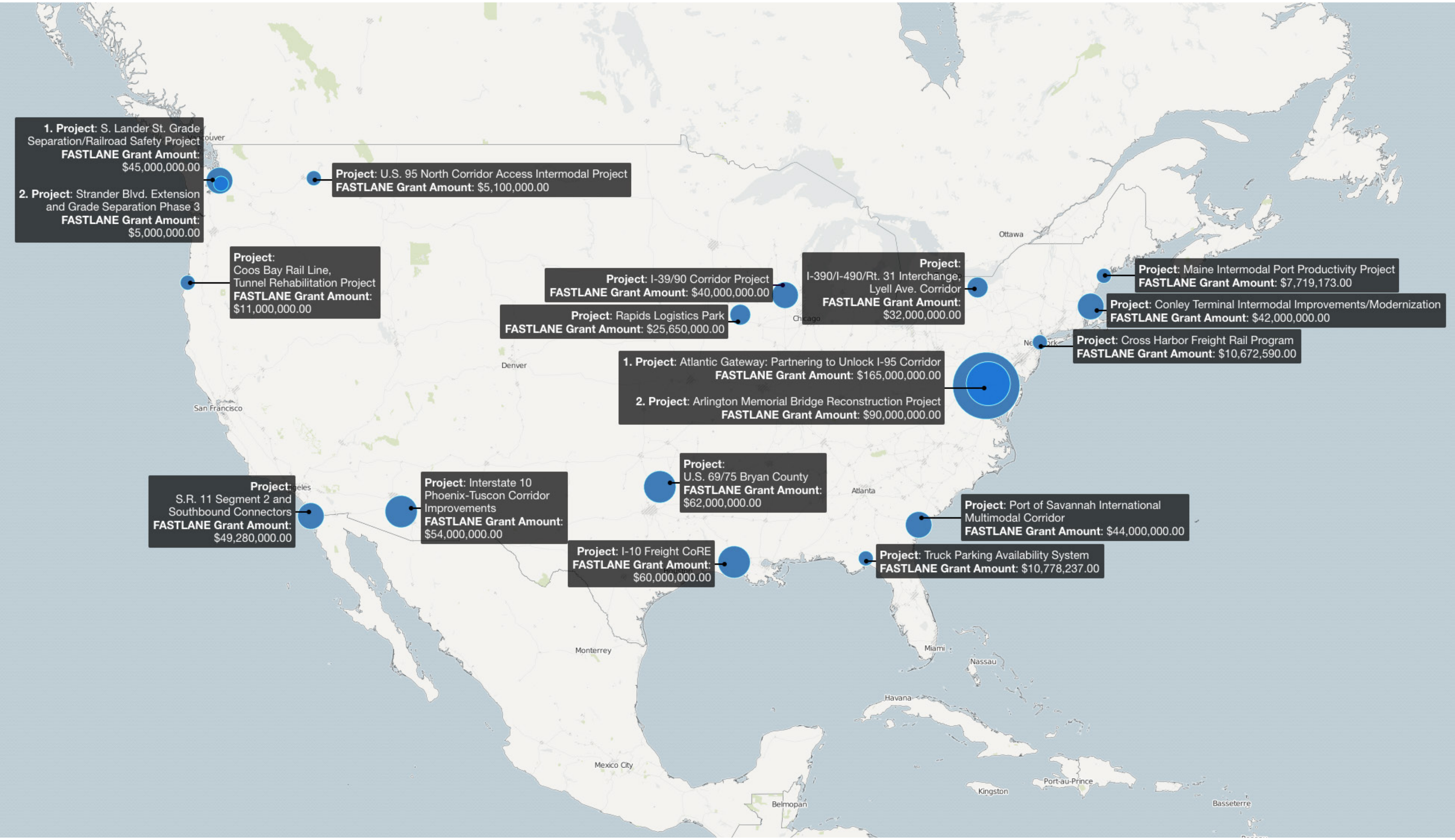
The FASTLANE Program – FY2016 Grants

The U.S. DOT published a NOFO for FY 2016 grants on March 2, 2016 and the application deadline was April 14, 2016. U.S. DOT sent its proposed list of projects to the House T&I and Senate EPW Committees on July 6, 2016, starting the 60-day legislative disapproval countdown per 23 U.S.C. §117(m). However, Congress was already planning its longest-ever summer recess to begin shortly thereafter, negating Congress's ability to push a disapproval resolution through the House and Senate in time (even if they had been so inclined).

U.S. DOT made the formal grant announcements on September 7, 2016 – 18 projects totaling the full available amount of $759.2 million:

STATE	PROJECT	SIZE	FASTLANE GRANT AMOUNT	TOTAL PROJECT COST	FASTLANE SHARE
VA	Atlantic Gateway: Partnering to Unlock I-95 Corridor	Large	$165,000,000	$905,000,000	18%
DC	Arlington Memorial Bridge Reconstruction Project	Large	$90,000,000	$166,000,000	54%
OK	U.S. 69/75 Bryan County	Large	$62,000,000	$120,625,000	51%
LA	I-10 Freight CoRE	Large	$60,000,000	$193,508,409	31%
AZ	Interstate 10 Phoenix-Tuscon Corridor Improvements	Large	$54,000,000	$157,500,000	34%
CA	S.R. 11 Segment 2 and Southbound Connectors	Large	$49,280,000	$172,200,000	29%
WA	South Lander St. Grade Separation/Railroad Safety Project	Large	$45,000,000	$140,000,000	32%
GA	Port of Savannah International Multi-Modal Corridor	Large	$44,000,000	$126,700,000	35%
MA	Conley Terminal Intermodal Improvements/Modernization	Large	$42,000,000	$102,890,000	41%
WI	I-39/90 Corridor Project	Large	$40,000,000	$1,195,300,000	3%
NY	I-390/I-490/Rt. 31 Interchange, Lyell Avenue Corridor	Large	$32,000,000	$162,900,000	20%
IA	Cedar Rapids Logistics Park	Small	$25,650,000	$46,500,000	55%
OR	Coos Bay Rail Line - Tunnel Rehabilitation Project	Small	$11,000,000	$19,555,000	56%
FL	Truck Parking Availability System	Small	$10,778,237	$23,983,850	45%
NY	Cross Harbor Freight Program (Rail)	Small	$10,672,590	$17,787,650	60%
ME	Maine Intermodal Port Productivity Project	Small	$7,719,173	$15,438,347	50%
ID	U.S. 95 North Corridor Access Intermodal Project	Small	$5,100,000	$8,500,000	60%
WA	Strander Blvd. Extension and Grade Separation Phase 3	Small	$5,000,000	$38,000,000	13%
Total for 18 FASTLANE Projects			**$759,200,000**	**$3,612,388,256**	**21%**

Fiscal Year 2016 FASTLANE Grants:



The geographic, large/small, and urban/rural division of the fiscal 2016 grants is as follows:

LARGE/SMALL SPLIT	TOTAL	SHARE	AVERAGE SIZE
11 large projects	$683.3 million	90.0%	$62.1 million
7 small projects	$75.9 million	10.0%	$10.8 million
URBAN/RURAL SPLIT			
10 urban projects	$490.7 million	64.6%	$49.1 million
8 rural projects	$268.5 million	35.4%	$33.6 million
LARGE/SMALL/URBAN/RURAL			
7 large urban projects	$467.3 million	61.6%	$66.8 million
4 large rural projects	$216.0 million	28.5%	$54.0 million
3 small urban projects	$23.4 million	3.1%	$7.8 million
4 small rural projects	$52.5 million	6.9%	$13.1 million

TOTAL GRANTS BY CENSUS REGION	TOTAL	SHARE
Northeast Region	$92.4 million	12.2%
Southeast Region	$431.8 million	56.9%
Midwest Region	$65.7 million	8.6%
West Region	$169.4 million	22.3%

TOTAL GRANTS BY CENSUS DIVISION	TOTAL	SHARE
New England	$49.7 million	6.5%
Middle Atlantic	$42.7 million	5.6%
South Atlantic	$309.8 million	40.8%
East North Central	$40.0 million	5.3%
East South Central	zero	zero
West North Central	$25.7 million	3.4%
West South Central	$122.0 million	16.1%
Mountain	$59.1 million	7.8%
Pacific	$110.3 million	14.5%

A short synopsis of each project follows, alphabetized by state. An asterisk indicates that the project emphasized freight in its application.

