

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Betsy Shotwell

SUBJECT: SEE BELOW

DATE: January 21, 2016

Approved



Date

1/25/16

INFORMATION

SUBJECT: SQUIRE PATTON BOGGS FEDERAL LEGISLATIVE AND REGULATORY ACTION RELEVANT TO GENERAL LOCAL GOVERNMENT INTERESTS: 2015 WRAP-UP AND 2016 FORECAST

The City's Federal lobbyist firm of Squire Patton Boggs, LLP has provided the attached comprehensive update for local government regarding actions of notable federal legislation and regulatory issues with an overview of activities from September through December 2015 including highlights of the FY 2016 Omnibus Appropriations Act. In particular, San José advocated for the HOME Investment Program funding, despite the Senate proposing a 66% cut, the program was actually increased from \$900,000,000 to \$950,000,000; supported transit funding to benefit BART (transit funding was increased); and opposed HUD's efforts to change Moving to Work contracts (Congress directed the extension of current contracts through 2028 under existing terms/conditions).

The memorandum also provides a forecast of the last session of the 114th Congress in 2016. Included in the report are relevant updates on key items including updates on the transportation reauthorization (the FAST Act), tax issues, water, the environment and energy, homeland security/public safety, housing and community development, cybersecurity and the current Federal Aviation Administration (FAA) extension which expires on March 31, 2016. Also included in this memo under Attachment B, is Squire Patton Boggs comprehensive report on the FAST Act which the City successfully advocated for increased Surface Transportation Program funding and flexibility and was signed by the President in December.

HONORABLE MAYOR AND CITY COUNCIL

Subject: Squire Patton Boggs Federal Legislative and Regulatory Action Relevant to Local Government

Interests: 2015 Wrap-Up and 2016 Forecast

January 21, 2016

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This Federal legislative and regulatory update reflects many of the City's legislative policy principles and priorities and our efforts to work with our Federal partners to advocate on issues of concern and interest to the City during the first year of the 114th Congress and in the concluding 2016 session. Updates are also provided in Squire Patton Boggs' weekly "Capital Thinking Blog" found on their website: www.squirepattonboggs.com.

/s/

BETSY SHOTWELL

Director, Intergovernmental Relations

For more information please contact Betsy Shotwell, Director of IGR at 408-535-8270.

Attachment A: Squire Patton Boggs Federal Legislative and Regulatory Action Relevant to General Local Government Interests: 2015 Wrap-Up and 2016 Forecast

Attachment B: Squire Patton Boggs Summary of Fixing America's Surface Transportation Act (FAST Act)

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Memorandum



To: City of San Jose
From: Squire Patton Boggs LLP
Date: January 13, 2016
Subject: Federal Legislative and Regulatory Action Relevant to General Local Government Interests: 2015 Wrap-Up and 2016 Forecast

This memorandum provides a comprehensive update for local governments and their partners regarding actions on notable federal legislation and regulatory issues, summarizing action in the last quarter of 2015 and beginning the last session of the 114th Congress.

Following the August recess, Congress had a full fall agenda of must-pass legislation. Following the chaos surrounding the mid-session retirement of House Speaker John Boehner (R-OH), the subsequent near-vote and announcement by Majority Leader Kevin McCarthy (R-CA) that he was removing himself from consideration, and ultimate election of the somewhat reluctant Paul Ryan (R-WI) to assume leadership of the House, much was accomplished. Before leaving DC – and, as some would say, in an effort to “clean out the barn” for incoming Speaker Ryan – Speaker Boehner pushed through a budget agreement that alleviated sequestration for two years and extended the debt ceiling. This paved the way for an end-of-year FY 2016 omnibus spending package. Additionally, a five-year surface transportation bill was approved and the FAA reauthorization was extended through March 31, 2016. The Export-Import Bank was reauthorized in the transportation reauthorization, while the Internet Tax Freedom Act extension and a two-year tax extender package were included in the FY 2016 omnibus appropriations bill. Congress also reauthorized elementary and secondary education programs before adjourning for the holiday recess.

Typically, legislation grinds to a quick halt in an election year, in part due to the shortened legislative calendar as Members spend more time at home campaigning. This year, however, we anticipate action on a number of items as the GOP aims to prove it can govern and President Obama tries to bolster his legacy. *Squire Patton Boggs January 13 analysis of the President’s State of the Union address delves deeper into the President’s priorities and the key issues we anticipate for 2016.*

44 Offices in 21 Countries

Squire Patton Boggs (US) LLP is part of the international legal practice Squire Patton Boggs, which operates worldwide through a number of separate legal entities.