ARIZONA

Interstate 10 Phoenix to Tucson Corridor Improvements. (Arizona DOT; Rural; Large) The project will 1) Realign and widen four miles of I-10 from milepost 209 to milepost 213 from two to three lanes in each direction near Picacho, including utility relocation, two new bridges, drainage, traffic signals, and lighting; 2) Widen I-10 from milepost 196 to milepost 199 from two to three lanes in each direction, including two bridges and construction of auxiliary lanes; and 3) Install dust storm early warning technology along I-10. $54,000,000.

CALIFORNIA*

SR-11 Segment 2 and Southbound Connectors. (California DOT; Urban; Large) The project will construct the final segment of a new freeway (California SR-11) to the future Otay Mesa East Port of Entry, as well as southbound connectors linking SR 125 to both southbound SR-905 (which leads to the existing Otay Mesa POE) and eastbound SR-11. $49,820,000.

DISTRICT OF COLUMBIA/VIRGINIA

Arlington Memorial Bridge Reconstruction Project. (National Park Service; Urban; Large) The project will implement Phase 1 of the reconstruction of the Arlington Memorial Bridge, which focuses on the approach spans, which are the most in need of repairs. $90,000,000. As discussed earlier, this project has special eligibility due to provisions that allow for its repair as a large project on federal lands. With strict weight limits, it carries no major freight traffic in and out of Washington, DC.

FLORIDA*

Truck Parking Availability System (TPAS). (Florida DOT; Rural; Small) The project will install an Intelligent Transportation System (ITS) to detect available truck parking at approximately 74 public facilities across the entire Interstate System in Florida. In addition, the project will collect information on some private locations. $10,778,237.

GEORGIA*

Port of Savannah International Multi-Modal Connector. (Georgia Ports Authority; Urban; Large) The project will reconfigure the Port of Savannah's on-dock intermodal container transfer facilities to bring rail switching activities inside the Port. The project includes the following improvements: 1) building two arrival/departure tracks and extend the track east from Chatham Yard to new arrival/departure tracks; 2) rebuilding a bridge over new yard tracks, Pipemakers Canal; 3) extending Chatham Yard arrival/departure tracks into Mason Yard as working tracks as well as two additional arrival/departure tracks; 4) building two new work tracks at Mason Yard, adding high-capacity cranes, and building new storage tracks; and 5) relocating the Norfolk Southern Foundation Lead track parallel to arrival/departure tracks between Mason Yard and Chatham Yard. $44,000,000.

IOWA*

Cedar Rapids Logistics Park. (Iowa DOT; Rural; Small) The project will construct integrated facilities for an intermodal container terminal; a rail-to-truck transload facility for bulk commodities; and a cross-dock facility for consolidating and redistributing truck loads, as well as loading and unloading containers. $25,650,000.

IDAHO

U.S 95 North Corridor Access Improvement Project. (Idaho DOT; Rural; Small) The project will construct operational improvements along approximately 8.9 miles of US 95 in Kootenai County, Idaho between Interstate 90 and the US 95 intersection with Idaho State Highway 53. The project will correct traffic signal spacing, implement adaptive signal timing, close vehicle-median crossings at non-signalized locations to reduce the number of crossing conflict points throughout the corridor, and provide better connectivity to adjacent local roads and businesses in the corridor. $5,100,000.

LOUISIANA

I-10 Freight CoRE. (Louisiana DOTD; Rural; Large) The project will replace pavement and add an additional lane on I-10 in Lafayette, Louisiana between the I-10/I-49 interchange and the Atchafalaya Floodway Bridge. This project includes the approximately seven mile west segment and approximately three mile east segment of the corridor; DOTD will complete the middle segment, approximately five miles, as part of a second phase. $60,000,000.

MAINE*

Maine Intermodal Port Productivity Project. (Maine DOT; Urban; Small) The project will provide infrastructure Improvements at the Port of Portland consisting of: 1) removing existing maintenance facility and infill of the wharf; 2) installing new mobile harbor crane and other cargo handling equipment; 3) constructing a highway and rail crossing upgrade; and 4) building a terminal operations and maintenance center. $7,719,173.

MASSACHUSETTS*

Conley Terminal Intermodal Improvements and Modernization. (Massachusetts Port Authority; Urban; Large) The project will improve the facilities and structures of the Paul W. Conley Terminal in the Port of Boston. Elements of the project include: 1) deepening, strengthening and repairs to Berth 11; 2) constructing Berth 12 fender improvements and backland pavement; 3) implementing refrigerated container storage improvements; and 4) building new gate facilities. $42,000,000.

NEW YORK

I-390/I-490/Route 31 Interchange, Lyell Avenue Corridor Project. (New York DOT; Urban; Large) The project will reconstruct the I-490/390/NY 390 and the NY 390 and NY 31 (Lyell Avenue) interchanges in the Town of Gates, west of Rochester, New York. The project will: 1) replace the NY 31/Lyell Avenue bridge over NY 390; 2) construct northbound I-390/NY 390 ramp improvements; 3) construct southbound I-390/NY 390 ramp improvements; and 4) realign the I-390 eastbound/I-490 westbound interchange ramp to NY 31 to eliminate an offset intersection. $32,000,000.

NEW YORK*

Cross Harbor Freight Program (Rail). (Port Authority of NY/NJ; Urban; Small) The project will implement intermodal rail improvements to help optimize the Port Authority's railcar float system. As part of the 65th Street Yard Improvements, the project will extend the existing transloading dock, (increasing its capacity from 3 to 12 railcars), cover the transloading dock with a canopy, pave certain areas in the Yard, and install other improvements. As part of the Port Jersey Division Second Track improvements, the project will double-track a portion of the Port Jersey Division of New York New Jersey Rail, LLC ("NYNJR"), build a second track along NYNJR's Port Jersey Division, and shift the interchange of railcars for that line between Conrail and NYNJR out of Greenville Yard and onto the new second track. $10,672,590.

OKLAHOMA*

U.S. 69/75 Bryan County. (Oklahoma DOT; Rural; Large) The project will upgrade an existing 4.2-mile arterial highway with numerous access points and three signalized intersections to make it a fully controlled access facility with grade separations and functional frontage roads. The project also includes a roadway/rail grade separation in the town of Calera to facilitate east-west movements through the town. $62,000,000.

OREGON*

Coos Bay Rail Line - Tunnel Rehabilitation Project. (Oregon International Port of Coos Bay; Rural; Small) The project will rehabilitate nine tunnels on the Coos Bay Rail Line between a connection with the Union Pacific Railroad near Eugene, Oregon, and rail shippers in the western Lane, Douglas and Coos Counties region of southwest Oregon. $11,000,000.

VIRGINIA

Atlantic Gateway: Partnering to Unlock the I-95 Corridor (Virginia DOT; Urban; Large) The FASTLANE award supports the Atlantic Gateway project, a corridor approach to improving mobility across the Eastern seaboard. The FASTLANE award will be combined with other public and private funding from multiple partners to invest in rail and highway capacity, including constructing approximately six miles of a fourth mainline from the South bank of the Potomac River to Alexandria, extending the express lanes on I-395 north to the Pentagon and on I-95 south to Fredericksburg, and improving general purpose lanes on segments of I-395 to add capacity and improve safety. $165,000,000.

WASHINGTON*

South Lander Street Grade Separation and Railroad Safety Project. (City of Seattle; Urban; Large) The project will separate South Lander Street and the BNSF rail line south of downtown Seattle. The project supports access between Port of Seattle terminals, intermodal facilities, and the state highway system. The project also includes a pedestrian-bicycle path. $45,000,000.

WASHINGTON*

Strander Boulevard Extension and Grade Separation Phase 3. (City of Tukwila; Urban; Small) The project will construct a grade separated crossing under a freight rail line and a 1,250 liner foot arterial from SR 181 to SW 27 27th Street, turn lanes, and related facilities in the Green River Valley. $5,000,000.

WISCONSIN

I-39/90 Corridor Project. (Wisconsin DOT; Rural; Large) The project will construct segments of the 45-mile I-39/90 Corridor Expansion project, including the 4-mile Janesville segment and two other projects. The project will reconstruct the roadway to expand a four-lane divided highway into an eight-lane divided highway with a separated concrete median barrier. The project includes eight new bridges and the widening, re-decking, or both of approximately four bridges. Noise walls will be constructed on both sides of the interstate for the residential properties bordering the highway. All signage will be replaced, including approximately three new overhead sign structures. The current interstate grade will be raised to meet standard vertical clearances at the four local streets that pass underneath the mainline. The interchange at Avalon Road will be reconstructed into the first Diverging Diamond Interchange configuration in the State. $40,000,000.

The FASTLANE Program - Analysis and Recommendations

The following are the analysis and observations of the first round of the FASTLANE program, and recommendations on how to improve future rounds.

Funding

The first round of FASTLANE was vastly oversubscribed. U.S. DOT received 212 applications requesting over $9.8 billion, far greater than the $760 million they were able to award. In previous reports, Eno and others recommended a minimum of $2 billion annual for a federal freight discretionary grant program. Independent research from these group shows that if a federal grant program is truly going to have real impact on a national scope, there needs to be more funding available than what the FAST Act provides.

Congress needs to increase the funding available for FASTLANE grants – or a similar discretionary freight program - to at least $2 billion annually. Importantly, Congress needs to find long term dedicated funding to ensure that this program is one that can finance projects for many decades. To achieve this, in 2016 Eno recommended that additional funding come through general fund appropriations in the short term, and some form of a *cost of freight shipment* fee in the long term (assuming the fee meets certain criteria).

Eligibility

$314 million of the $759.2 program went to projects with explicit freight characteristics, composing only about 41 percent of the total awards. While the rest of the projects will undoubtedly have a positive effect on roadway throughput (and therefore truck traffic) these projects do not emphasize freight in their descriptions or proposals. This is in response to broad eligibility language in the FAST Act stating the program is for freight *and* highway projects with some funding set aside for intermodal connectors. Since it is funded out of the Highway Account of the Highway Trust Fund, it leaves little ability to target funding to port, rail, and waterway projects that make up a significant portion of the US freight network.

But given that a large portion of FAST came from general fund monies, payers of fuel taxes have little claim to keep all the funding. Therefore, **Congress should revise the eligibility standards to allow for all freight projects, including public and private railways, ports, waterways, highways, and intermodal connectors.**

Further, **Congress needs to also restrict eligibility to only freight projects.** While it is certainly true that important highway projects of regional and national significance can and should qualify and compete for grants, narrowing the focus will help ensure that U.S. DOT selects awardees fairly and consistently. Focusing solely on freight can tighten the metrics and increase transparency for project selection. Importantly, if the freight industry is eventually to accept freight fee dedicated to improving the freight system, they will expect that the proceeds of this fee will be dedicated to a multimodal freight discretionary grant program.

Project Selection Process

Despite the listing of different "outcomes" in the evaluation criteria section of the NOFO, U.S. DOT gave little insight as to how its staff ultimately used them to rank the projects and make final selections. Similar to the TIGER program, which U.S. DOT has administered since 2009, there is no indication to FASTLANE applicants on how their projects score related to economic, mobility, environmental, safety, and cost share criteria.

U.S. DOT needs to exercise greater transparency and explicitly describe its evaluation process, assign weights to criteria, and publish the final results. Opening up the selection process to scrutiny will help strengthen the program in the long run, and applicants will have significantly more direction in how they shape their submittal. For their part, grantees should openly show how their project meets the criteria, and provide U.S. DOT with enough detail to test their results. This would allow DOT officials and others in the transportation community to review applications and validate their results. In doing so, DOT needs to emphasize how projects affect the national freight network and can bring benefits to the system outside of the project's immediate region.

Non federal share

Currently, the maximum FASTLANE share of any project is 60 percent. Leveraging state, local, and private dollars to complete the project, and thus reducing the FASTLANE share to the lowest amount possible, should remain an important goal of this program. If a project is receiving 60 percent of its funding from FASTLANE, then the federal grant becomes the driving force in making the project happen. Instead, the focus should be on closing the deal on a project that is nearly funded and closer to construction. With a lower federal share, more projects could move forward and the program would have a broader impact on the national system. **U.S. DOT should emphasize leveraging non federal funds, both public and private, by increasing the weight of this metric** so that projects that use fewer federal dollars score better.

Geographic Distribution

The final FY 2016 grants went to 18 different projects. While the two grants in Virginia/DC represented nearly a third of the overall funding, most grants were spread out around jurisdictions around the country. Although funding was not spread to every jurisdiction, the 18 selected projects were in 15 different states. It is unclear how U.S. DOT made its final decisions, but there was clearly an effort to provide as much funding to as many states as possible while keeping the size of the grants large enough to make a significant impact on completing freight projects.

U.S. DOT should be transparent and explicit in how it awards projects to achieve some form of geographic diversity, and should keep the equity aspect of the selection process to a minimum. It is important for a discretionary grant program to keep project awards targeted to the most valuable projects, regardless of location or political distribution. However, the long-term sustainability of FASTLANE depends on support from Congress. If the program were to continue to award a large portion of the funds to just a few regions, then the program's political support would soon fall apart. Sometimes this means selecting some projects that do not score as high as other projects, as there is a political obligation to ensure that the funding does not leave too many places out. Consistent with the recommendation for transparency, U.S. DOT needs to objectively analyze the geographical distribution aspect of the program and openly report how they achieved a geographical distribution element.

About the Memorial Bridge

The $90 million for the Memorial Bridge rehabilitation quickly catches the attention of any analyst examining the 18 selected projects. The project is on federal lands and it explicitly does not carry any freight traffic due to weight restrictions on the bridge and nearby roadways. It is obvious that the federal lands language in the FAST Act was crafted to bring needed money to repair this bridge, yet due to the earmark ban Congress could not designate the project in legislation. This was undoubtedly an important project that needed more funding than the National Park Service had available through normal channels, and the FASTLANE grant program happened to be the easiest policy vehicle to make it happen. Congress and DOT should not be criticized for making this happen.

Now that FASTLANE and other sources have provided full funding for the Memorial Bridge project, it does not appear that there are other large scale projects on federal lands on the horizon meeting the same statutory requirements. Further, there are no other projects that appear to be so implicitly designated by Congress for federal funding under this program, so the remaining iterations of FASTLANE can refocus portions of the funding on other freight projects.

The FASTLANE Program – Conclusion

The FASTLANE grant program represents a positive step toward making robust federal freight investments. Eno recommends enhancing this program, or creating a similar program that is targeted to freight infrastructure, that can make a real difference in improving the safety, reliability, and effectiveness of the U.S. freight network. Now is an opportunity for Congress, the Administration, and the freight industry to come together to take this next step.