Please visit squirepattonboggs.com for more information.

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BUDGET/APPROPRIATIONS

FY 2017 APPROPRIATIONS

As noted above, the President will submit his final budget request to Congress on February 9. His proposal for FY 2017 is expected to adhere to the discretionary spending levels put in place by the two-year budget deal agreed to last fall (see below).

The President's budget is expected to echo many of the elements he highlighted in his final State of the Union (SOTU) address, which was focused more on big-picture items rather than simply a list of policy priorities. The budget request is expected to address the President's recent efforts on gun control and Syrian refugees, and may include a push for additional actions on the environment.

The release of the President's budget will kick off the FY 2017 appropriations process, which is expected to begin soon in the House. House Budget Committee Chairman Tom Price (R-GA) intends to mark up a budget resolution this spring, as Republicans look to get the appropriations process back on track. In recent budget resolutions, Republicans have put forth proposals to balance the budget and eliminate the deficit within ten years. The \$680 billion tax extender package, approved without offsets, will make meeting this goal much more challenging.

Additionally, Congressional Republicans are expected to again use the budget reconciliation process, which is not subject to a 60-vote threshold in the Senate, to send Republican priorities to the President's desk. President Obama vetoed the FY 2016 budget reconciliation bill last week, which would have repealed large parts of the Affordable Care Act and restricted Planned Parenthood funding for one year.

BIPARTISAN BUDGET ACT OF 2015

The FY 2016 appropriations process got off to a good start, with the House and Senate Appropriations Committees each passing all twelve spending bills out of committee for the first time in six years. However, the House process broke down this summer over a controversial confederate flag amendment and Senate Democrats blocked sequestration-level spending bills from coming to the floor in an effort to force negotiations on a broad budget deal.

Following the breakdown of the appropriations process, and, as his final act as House Speaker, John Boehner (R-OH) led negotiations on a two-year budget agreement, *The Bipartisan Budget Act of 2015* (P.L. 114-74). In addition to suspending the debt limit through March 15, 2017, the bill raised sequestration-level discretionary budget caps by \$80 billion over two years - \$50 million in FY 2016 and \$30 million in FY 2017 - equally divided between defense and nondefense programs:

- FY 2016 Defense – from \$523 billion to \$548 billion
- FY 2016 Non-defense – from \$493.5 billion to \$518.5 billion

The budget agreement not only paved the way for resolution of the FY 2016 appropriations process (*see below*), but the establishment of topline funding levels for FY 2017 will also enable the appropriations committees to begin work earlier next year, and may get Congress closer to a "return to order" for the FY 2017 budget process.

FY 2016 OMNIBUS APPROPRIATIONS ACT

On December 18, the President signed *The Consolidated Appropriations Act, 2016* (H.R. 2029), a \$1.15 trillion FY 2016 discretionary spending omnibus bill that provided budgets for all federal departments and agencies through September 30, 2016. *Squire Patton Boggs provided a comprehensive department-by-department analysis of the omnibus bill on December 17.*

The omnibus package also included a \$622 billion package of tax provisions (“tax extenders”) (*see below for details*) and a long-awaited cybersecurity information-sharing measure, the *Cybersecurity Information Sharing Act of 2015*, which combines three previously-passed cybersecurity measures: two bills passed by the House in April and one bill approved by the Senate in October. *Squire Patton Boggs included information on the tax extenders on our December 17 omnibus analysis and provided a detailed summary of the cybersecurity provisions on December 22.*

Some key highlights:

- Programs that were facing significant cuts were provided level or increased funding: COPS Hiring and HOME Investment Partnership were slightly increased from FY 2015 funding levels; the Predisaster Mitigation program was significantly increased; and the TIGER program was maintained at the FY 2015 funding level.
- The Department of Homeland Security is authorized to reallocate \$50 million to address emergent threats from violent extremism and from complex, coordinated terrorist attacks, \$10 million of which will be distributed through a competitive program.
- Visa requirements for individuals entering the U.S. were tightened as proposed in the stand-alone bill that recently passed the House.
- The EB-5 Regional Center program was reauthorized through the fiscal year.
- The bill lifts a 40-year ban on crude oil exports.
- The program that provides medical care to 9/11 first responders and survivors was reauthorized.
- The bill does not provide funding for another BRAC round.
- A two-year delay on implementation of the medical device tax and the “Cadillac” tax.
- A one-year extension of the Internet Tax Freedom Act.