Appendix A - The compromise to reach FASTLANE

The 2014 and 2015 iterations of the Obama Administration's GROW AMERICA reauthorization proposal were largely identical with respect to a freight grant program. Both proposed new national, multimodal freight policy and grant programs to be codified in chapter 54 of title 49, United States Code. GROW AMERICA proposed a new National Freight Infrastructure Program to be codified at 49 U.S.C. §5402 to make discretionary grants for road, rail, air, water, pipeline or intermodal facilities that would provide freight shipment cost reductions as well as safety, state-of-good-repair, or environmental benefits for freight transportation or would eliminate bottlenecks. The 2014 bill proposed an average of $1.25 billion per year over four years for the program and the 2015 proposal suggested an average of $1.5 billion per year over six years.

In both instances, GROW AMERICA proposed that funding for the program be provided as contract authority from the Highway Account of the renamed Transportation Trust Fund. GROW AMERICA proposed a number of changes to the Highway Trust Fund, making not only the new freight grants but the existing TIGER, high-speed rail, and Amtrak grant programs as well. This, as well as the lack of a politically viable "pay-fors," rendered the overall parameters of GROW AMERICA a non-starter in Congress. But even if the dollar amounts had not been a problem, the very nature of the Administration's freight proposal made it a non-starter in the U.S. Senate, for reasons of committee jurisdiction (which would also bedevil the eventual FASTLANE program).

GROW AMERICA proposed a HTF Highway Account contract authority program to be codified under title 49 U.S.C. (Transportation), which is generally under the jurisdiction of the Senate Commerce, Science and Transportation Committee. The Senate Environment and Public Works Committee takes great pains to ensure that the only uses of Highway Account contract authority are under their control and are codified in title 23 U.S.C. (Highways) which is under strict EPW control. EPW panel leaders, who take the lead on reauthorization legislation, have always refused to allow the Commerce Committee to create any new programs involving contract authority (with the exception of safety programs).

As the Senate committees drafted their portions of the FAST Act in 2015, the Commerce Committee approved a draft bill that included the establishment of a new chapter 54 of title 49 on freight. This included a national multimodal freight policy statement and the designation of a national multimodal freight network, but no grant program.

Meanwhile, the EPW panel had produced a bill that would have created a new discretionary "assistance for major projects" (AMP) program at FHWA. It provided an average of $400 million per year in HTF Highway Account contract authority (to be codified at 23 U.S.C. §171) to "assist in funding high-cost surface transportation infrastructure projects" with a total project cost exceeding $350 million. Importantly, it did not emphasize freight project specifically but left eligibility open to any transportation infrastructure project.

In order to get to the Senate floor, the components from a half-dozen different Senate committees had to be welded together to form one comprehensive substitute for the chosen bill (H.R. 22). When Senate Majority Leader Mitch McConnell (R-KY) introduced the first version of that substitute, something unusual had happened to the freight provision. The EPW and

Commerce panels had cooperated to produce a joint work product in Division D of the legislation: "Freight and Major Projects."

The McConnell substitute combined the freight policy provisions (in the new chapter 54 of title 49) from the Commerce bill and the AMP grant program from EPW in the new Division D. EPW and Commerce staff had worked together to come up with common definitions, purposes and rules in section 44001 of the substitute for both AMP (now in section 44002(a)) and a new "assistance for freight projects" discretionary grant program from Commerce (in section 44002(b)) that appeared in the McConnell substitute for the first time. The Commerce program was also for large projects – minimum grant size was $10 million and maximum grant size was $100 million.

The EPW grant program was still getting HTF Highway Account contract authority and was thus codified in title 23, but the new Commerce freight-only grant program was codified in title 49 and was thus dependent on future appropriations, authorized at a $200 million per year level. (The common definitions, purposes and rules were not codified at all, just left as section 44001 in the bill, so as not to provoke a jurisdictional fight.) These provisions passed the Senate intact, though the AMP funding level changed several times.

Several months later, the House passed its own bill which included (in section 1111) a new "nationally significant freight and highway projects program" for projects with an estimated cost exceeding $100 million. The House bill provided a good amount of Highway Account contract authority for the program – an average of $743 million per year over six years. The House's program – to be codified at 23 U.S.C. §117 – was not completely freight-focused. Instead, it called for grants for "projects of national or regional significance" that would "improve the safety, efficiency, and reliability of the movement of freight and people…reduce highway congestion and bottlenecks….[and] enhance the resiliency of critical highway infrastructure, including highway infrastructure that supports national energy security" in addition to projects that improve economic competitiveness or improve intermodal freight connectivity. *(Emphasis added)*

[A side-by-side comparison of the House-passed language, the Senate-passed language and the final law for the program can be found in Appendix B]

In a hurried House-Senate conference committee, House negotiators were under a directive from their party leadership not to agree to any new authorizations for future general fund appropriations that exceeded Congressional Budget Office "baseline" levels (last year's levels, plus annual inflation) wherever possible. Apparently, there had been high-profile non-transportation instances in the past of GOP members voting for authorization bills with large general fund authorizations, then voting for appropriations bills that did not fully fund the authorization levels, resulting in attack ads on TV against the members for voting to "cut" the programs they had earlier voted for. This meant that any new transportation programs needed to come from contract authority instead of future general funds.

The House conferees were insistent that the "unfunded" new general fund grant programs in the Senate Commerce titles of the bill be dropped. With the exception of some new passenger rail programs, they were. The conferees also dropped the Senate provisions that would have codified national freight policy in a new chapter 54 of title 49.

Since both House and Senate bills had a "megaprojects" program funded with Highway Account contract authority, the conferees used the much larger House program as a base and added a few provisions from the Senate bill. These main Senate provisions kept a minimum grant size, a carve-out to allow other federal funds to serve as the non-federal share of an unnamed federal lands project (although not explicit in the bill, it was clear that the project was the Arlington Memorial Bridge).

The final provision (section 1105 of the FAST Act) created the new Nationally Significant Freight and Highway Projects Program at 23 U.S.C. §117. It was funded with $4.5 billion in HTF Highway Account contract authority over six years – an average of $900 million per year.

Appendix B –
Side-by-side Comparison of House, Senate and Final Legislative Language

Senate DRIVE Act	House STRR Act	Enacted FAST Act
Secs. 44001-44002 would have created 23 U.S.C. §171	Sec. 1111 would have created 23 U.S.C. §117	Sec. 1123 created 23 U.S.C. §117
$2.1 billion HTF-HA C.A. over 6 years	$4.46 billion HTF-HA C.A. over 6 years	$4.5 billion HTF-HA C.A. over 5 years
Assistance for major projects program	Nationally significant freight and highway projects	Nationally significant freight and highway projects
§171(c) Establishment Of Program.—The Administrator shall establish a program in accordance with this section to provide grants for projects that will have a significant impact on a region or the Nation. Sec. 44001(a) In General.—The purpose of the grants described in the amendments made by section 44002 is to assist in funding critical high-cost transportation infrastructure projects that— (1) are difficult to complete with existing Federal, State, local, and private funds; and (2) will achieve 1 or more of— (A) generation of national or regional economic benefits and an increase in the global economic competitiveness of the United States; (B) reduction of congestion and the impacts of congestion; (C) improvement of facilities vital to agriculture, manufacturing, or national energy security; (D) improvement of the efficiency, reliability, and affordability of the movement of freight; (E) improvement of transportation safety; (F) improvement of existing and designated future Interstate System routes; or (G) improvement of the movement of people through improving rural connectivity and metropolitan accessibility.	§117(a) Establishment.—There is established a nationally significant freight and highway projects program to provide financial assistance for projects of national or regional significance that will— (1) improve the safety, efficiency, and reliability of the movement of freight and people; (2) generate national or regional economic benefits and an increase in the global economic competitiveness of the United States; (3) reduce highway congestion and bottlenecks; (4) improve connectivity between modes of freight transportation; or (5) enhance the resiliency of critical highway infrastructure, including highway infrastructure that supports national energy security.	§117(a) Establishment.- (1) In general.-There is established a nationally significant freight and highway projects program to provide financial assistance for projects of national or regional significance. (2) Goals.-The goals of the program shall be to- (A) improve the safety, efficiency, and reliability of the movement of freight and people; (B) generate national or regional economic benefits and an increase in the global economic competitiveness of the United States; (C) reduce highway congestion and bottlenecks; (D) improve connectivity between modes of freight transportation; (E) enhance the resiliency of critical highway infrastructure and help protect the environment; (F) improve roadways vital to national energy security; and (G) address the impact of population growth on the movement of people and freight.