Also of importance are policy riders that were not included in the omnibus:

- Language tightening security certifications for Syrian refugees resettling in the United States.
- Provisions restricting federal funding for states or local governments that do not fully cooperate with enforcement of Federal immigration laws (“sanctuary cities”).
- No ban on funding to Planned Parenthood or new abortion restrictions.
- Language to block movement on the “Waters of the U.S.” rule or clean power regulations.
- Changes to campaign finance laws.

BUDGET RECONCILIATION

On January 6, the House passed the Senate amendment to the *Restoring Americans’ Healthcare Freedom Reconciliation Act of 2015* (H.R. 3762), the budget reconciliation bill, on a party-line vote of 240-181. The reconciliation bill would prohibit most federal funding for Planned Parenthood for one year and repeal large portions of the Affordable Care Act (“Obamacare”), including: repealing the medical device tax, the “Cadillac tax” on certain employer-sponsored health benefits, and a tax on health insurers; eliminating

penalties used to enforce mandates for health insurance for individuals and employers; and repealing Medicaid expansion. As expected, President Obama vetoed the bill on January 8. The House will vote on January 26 to override the President's veto. While Republicans do not have the two-thirds vote required to override a Presidential veto, the vote will serve to reinforce political messaging heading into the election.

TRANSPORTATION

SURFACE TRANSPORTATION REAUTHORIZATION/HIGHWAY TRUST FUND: THE FAST ACT

On December 4, the President signed the *Fixing America's Surface Transportation (FAST) Act* (H.R. 22), a five-year surface transportation reauthorization providing \$305 billion over fiscal years 2016 to 2020. The FAST Act includes \$225.2 billion for highways and \$48.7 billion for transit programs. It continues nearly all of the highway and transit formula programs of MAP-21, and focuses much of the increase in highway funding on two new freight programs, one formula-based and one discretionary. The Act reestablishes the bus and bus facilities discretionary grant program, converts the Surface Transportation Program into a block grant, and builds on the environmental streamlining and project acceleration provisions of previous authorization bills. *Squire Patton Boggs provided a comprehensive analysis of the FAST Act on December 8.*

FEDERAL AVIATION ADMINISTRATION (FAA) REAUTHORIZATION

The current short-term Federal Aviation Administration (FAA) extension expires on March 31, and FAA reauthorization will be a priority for the House Transportation and Infrastructure Committee and the Senate Commerce, Science, and Transportation Committee early this year. While much of the House's reauthorization bill has been vetted with Democrats, Transportation Committee Chairman Bill Shuster (R-PA) has not released what is likely to be the most contentious part of the bill, air traffic control (ATC) reform. Chairman Shuster is expected to propose significantly restructuring ATC by moving it out of the federal government and into a nonprofit or private entity. Senate Commerce Committee Chairman John Thune (R-SD) has said FAA reauthorization is one of his Committee's highest priorities, though the Senate will likely allow the House to move on its legislation first.

WIFIA: WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT

The Water Infrastructure Finance and Innovation Act (WIFIA) enacted in 2014, established the first new water infrastructure financing program in over 25 years. However, the bill included a provision prohibiting communities from funding projects with a combination of WIFIA assistance and tax-exempt debt. The recent surface transportation reauthorization, *the FAST Act*, modified the WIFIA program to eliminate the tax-exempt prohibition.

Under the terms of the WIFIA program, project sponsors can secure a low-interest loan for up to 49 percent of project costs; the remaining 51 percent must come from other sources. Tax-exempt bonds will generally be the most cost-effective source for the required non-WIFIA share of project costs, so permitting project sponsors to use tax-exempt debt with WIFIA assistance will ensure the WIFIA program works as intended to reduce project costs and accelerate investment in much-needed major infrastructure improvements.

While funding has been appropriated for the administrative costs of starting up the Environmental Protection Agency's WIFIA office, appropriations necessary to support WIFIA loans to project sponsors are expected in FY 2017.

ENERGY AND ENVIRONMENT

DROUGHT LEGISLATION

Following the passage of the House *Western Water and American Food Security Act of 2015* (H.R. 2898) this summer, the Senate Energy and Natural Resources held a hearing in October to consider six bills related to Western and Alaska Water legislation, including the *California Emergency Drought Relief Act of 2015* (S. 1894) authored by Senators Dianne Feinstein and Barbara Boxer. During the hearing Chairwoman Lisa Murkowski (R-AL) made it clear the process of coalescing the bills and identify funding could be a lengthy process.

In December, House Majority Leader Kevin McCarthy (R-CA) led an effort to attach drought legislation to the omnibus appropriations bills. However, as the proposal aligned very closely with the House drought bill, it was quickly opposed by House Democrats and Senator Feinstein. Ultimately, while there was increased funding for drought-related activities included in the FY 2016 appropriations bill, comprehensive drought policy was not. Reportedly, Senator Feinstein and Congressman David Valadao, the author of the House drought bill, are working on a compromise measure.

CLEAN POWER PLAN/COP 21

Last August, President Obama announced the final Clean Power Plan rule aimed at cutting carbon pollution from power plants, widely viewed to be the nation's largest driver of climate change. Republican attempts to block the Clean Power Plan in the FY 2016 omnibus appropriations failed to remain in the final bill due to a veto threat that Congress could not have overridden. The Plan is destined to be one of the most heavily litigated environmental regulations in history and already numerous states and countless industry groups have filed more than 15 separate cases against it. Concurrently, numerous states, cities and environmental groups will also intervene in support of EPA. Due to the complexity of the cases and the hundreds of parties involved, a ruling on whether a stay will be granted should happen early this year, and, should the case eventually reach the Supreme Court, the high court may not rule on this until 2018.

In Paris in December, nearly 200 countries came together for the first time in history to announce a universal agreement to act on climate change. Under the Paris agreement, countries pledge to limit global warming to two degrees Celsius at most and pursue efforts to keep it below 1.5 degrees Celsius. This agreement applies to all countries, and, according to the Administration, sets meaningful accountability and reporting requirements, and brings countries back to the table every five years to grow their commitments as markets change and technologies improve. In the coming year, the Environmental Protection Agency (EPA) will work towards consistent and transparent greenhouse gas reporting and inventory requirements under the Paris Agreement. They will also identify and evaluate substitutes in the US to reduce hydrofluorocarbons (HFCs), which is another climate pollutant, and will lead to global efforts to finalize a requirement in 2016 for countries to reduce production and use of HFCs under the Montreal Protocol. EPA will also finalize a proposal to improve fuel economy and cut carbon pollution from heavy duty vehicles and another to limit methane leaks from oil and gas operations.

GROUND LEVEL OZONE RULE

In October, the EPA finalized a rule that changed the standard for ground-level ozone from 75 parts per billion, which was set in 2008, to 70 parts per billion. In December, the National Association of Manufacturers and the U.S. Chamber of Commerce filed a lawsuit against the EPA over the revised ozone rule, calling it “unworkable and overly burdensome.” A number of cities and counties across the country have expressed concerns about the potential impacts of more stringent ozone standards as they struggle to achieve or stay in attainment with the current standard. Under the rule, states have one year to provide recommendations regarding how they will meet the standard.

In addition, EPA has recently proposed changes to its “Exceptional Events Rule” (EER) that allows the agency to exclude certain air-quality monitoring data – associated with uncontrollable or unpreventable emissions – when determining whether or not an area violates a National Ambient Air Quality Standard (NAAQS). Under the current rule, states may flag certain air monitoring readings as “exceptional” (e.g., those caused by wildfires, high wind dust storms, or stratospheric ozone intrusions) which may be excluded from NAAQS “attainment versus non-attainment” designations and related actions. Arid western states, which face significant air quality challenges brought on by natural events, often complain that EPA has not consistently applied EER. EPA claims that the proposed EER revisions should reduce the burden on states to show that events qualify as “exceptional” and would reduce the number of criteria states must address in seeking to prove an exceptional event. Specifically, EPA would eliminate a current requirement that states show they would have complied with a NAAQS “but for” the exceptional event causing high levels of pollution. EPA has extended the public comment deadline to February 3, 2016.