Senate DRIVE Act	House STRR Act	Enacted FAST Act
§171(j) Administrative Selection.—The Administrator shall award grants to eligible projects in a fiscal year based on the criteria described in subsection (e). §171(g) Funding Requirements.— (1) IN GENERAL.—Except in the case of projects described in paragraph (2), the amount of a grant under this section shall be at least $50,000,000. (4) STATE CAP.— (A) IN GENERAL.—Not more than 20 percent of the funds made available for a fiscal year to carry out this section may be awarded to projects in a single State. (B) EXCEPTION FOR MULTISTATE PROJECTS.—For purposes of the limitation described in subparagraph (A), funds awarded for a multistate project shall be considered to be distributed evenly to each State.	§117(b) Grant Authority.—In carrying out the program established in subsection (a), the Secretary may make grants, on a competitive basis, in accordance with this section.	§117(b) Grant Authority.- (1) In general.-In carrying out the program established in subsection (a), the Secretary may make grants, on a competitive basis, in accordance with this section. (2) Grant amount.-Except as otherwise provided, each grant made under this section shall be in an amount that is at least $25,000,000.
Sec. 44001(b) (1) ELIGIBLE APPLICANT.—The term "eligible applicant" means— (A) a State (or a group of States); (B) a local government (or a group of local governments); (C) a tribal government (or a consortium of tribal governments); (D) a transit agency (or a group of transit agencies); (E) a special purpose district or a public authority with a transportation function;	§117(c) Eligible Applicants.— (1) IN GENERAL.—The Secretary may make a grant under this section to the following: (A) A State or group of States. (B) A metropolitan planning organization that serves an urbanized area (as defined by the Bureau of the Census) with a population of more than 200,000 individuals. (C) A unit of local government. (D) A special purpose district or public authority with a transportation function, including a port authority.	§117(c) Eligible Applicants.- (1) In general.-The Secretary may make a grant under this section to the following: (A) A State or a group of States. (B) A metropolitan planning organization that serves an urbanized area (as defined by the Bureau of the Census) with a population of more than 200,000 individuals. (C) A unit of local government or a group of local governments. (D) A political subdivision of a State or local government.

Senate DRIVE Act	House STRR Act	Enacted FAST Act
(F) a port authority (or a group of port authorities); (G) a political subdivision of a State or local government; (H) a Federal land management agency, jointly with the applicable State; or (I) a multistate or multijurisdictional group of entities described in subparagraphs (A) through (H). Sec. 44001(c) Applications.— (1) IN GENERAL.—An eligible applicant shall submit to the Secretary or the Federal Highway Administrator (referred to in this section as the "Administrator"), as appropriate, an application in such form and containing such information as the Secretary or Administrator, as appropriate, determines necessary, including the total amount of the grant requested. (2) CONTENTS.—Each application submitted under this paragraph shall include data on the most recent system performance, to the extent practicable, and estimated system improvements that will result from completion of the eligible project, including projections for improvements 5 and 10 years after completion of the project. (3) RESUBMISSION OF APPLICATIONS.—An eligible applicant whose project is not selected may resubmit an application in a subsequent solicitation with an addendum indicating changes to the project application.	(E) A Federal land management agency that applies jointly with a State or group of States. (2) APPLICATIONS.—To be eligible for a grant under this section, an entity specified in paragraph (1) shall submit to the Secretary an application in such form, at such time, and containing such information as the Secretary determines is appropriate.	(E) A special purpose district or public authority with a transportation function, including a port authority. (F) A Federal land management agency that applies jointly with a State or group of States. (G) A tribal government or a consortium of tribal governments. (H) A multistate or multijurisdictional group of entities described in this paragraph. (2) Applications.-To be eligible for a grant under this section, an entity specified in paragraph (1) shall submit to the Secretary an application in such form, at such time, and containing such information as the Secretary determines is appropriate.

Senate DRIVE Act	House STRR Act	Enacted FAST Act
§171(b)(2) (B) ELIGIBLE PROJECT.— (i) IN GENERAL.—The term 'eligible project' means a surface transportation project, or a program of integrated surface transportation projects closely related in the function the projects perform, that— (I) is a capital project that is eligible for Federal financial assistance under— (aa) this title; or (bb) chapter 53 of title 49; and (II) except as provided in clause (ii), has eligible project costs that are reasonably anticipated to equal or exceed the lesser of— (aa) $350,000,000; and (bb)(AA) for a project located in a single State, 25 percent of the amount of Federal-aid highway funds apportioned to the State for the most recently completed fiscal year; (BB) for a project located in a single rural State with a population density of 80 or fewer persons per square mile based on the most recent decennial census, 10 percent of the amount of Federal-aid highway funds apportioned to the State for the most recently completed fiscal year; or (CC) for a project located in more than 1 State, 75 percent of the amount of Federal-aid highway funds apportioned to the participating State that has the largest apportionment for the most recently completed fiscal year.	§117(d) Eligible Projects.— (1) IN GENERAL.—Except as provided in subsection (h), the Secretary may make a grant under this section only for a project that— (A) is— (i) a freight project carried out on the National Highway Freight Network established under section 167 of this title; (ii) a highway or bridge project carried out on the National Highway System, including— (I) a project to add capacity to the Interstate System to improve mobility; and (II) a project in a national scenic area; (iii) an intermodal or rail freight project carried out on the National Multimodal Freight Network established under section 70103 of title 49; or (iv) a railway-highway grade crossing or grade separation project; and (B) has eligible project costs that are reasonably anticipated to equal or exceed the lesser of— (i) $100,000,000; or (ii) in the case of a project— (I) located in 1 State, 30 percent of the amount apportioned under this chapter to the State in the most recently completed fiscal year; or (II) located in more than 1 State, 50 percent of the amount apportioned under this chapter to the participating State with the largest apportionment under this chapter in the most recently completed	§117(d) Eligible Projects.- (1) In general.-Except as provided in subsection (e), the Secretary may make a grant under this section only for a project that- (A) is- (i) a highway freight project carried out on the National Highway Freight Network established under section 167; (ii) a highway or bridge project carried out on the National Highway System, including- (I) a project to add capacity to the Interstate System to improve mobility; or (II) a project in a national scenic area; (iii) a freight project that is- (I) a freight intermodal or freight rail project; or (II) 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; or (iv) a railway-highway grade crossing or grade separation project; and (B) has eligible project costs that are reasonably anticipated to equal or exceed the lesser of- (i) $100,000,000; or (ii) in the case of a project- (I) located in 1 State, 30 percent of the amount apportioned under this chapter to the State in the most

Senate DRIVE Act	House STRR Act	Enacted FAST Act
(ii) FEDERAL LAND TRANSPORTATION FACILITY.—In the case of a Federal land transportation facility, the term 'eligible project' means a Federal land transportation facility that has eligible project costs that are reasonably anticipated to equal or exceed $150,000,000. §171(g) (3) LIMITATION OF FUNDS.—Not more than 20 percent of the funds made available for a fiscal year to carry out this section shall be allocated for projects eligible under section 167(i)(5)(B) or chapter 53 of title 49.	fiscal year. (2) LIMITATION.— (A) IN GENERAL.—Not more than $500,000,000 of the amounts made available for grants under this section for fiscal years 2016 through 2021, in the aggregate, may be used to make grants for projects described in paragraph (1)(A)(iii) and such a project may only receive a grant under this section if— (i) the project will make a significant improvement to freight movements on the National Highway Freight Network; and (ii) the Federal share of the project funds only elements of the project that provide public benefits. (B) EXCLUSIONS.—The limitation under subparagraph (A) shall— (i) not apply to a railway-highway grade crossing or grade separation project; and (ii) with respect to a multimodal project, shall apply only to the non-highway portion or portions of the project.	recently completed fiscal year; or (II) located in more than 1 State, 50 percent of the amount apportioned under this chapter to the participating State with the largest apportionment under this chapter in the most recently completed fiscal year. (2) Limitation.- (A) In general.-Not more than $500,000,000 of the amounts made available for grants under this section for fiscal years 2016 through 2020, in the aggregate, may be used to make grants for projects described in paragraph (1)(A)(iii) and such a project may only receive a grant under this section if- (i) the project will make a significant improvement to freight movements on the National Highway Freight Network; and (ii) the Federal share of the project funds only elements of the project that provide public benefits. (B) Exclusions.-The limitation under subparagraph (A)- (i) shall not apply to a railway-highway grade crossing or grade separation project; and (ii) with respect to a multimodal project, shall apply only to the non-highway portion or portions of the project.