EPA “WATERS OF THE U.S.” RULE

On August 28, the final rule governing Waters of the U.S. (WOTUS) went into effect. The rule replaces “navigable waters” with a new definition of “Waters of the U.S.” which could significantly expand the jurisdiction of the Clean Water Act (CWA). The rule created a great deal of uncertainty. If understanding when “adjacent” waters would be subject to Section 404 jurisdiction was not difficult enough, the rule added a new concept of “neighboring” to determine when areas “adjacent” to WOTUS require permits. The rule also established distance criteria of 1,500 feet and 4,000 feet as a basis for determining “significant nexus.” Waters within 4,000 feet of a traditional navigable water must be examined on a case specific basis to determine if they bear a “significant nexus” to that water and, if so, a permit would be required. Physical breaks in a drainage would not necessarily limit jurisdiction. Isolated waters such as “western vernal pools in California” and prairie potholes could be considered under WOTUS and require case specific nexus analysis.

Legal challenges were immediately filed by states, industry groups and environmental interests on all sides of the rule. In August, the U.S. District Court in North Dakota issued a preliminary injunction suspending the rule in the 13 states that filed the suit. This action was followed by the decision of the Sixth Circuit Court of Appeals issued on October 9, in a consolidated action brought by 18 states, to stay implementation of the new WOTUS rule nationwide.

In a joint memorandum issued in November, EPA and the Army Corps of Engineers announced that they would comply with the stay and resume use of the prior WOTUS definition adopted in 1984. This situation may take years of litigation to resolve and may end up at the Supreme Court. Legislative language to block movement/implementation on the Waters of the U.S. rule was attached to the FY 2016 omnibus appropriations bill, but was removed from the final version of the bill which passed at the end of the year.

ENERGY LEGISLATION

Congress has not enacted broad-based energy legislation since the Energy Policy Act of 2007, and a presidential election year would seem to be the least likely time for such legislation to make it through Congress. Yet, both the Senate and the House have advanced reform bills that contain enough passable items that, if they are acted on this year, would represent a significant update to federal energy policy.

The Senate Energy and Natural Resources Committee in July approved a sprawling and bipartisan bill that runs the gamut from energy efficiency to pipeline and electrical infrastructure to energy development. The Senate's unwieldy amendment process could pose challenges to the bipartisan alliance forged by Chair Lisa Murkowski (R-AK) and Ranking Member Maria Cantwell (D-WA) when the bill is brought to the floor.

The House advanced similar legislation that focuses on speeding up energy infrastructure development though divisive amendments added to the bills have threatened to derail them. The House passed the legislation largely along party lines in December under a veto threat from the President.

The FY 2016 omnibus appropriations measure which passed Congress at the end of the year lifted the 40-year-old ban on crude oil exports in exchange for a multi-year extension of the renewable production and investment tax credits.

TAX ISSUES

TAX EXTENDERS

On December 18, Congress passed H.R. 2029, a \$1.15 trillion FY 2016 omnibus spending bill that provided a full year budget for all federal agencies and departments through September 30, 2016. A \$622 billion package of tax provisions was added to the bill entitled *The Protecting Americans from Tax Hikes Act of 2015*. It was the first major tax legislation since 2012 and it permanently extended 22 tax provisions and extends others for two to four years.

At the end of 2014, over 50 "tax extenders" expired which included individual, business and energy provisions. In recent years, Congress has reinstated these provisions retroactively leading to great uncertainty. This bill is the culmination of recent work done in both chambers over the past year and reflects the priorities of House Speaker Paul Ryan (R- WI) during his tenure as Chairman of the Ways and Means Committee and in his new role as Speaker.

Among the provisions made permanent are the enhanced Child Tax Credit, the enhanced American Opportunity Tax Credit, the enhanced Earned Income Tax Credit, the above-the-line deduction for teachers who buy school supplies, the charitable deduction of contributions of real property for conservation purposes, along with the Research and Development Tax Credit. Also made permanent are: the tax break for mass transit and parking benefits; the option to claim an itemized deduction for state and local income taxes; and the temporary minimum low income housing tax credit rates for non-Federally subsidized buildings. The bill extends the New Markets Tax Credit through 2019 and empowerment zones through 2016. Finally, it extends a slew of energy production and conservation tax credit such as that for energy efficient new homes.

Finally, the legislation suspends the 2.3 percent excise tax on medical devices through 2017 and delays for two years the so-called “Cadillac tax” on high priced health insurance plans that was supposed to begin in 2018. *Squire Patton Boggs included information on the tax extenders in our December 17 omnibus analysis.*

INTERNET TAXATION

In June, Representative Jason Chaffetz (R-UT) introduced the *Remote Transactions Parity Act of 2015* (RTPA/H.R. 2775) which authorizes states to collect remote online sales tax proceeds based on destination sales and use sourcing rules. The RTPA is structurally similar to the Marketplace Fairness Act (MFA), but does depart in certain narrow respects in an effort to respond to conservative criticism. The RTPA is supported by a diverse coalition of public and private sector stakeholders, including the Marketplace Fairness Coalition and other entities that traditionally support the MFA. As you will recall, the Senate passed the Marketplace Fairness Act with an overwhelming, bipartisan vote of 69 to 27 in May of 2013. It has stalled, however, in the House despite several attempts to bring it forward in the past few years.

The fate of the MFA/RTPA has become entwined with a separate internet-related tax issue, the Internet Tax Freedom Act (IFTA). The Internet Tax Freedom Act bars states from enacting new taxes on internet access. It was implemented 18 years ago to protect the nascent internet, and nine states were grandfathered under it due to having taxes in place prior to 1998. IFTA needs to be renewed periodically and was due to expire on September 30. It was extended, however, through a short-term continuing resolution, and, at the end of the year, it was renewed in the FY 2016 omnibus appropriations bill until September 30, 2016.

There is considerable support in the telecommunications industry to make IFTA permanent. Wireless and cable trade associations argue that expiration would likely increase the cost of broadband access as it would become more vulnerable to what they claim would be new onerous telecommunications taxes due to the Federal Communications Commission’s recent reclassification of broadband services as a Title II telecommunications service (net neutrality). On December 11, the House passed an unrelated bill that contained language providing for the Permanent Internet Tax Freedom Act (PIFTA/H.R. 235; ITFFA /S. 431) which would have struck entirely the expiration provisions that force reconsideration of the IFTA every few years, as well as the carve out for several states. The Senate removed the language from the bill, in part because key Senate supporters of the Marketplace Fairness Act will only agree to permanent extension if it is coupled with either the MFA or RTPA. The expiration of IFTA in the fall will ensure that this debate continues throughout the year.

HOMELAND SECURITY/PUBLIC SAFETY

SANCTUARY CITY LEGISLATION

As previously reported, in July, the House passed the *Enforce the Law for Sanctuary Cities Act* (H.R. 3009) which would deny COPS and Byrne JAG grant funding to jurisdictions deemed as “sanctuary cities” under a very broad definition. After numerous postponements of consideration in the Senate Judiciary Committee, reportedly because of disagreements among Republicans about penalty provisions in the bill, Senate Majority Leader Mitch McConnell (R-KY) brought the *Stop Sanctuary Policies and Protect Americans Act* (S. 2146) to the Senate floor in late October bypassing the committee. A cloture vote on the bill, which is a procedurally vote requiring 60 ‘yes’ votes to move a bill forward, failed 54-45. As he had with the House bill, the President issued a Statement of Administration Policy threatening to veto the Senate bill.

As the FY 2016 appropriations omnibus was negotiated, several sanctuary city policy riders were brought up for consideration. Ultimately, the bill remained free of any language concerning sanctuary cities. Although coverage of the issue has abated in recent months, it is possible that efforts to include restrictions on federal funding for designated sanctuary cities will continue in the FY 2017 appropriations process.

NEW EMERGENT THREAT PROGRAM

When Congress passed the FY 2016 omnibus appropriations measure (H.R. 2029), they created a new program under the Department of Homeland Security which will be housed in the Office of the Secretary. The program for “Responding to Emergent Threats from Violent Extremism” is a \$50 million discretionary and competitive program to address emergent threats from violent extremism and from complex, coordinated terrorist attacks. Congress did place some constraints on the funding:

- 1) No more than \$10 million for a Countering Violent Extremism (CVE) initiative to assist state and local communities prepare for, prevent and respond to emergent threats from violent extremism. These funds will be provided on a competitive basis to states, local governments, tribal governments, nonprofit organizations or institutions of higher education. Eligible activities include, but are not limited to: planning, developing, implementing or expanding educational outreach, community engagement, social service programs, training and exercises, as well as other activities determined appropriate by the Secretary;
- 2) No less than \$39 million for an initiative to help states and local governments prepare for, prevent and respond to complex, coordinated terrorist attacks with the potential for mass casualties and infrastructure damage;
- 3) No less than \$1 million for expanding or enhancing the Joint Counterterrorism Awareness Workshop Series, which brings together federal, state and local governments and the private sector to help regions improve their counter-terrorism preparedness posture, including the ability to address the threat of complex terrorist attacks.