Senate DRIVE Act	House STRR Act	Enacted FAST Act
	§117(h) Reserved Amounts.— (1) IN GENERAL.—The Secretary shall reserve not less than 10 percent of the amounts made available for grants under this section each fiscal year to make grants for projects described in subsection (d)(1)(A) that do not satisfy the minimum threshold under subsection (d)(1)(B). (2) GRANT AMOUNT.—Each grant made under this subsection shall be in an amount that is at least $5,000,000. (3) PROJECT SELECTION CONSIDERATIONS.—In addition to other applicable requirements, in making grants under this subsection the Secretary shall consider— (A) the cost effectiveness of the proposed project; and (B) the effect of the proposed project on mobility in the State and region in which the project is carried out.	§117(e) Small Projects.- (1) In general.-The Secretary shall reserve 10 percent of the amounts made available for grants under this section each fiscal year to make grants for projects described in subsection (d)(1)(A) that do not satisfy the minimum threshold under subsection (d)(1)(B). (2) Grant amount.-Each grant made under this subsection shall be in an amount that is at least $5,000,000. (3) Project selection considerations.-In addition to other applicable requirements, in making grants under this subsection the Secretary shall consider- (A) the cost effectiveness of the proposed project; and (B) the effect of the proposed project on mobility in the State and region in which the project is carried out.
§171(b)(2) (C) ELIGIBLE PROJECT COSTS.—The term ‘eligible project costs’ means the costs of— (i) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other preconstruction activities; and (ii) construction, reconstruction, rehabilitation, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, acquisition of equipment directly related to improving system performance, and operational improvements.	§117(e) Eligible Project Costs.—Grant amounts received for a project under this section may be used for— (1) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other preconstruction activities; and (2) construction, reconstruction, rehabilitation, acquisition of real property (including land related to the project and improvements to the land), environmental mitigation, construction contingencies, acquisition of equipment, and operational improvements.	§117(f) Eligible Project Costs.-Grant amounts received for a project under this section may be used for- (1) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other preconstruction activities; and (2) construction, reconstruction, rehabilitation, acquisition of real property (including land related to the project and improvements to the land), environmental mitigation, construction contingencies, acquisition of equipment, and operational improvements directly related to improving system performance.

Senate DRIVE Act	House STRR Act	Enacted FAST Act
§171(e) Criteria For Project Evaluation And Selection.— (1) IN GENERAL.—The Administrator may select a project for funding under this section only if the Administrator determines that the project— (A) is consistent with the national goals described in section 150(b); (B) will significantly improve the performance of the national surface transportation network, nationally or regionally; (C) is based on the results of preliminary engineering; (D) is consistent with the long-range statewide transportation plan; (E) cannot be readily and efficiently completed without Federal financial assistance; (F) is justified based on the ability of the project to achieve 1 or more of— (i) generation of national economic benefits that reasonably exceed the costs of the project; (ii) reduction of long-term congestion, including impacts on a national, regional, and statewide basis; (iii) an increase in the speed, reliability, and accessibility of the movement of people or freight; or (iv) improvement of transportation safety, including reducing transportation accident and serious injuries and fatalities; and (G) is supported by a sufficient amount of non-Federal funding, including evidence of stable and dependable financing to construct, maintain, and operate the infrastructure facility.	§117(f) Project Requirements.—The Secretary may make a grant for a project described under subsection (d) only if the relevant applicant demonstrates that— (1) the project will generate national or regional economic, mobility, or safety benefits; (2) the project will be cost effective; (3) the project will contribute to the accomplishment of 1 or more of the national goals described under section 150 of this title; (4) the project is based on the results of preliminary engineering; (5) with respect to related non-Federal financial commitments— (A) 1 or more stable and dependable sources of funding and financing are available to construct, maintain, and operate the project; and (B) contingency amounts are available to cover unanticipated cost increases; (6) the project cannot be easily addressed using other funding available to the project sponsor under this chapter; and (7) the project is reasonably expected to begin construction not later than 18 months after the date of obligation of funds for the project.	§117(g) Project Requirements.-The Secretary may select a project described under this section (other than subsection (e)) for funding under this section only if the Secretary determines that- (1) the project will generate national or regional economic, mobility, or safety benefits; (2) the project will be cost effective; (3) the project will contribute to the accomplishment of 1 or more of the national goals described under section 150 of this title; (4) the project is based on the results of preliminary engineering; (5) with respect to related non-Federal financial commitments- (A) 1 or more stable and dependable sources of funding and financing are available to construct, maintain, and operate the project; and (B) contingency amounts are available to cover unanticipated cost increases; (6) the project cannot be easily and efficiently completed without other Federal funding or financial assistance available to the project sponsor; and (7) the project is reasonably expected to begin construction not later than 18 months after the date of obligation of funds for the project.

Senate DRIVE Act	House STRR Act	Enacted FAST Act
§171(e) (2) ADDITIONAL CONSIDERATIONS.—In evaluating a project under this section, in addition to the criteria described in paragraph (1), the Administrator shall consider the extent to which the project— (A) leverages Federal investment by encouraging non-Federal contributions to the project, including contributions from public-private partnerships; (B) is able to begin construction by the date that is not later than 18 months after the date on which the project is selected; (C) incorporates innovative project delivery and financing to the maximum extent practicable; (D) helps maintain or protect the environment; (E) improves roadways vital to national energy security; (F) improves or upgrades designated future Interstate System routes; (G) uses innovative technologies, including intelligent transportation systems, that enhance the efficiency of the project; (H) helps to improve mobility and accessibility; and (I) address the impact of population growth on the movement of people and freight. Sec. 44001(e) Geographic Distribution.—In awarding grants, the Secretary or Administrator, as appropriate, shall take measures to ensure, to the maximum extent practicable— (1) an equitable geographic distribution of amounts; and (2) an appropriate balance in addressing the needs of rural and urban communities.	§117(g) Additional Considerations.—In making a grant under this section, the Secretary shall consider— (1) the extent to which a project utilizes nontraditional financing, innovative design and construction techniques, or innovative technologies; (2) the amount and source of non-Federal contributions with respect to the proposed project; and (3) the need for geographic diversity among grant recipients, including the need for a balance between the needs of rural and urban communities.	§117(h) Additional Considerations.-In making a grant under this section, the Secretary shall consider- (1) utilization of nontraditional financing, innovative design and construction techniques, or innovative technologies; (2) utilization of non-Federal contributions; and (3) contributions to geographic diversity among grant recipients, including the need for a balance between the needs of rural and urban communities.