On January 8, the Administration announced the formation of the Countering Violent Extremism (CVE) Task Force. The new Task Force will coordinate government efforts and partnerships to prevent violent extremism covering four key needs: 1) An infrastructure to coordinate and prioritize CVE activities; 2) clear responsibility, accountability and communications across government and with the public; 3) participation

of relevant departments and agencies outside of national security lanes; and 4) a process to assess, prioritize and allocate resources to maximize impact. It will serve as a permanent interagency task force hosted by the Department of Homeland Security and including the Department of Justice, the FBI, National Counterterrorism Center and other supporting departments and agencies.

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM (SCAAP) REIMBURSEMENT LEGISLATION

On December 10, 2015, Senators John McCain (R-AZ), Jeff Flake (R-AZ), Dianne Feinstein (D-CA) and Chuck Schumer (D-NY) introduced a bill to reauthorize the State Criminal Alien Assistance Program (S. 2395) and reimburse states for the cost of housing criminal aliens. The bill would authorize \$950 million/year reimbursement to state and local governments over the next five years. Additionally, the bill would allow reimbursement for costs associated with housing individuals who have been charged with crimes, not only for those who have been convicted.

The FY 2016 appropriations omnibus provided \$210 million for the SCAAP program, an increase of \$25 million over FY 2015.

HOUSING AND COMMUNITY DEVELOPMENT

JUVENILE RE-ENTRY ASSISTANCE PROGRAM

As part of President Obama's efforts to promote rehabilitation and re-integration for the formerly incarcerated, the U.S. Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ) announced in November \$1.7 million for Public Housing Authorities (PHAs) to aid eligible public housing residents who are under the age of 24 to expunge or seal their records in accordance with relevant state laws. Through the Juvenile Re-entry Assistance program (JRAP), HUD and DOJ are teaming up to help those who have paid their debt to society to rehabilitate and reintegrate back into their communities. The program specifically excludes makers of meth on public housing property, sex offenders and those convicted of domestic violence. Additionally, HUD announced updated public housing arrests guidance to PHAs regarding the use of arrests in determining who can live in HUD-assisted properties. The guidance outlines that arrest records may not be the basis for denying admission, terminating assistance or evicting tenants. It reiterates that HUD does not require PHAs and owners to adopt a "one strike" policy. The Administration estimates that 60,000 youths under age 24 are confined in juvenile detention and correctional facilities, with hundreds of thousands more on probation, and believes that these consequences create unnecessary barriers to economic opportunity and productivity.

CHOICE NEIGHBORHOOD PLANNING AND ACTION GRANTS

In November, HUD announced the availability of another round of Choice Neighborhood Planning Grants to help communities redevelop severely distressed public and HUD-assisted housing and transform surrounding neighborhoods. The funding announcement introduces an additional, innovative component to the Planning Grants, called Planning and Action Grants. Grants of up to \$2 million will enable communities to create a locally-driven plan to transform struggling neighborhoods, as well as implement early improvements, such as reclaiming vacant property and attracting new businesses. Choice Neighborhoods is HUD's signature place-based initiative in support of the President's goal to build Ladders of Opportunity to the middle class. Choice Neighborhoods is focused on three core goals:

- Housing: Replace distressed public and assisted housing with high-quality mixed-income housing that is well-managed and responsive to the needs of the surrounding neighborhood;
- People: Improve educational outcomes and intergenerational mobility for youth with services and supports delivered directly to youth and families;
- Neighborhood: Create the conditions necessary for public and private reinvestment in distressed neighborhoods to offer the kinds of amenities and assets, including safety, good schools and commercial activity that are important to families choices about their community.

Until now, the Planning Grant funds could only be used to create a neighborhood Transformation Plan, but in this round communities with severely distressed public or HUD-assisted housing will continue to develop a successful neighborhood transformation plan and build the support necessary for that plan to be successfully implemented. The grants will enable activities such as: reclaiming and recycling vacant property into community gardens, pocket parks, farmers markets or land banking; beautification, place-making, and community arts projects; homeowner and business façade improvement programs; neighborhood broadband/WiFi; fresh food initiatives and gap financing for economic development projects. Choice Neighborhoods Planning Grant funds are available for public housing authorities, local governments, non-profits, and tribal entities. Applications are due February 9, 2016.