Senate DRIVE Act	House STRR Act	Enacted FAST Act
§171(g) (2) RURAL PROJECTS.—The amounts made available for a fiscal year under this section for eligible projects located in rural areas or in rural States shall not be— (A) less than 20 percent of the amount made available for the fiscal year under this section; and (B) subject to paragraph (1). Sec. 44001(b) (2) RURAL AREA.—The term "rural area" means an area that is outside of an urbanized area with a population greater than 150,000 individuals, as determined by the Bureau of the Census. (3) RURAL STATE.—The term "rural State" means a State that has a population density of 80 or fewer persons per square mile, based on the most recent decennial census.	§117(h) (5) RURAL AREAS.—The Secretary shall reserve not less than 20 percent of the amounts made available for grants under this section, including the amounts made available under paragraph (1), each fiscal year to make grants for projects located in rural areas. (4) EXCESS FUNDING.—In any fiscal year in which qualified applications for grants under this subsection will not allow for the amount reserved under paragraph (1) to be fully utilized, the Secretary shall use the unutilized amounts to make other grants under this section.	§117(i) Rural Areas.- (1) In general.-The Secretary shall reserve not less than 25 percent of the amounts made available for grants under this section, including the amounts made available under subsection (e), each fiscal year to make grants for projects located in rural areas. (2) Excess funding.-In any fiscal year in which qualified applications for grants under this subsection will not allow for the amount reserved under paragraph (1) to be fully utilized, the Secretary shall use the unutilized amounts to make other grants under this section. (3) Rural area defined.-In this subsection, the term "rural area" means an area that is outside an urbanized area with a population of over 200,000.
[in the absence of any specific language in the Senate bill, 23 U.S.C. §120 would probably control]	§117(i) Federal Share.— (1) IN GENERAL.—The Federal share of the cost of a project assisted with a grant under this section may not exceed 50 percent. (2) NON-FEDERAL SHARE.—Funds apportioned to a State under section 104(b)(1) or 104(b)(2) may be used to satisfy the non-Federal share of the cost of a project for which a grant is made under this section so long as the total amount of Federal funding for the project does not exceed 80 percent of project costs.	§117(j) Federal Share.- (1) In general.-The Federal share of the cost of a project assisted with a grant under this section may not exceed 60 percent. (2) Maximum federal involvement.-Federal assistance other than a grant under this section may be used to satisfy the non-Federal share of the cost of a project for which such a grant is made, except that the total Federal assistance provided for a project receiving a grant under this section may not exceed 80 percent of the total project cost. (3) Federal land management agencies.-Notwithstanding any other provision of law, any Federal funds other than those made available under this title or title 49 may be used to pay the non-Federal share of the cost of a project carried out under this section by a Federal land management agency, as described under subsection (c)(1)(F).

Senate DRIVE Act	House STRR Act	Enacted FAST Act
	§117(k) Treatment Of Freight Projects.—Notwithstanding any other provision of law, a freight project carried out under this section shall be treated as if the project is located on a Federal-aid highway.	§117(k) Treatment of Freight Projects.-Notwithstanding any other provision of law, a freight project carried out under this section shall be treated as if the project is located on a Federal-aid highway.
§171(g) (5) TIFIA PROGRAM.—On the request of an eligible applicant under this section, the Administrator may use amounts awarded to the entity to pay subsidy and administrative costs necessary to provide the entity Federal credit assistance under chapter 6 with respect to the project for which the grant was awarded.	§117(l) TIFIA Program.—At the request of an eligible applicant under this section, the Secretary may use amounts awarded to the entity to pay subsidy and administrative costs necessary to provide the entity Federal credit assistance under chapter 6 with respect to the project for which the grant was awarded.	§117(l) TIFIA Program.-At the request of an eligible applicant under this section, the Secretary may use amounts awarded to the entity to pay subsidy and administrative costs necessary to provide the entity Federal credit assistance under chapter 6 with respect to the project for which the grant was awarded.

Senate DRIVE Act	House STRR Act	Enacted FAST Act
	§117(m) Congressional Notification.— (1) NOTIFICATION.—At least 60 days before making a grant for a project under this section, the Secretary shall notify, in writing, the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate of the proposed grant. The notification shall include an evaluation and justification for the project and the amount of the proposed grant award. (2) CONGRESSIONAL DISAPPROVAL.—The Secretary may not make a grant or any other obligation or commitment to fund a project under this section if a joint resolution is enacted disapproving funding for the project before the last day of the 60-day period described in paragraph (1).	§117(m) Congressional Notification.- (1) Notification.- (A) In general.-At least 60 days before making a grant for a project under this section, the Secretary shall notify, in writing, the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate of the proposed grant. The notification shall include an evaluation and justification for the project and the amount of the proposed grant award. (B) Multimodal projects.-In addition to the notice required under subparagraph (A), the Secretary shall notify the Committee on Commerce, Science, and Transportation of the Senate before making a grant for a project described in subsection (d)(1)(A)(iii). (2) Congressional disapproval.-The Secretary may not make a grant or any other obligation or commitment to fund a project under this section if a joint resolution is enacted disapproving funding for the project before the last day of the 60-day period described in paragraph (1).
Sec. 44001(f) Reports.— (1) IN GENERAL.—The Secretary or the Administrator, as appropriate, shall make available on the website of the Department at the end of each fiscal year an annual report that lists each project for which a grant has been provided under this section during that fiscal year.		§117(n) Reports.- (1) Annual report.-The Secretary shall make available on the Web site of the Department of Transportation at the end of each fiscal year an annual report that lists each project for which a grant has been provided under this section during that fiscal year.

Senate DRIVE Act	House STRR Act	Enacted FAST Act
(2) COMPTROLLER GENERAL.— (A) ASSESSMENT.—The Comptroller General of the United States shall conduct an assessment of the administrative establishment, solicitation, selection, and justification process with respect to the funding of grants described in this title. (B) REPORT.—Not later than 1 year after the initial awarding of grants described in this section, the Comptroller General of the United States shall submit to the Committee on Environment and Public Works of the Senate, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes— (i) the adequacy and fairness of the process by which each project was selected, if applicable; (ii) the justification and criteria used for the selection of each project, if applicable.		(2) Comptroller general.- (A) Assessment.-The Comptroller General of the United States shall conduct an assessment of the administrative establishment, solicitation, selection, and justification process with respect to the funding of grants under this section. (B) Report.-Not later than 1 year after the initial awarding of grants under this section, the Comptroller General shall submit to the Committee on Environment and Public Works of the Senate, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes- (i) the adequacy and fairness of the process by which each project was selected, if applicable; and (ii) the justification and criteria used for the selection of each project, if applicable.
	§117(j) Agreements To Combine Amounts.—Two or more entities specified in subsection (c)(1) may combine, pursuant to an agreement entered into by the entities, any part of the amounts provided to the entities from grants under this section for a project for which the relevant grants were made if— (1) the agreement will benefit each entity entering into the agreement; and (2) the agreement is not in violation of a law of any such entity.	

Senate DRIVE Act	House STRR Act	Enacted FAST Act
	§117(n) Facilitating Commercial Waterborne Transportation.—Notwithstanding any other provision of law, or rights granted thereunder, and provided that the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) are met, a property owner may develop, construct, operate, and maintain pier, wharf, or other such load-out structures on that property and on or above adjacent beds of the navigable waters of the United States to facilitate the commercial waterborne transportation of domestic aggregate that may supply an eligible project under this section, including salt, sand, and gravel, from reserves located within ten miles of the property.	

Appendix C – Full FASTLANE Program Decription

The Nationally Significant Freight and Highway Projects program (which the Department of Transportation has dubbed FASTLANE) is codified at 23 U.S.C. §117.

Purpose

Per 23 U.S.C. §117(a), the goals of the FASTLANE program are to:

A. Improve the safety, efficiency, and reliability of the movement of freight and people.
B. Generate national or regional economic benefits and an increase in the global economic competitiveness of the United States.
C. Reduce highway congestion and bottlenecks.
D. Improve connectivity between modes of freight transportation.
E. Enhance the resiliency of critical highway infrastructure and help protect the environment.
F. Improve roadways vital to national energy security.
G. Address the impact of population growth on the movement of people and freight.

Funding

Section 1101(a)(5) of the FAST Act of 2015 provided a total of $4.5 billion of Highway Trust Fund contract authority for the FASTLANE program over five fiscal years, as follows:

FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
$800 million	$850 million	$900 million	$950 million	$1.000 billion

However, available contract authority for allocated programs like FASTLANE is reduced every year by the application of the annual obligation limitation on the federal-aid highways account. In fiscal 2016, this reduction was 5.1 percent, lowering the actual usable amount of FASTLANE contract authority to $759.2 million. Assuming a 5.0 percent reduction in future years (the actual reduction could well be greater than that), the actual amount of available funding for the program would look like this:

FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
$759.2 million	$807.5 million	$855 million	$902.5 million	$950 million

Eligible applicants

Per 23 U.S.C. §117(c), the following types of entities are eligible to apply for FASTLANE grants each year:

A. A state or a group of states.
B. A metropolitan planning organization that serves an urbanized area (as defined by the Bureau of the Census) with a population of more than 200,000 individuals.
C. A unit of local government or a group of local governments.
D. A political subdivision of a state or local government.
E. A special purpose district or public authority with a transportation function, including a port authority.
F. A Federal land management agency that applies jointly with a state or group of states.
G. A tribal government or a consortium of tribal governments.
H. A multistate or multijurisdictional group of entities described above.

Eligible projects

23 U.S.C. §117(d) restricts eligible projects by type and by size.

Type

Eligible projects must be highway freight projects carried out on the National Highway Freight Network; highway or bridge projects carried out on the National Highway System; freight intermodal or freight rail projects; freight projects that are surface transportation infrastructure projects "necessary to facilitate direct intermodal exchange, transfer, or access" into or out of a public or private freight rail, water, port, or intermodal facility; or railway-highway grade crossing or grade separation projects. In the case of intermodal or rail projects, §117(d)(2) provides that projects must "make a significant improvement to freight movements on the National Highway Freight Network" and clarifies that the federal share of the project can only fund elements of the project that provide public benefits.

Size

In general, projects must have total costs estimated in excess of $100 million (or, in smaller states, at least 30 percent of the state's total apportioned highway funding in the most recent fiscal year if that amount is less than $100 million). In the case of multi-state projects between smaller states, the project cost can be less than $100 million if the cost exceeds 50 percent of the total highway apportionment of the state with the largest apportionment. In fiscal 2016, 11 states (Delaware, Hawaii, Idaho, Maine, Nebraska, New Hampshire, North Dakota, Rhode Island, South Dakota, Vermont and Wyoming) and the District of Columbia were eligible to apply for projects under $100 million based on their small apportionments. However, 23 U.S.C. §117(e) reserves 10 percent of each year's program funding for smaller projects that do not meet the minimum threshold size in §117(d).

Eligible project costs

Per 23 U.S.C. §117(f), the following are eligible project costs:

A. Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other preconstruction activities.

B. Construction, reconstruction, rehabilitation, acquisition of real property (including land related to the project and improvements to the land), environmental mitigation, construction contingencies, acquisition of equipment, and operational improvements directly related to improving system performance.

Project requirements

Per 23 U.S.C. §117(g), for the 90 percent of the annual program funding that is not reserved for small projects, the Secretary can only select projects that meet the following criteria:

A. The project will generate national or regional economic, mobility, or safety benefits.

B. The project will be cost effective.

C. The project will contribute to the accomplishment of one or more of the national goals described under 23 U.S.C. §150.

D. The project is based on the results of preliminary engineering.

E. The project must have one or more stable and dependable sources of non-federal funding and financing available to construct, maintain, and operate the project and must have contingency amounts are available to cover unanticipated cost increases.

F. The project cannot be easily and efficiently completed without other Federal funding or financial assistance available to the project sponsor.

G. The project is reasonably expected to begin construction not later than 18 months after the date of obligation of funds for the project.

None of these requirements apply to grants made by the 10 percent of the funding set aside for small projects by 23 U.S.C. §117(e). The FY 2016 Notice of Funding Opportunity said only that “For a small project to be selected, the Department will evaluate the cost effectiveness of the proposed project and the effect of the proposed project on mobility in the State and region in which the project is carried out.”

Evaluation criteria

The FY 2016 Notice of Funding Opportunity indicated that applications would be evaluated on the following criteria:

A. ECONOMIC OUTCOMES “Improving the efficiency and reliability of the surface transportation system at the regional or national level to increase the global economic competitiveness of the United States, including improving connectivity between freight modes of transportation, improving roadways vital to national energy security, facilitating freight movement across land border crossings, and addressing the impact of population growth on the movement of people and freight.”

B. MOBILITY OUTCOMES “Improving the movement of people and goods by maintaining highways, bridges, and freight infrastructure in a state of good repair, enhancing the resiliency of critical surface transportation infrastructure, and significantly reducing highway congestion and bottlenecks.”

C. SAFETY OUTCOMES “Achieving a significant reduction in traffic fatalities and serious injuries on the surface transportation system, as well as improving interactions between roadway users, reducing the likelihood of derailments or high consequence events, and improving safety in transporting certain types of commodities.”

D. COMMUNITY AND ENVIRONMENTAL OUTCOMES “How and whether the project mitigates harm to communities and the environment, extends benefits to the human and natural environment, or enhances personal mobility and accessibility. This includes reducing the negative effects of existing infrastructure, removing barriers, avoiding harm to the human and natural environment, and using design improvements to enhance access (where appropriate) and environmental quality for affected communities. Projects should also reflect meaningful community input provided during project development.”

E. PARTNERSHIP AND INNOVATION Demonstrating strong collaboration among a broad range of stakeholders or using innovative strategies to pursue primary outcomes listed above including efforts to reduce accelerate delivery delays. Additional consideration will be given for the use of innovative and flexible designs and construction techniques or innovative technologies.”

F. COST SHARE In addition to the statutory criteria, “Additional consideration will be given to the use of nontraditional financing, as well as the use of non-Federal contributions. The Department may consider the form of cost sharing presented in an application. Firm commitments of cash that indicate a complete project funding package and demonstrate local support for the project are more competitive than other forms of cost sharing.

Grant size

23 U.S.C. §117(b) sets a minimum grant size of $25 million for the 90 percent of annual program funding that is not set aside for small projects. For small projects subject to §117(e), there is a minimum grant size of $5 million.

Federal share

23 U.S.C. §117(j) states that the federal share of the cost of a project assisted with a grant under this section may not exceed 60 percent and that other federal dollars (from programs other than FASTLANE may be used to satisfy the non-federal share of the cost of a project for which such a grant is made, except that the total federal assistance provided for a project may not exceed 80 percent of the total project cost.

Set-asides

23 U.S.C. §117(i) sets aside no less than 25 percent of each year's program funding for projects in rural areas, which the section defines as projects in areas outside urbanized areas with a population over 200,000. In addition, §117(d)(2) places a multi-year ceiling of $500 million on the total amount of grants that can be used for intermodal, rail, or port projects under §117(d)(1)(A)(iii). The FY 2016 grants used $173.4 million of this $500 million five-year cap, or 35 percent.

Approval process

23 U.S.C. §117(m) sets forth a convoluted process for project approval designed to give Congress an opportunity to weigh in before grants can be made. Once the Secretary evaluates applications and makes tentative project selections, he must transmit the proposed project list to the House Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee. (For multimodal projects, the Senate Commerce, Science and Transportation Committee must also be notified.) The Secretary cannot make any announcements of grants until at least 60 calendar days have passed since the transmittal of the project list to Congress. This is to give Congress time to enact a joint resolution of disapproval into law (presumably over the President's veto) and reject the project list if Congress is so motivated.

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