PROMISE ZONES

On December 18, HUD and the Department of Agriculture (USDA) announced the opening of the third and *final* round of Promise Zone applications. Promise Zones are high-poverty communities where the federal government partners with local leaders to increase economic activity, improve educational opportunities, leverage private investment, reduce violent crime, enhance public health and address other priorities identified by the community. Through the Promise Zone designation, communities will work directly with federal, state and local agencies to give local leaders proven tools to improve the quality of life in some of the country's most vulnerable areas. Any communities meeting the eligibility criteria, which include having a contiguous boundary, high poverty rate and a population within the area not exceeding 200,000 residents, can apply for a designation. HUD and USDA will designate seven Promise Zones across urban, rural and tribal communities for the final round. Once designated, each Promise Zone will be coordinated by a lead community-based organization in partnership with the Obama Administration. All Promise Zones will receive priority access to federal investments that will further their strategic plans, federal staff on the ground to help them implement their goals, and five full-time AmeriCorps VISTA members to recruit and manage volunteers and strengthen the capacity of the Promise Zone initiative. Webcasts will be held on January 13 and February 1. The deadline for submitting an application is February 23, 2016.

EXPORT-IMPORT BANK

In adopting a six-year transportation bill to fund highway and transit projects, the FAST Act, Congress also approved the revival of the Export-Import bank which had been idle since its charter expired in June. There were no limitations on the extension of the Ex-Im bank, despite being targeted by conservative Republicans who claimed that it amounted to corporate welfare.

The Export-Import bank provides loan guarantees that support the sale of U.S. goods, large and small, to foreign countries. Last summer, the Senate had voted 64-29 in favor of the bank, but Senate Majority Leader Mitch McConnell urged that it be attached to the FAST Act in order for it to be approved by both

chambers. The bank dates back to the administration of President Franklin Roosevelt. During the lapse in its charter, the bank continued to manage a portfolio of outstanding obligations until the renewal.

PATENT REFORM

Legislative efforts on patent reform stalled last summer amid growing concern from biotech and university groups, as well as small inventors. The House and Senate Judiciary Committees approved differing bills in June (H.R. 9/S. 1137) that would require “patent trolls” who bring judicially-deemed frivolous patent infringement cases to pay defense attorney fees and provide detailed initial pleadings. Although a similar version of the House bill was passed by that chamber in 2013, increasing opposition by rank-and-file Republicans forced leadership to pull the bill from the House floor in July.

However, recent actions by the Supreme Court may help curtail frivolous patent infringement litigation. In October, the Court agreed to hear arguments on two consolidated cases focused on the test used in patent infringement cases to determine damage awards from a party that initiates bad-faith litigation. The parties in these cases were awarded three times the amount of assessed damages. Arguments are scheduled for February 26. Additionally, in his 2015 end-of-year report regarding 2015 civil rules amendments, Chief Justice John G. Roberts, Jr., announced changes that could impact patent litigation. The changes included the elimination of a form typically used in the filing of patent lawsuits. Legal experts believe the elimination of this form, which reportedly took little effort to complete, will now require plaintiffs to file more substantial pleadings in order to initiate patent litigation.

CYBERSECURITY

In October, the Senate passed the Cybersecurity Information Sharing Act (CISA/S. 754). The text of the bill was incorporated by amendment into a consolidated spending bill (“Omnibus”) in the U.S. House of Representatives, a measure that passed by both chambers of Congress in mid-December. President Obama signed the Omnibus bill containing CISA into law on December 18, 2015. Already, in the first full week of 2016, Congress is continuing to scrutinize the federal government’s response to cyberattacks and is expected to continue its oversight activities.

In the context of seeking to deny foreign terrorist organizations the ability to use the Internet to further their recruitment or messaging activities, the Obama Administration met with Silicon Valley leaders in the first week of January to discuss this and encryption. On December 31, the Department of the Treasury’s Office of Foreign Assets Control (OFAC) [issued regulations](#) to implement Executive Order (E.O.) 13694, which was issued by President Obama on April 1, 2015, and titled, “Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities.” The E.O. was issued after several high-profile attacks on U.S. companies and on the U.S. Government. The OFAC regulations (31 CFR Part 578) were issued in abbreviated form in order to provide immediate guidance to the public, with more detailed guidance to follow.

TRADE ISSUES

Congress passed three major trade bills in 2015, including legislation renewing Trade Promotion Authority (TPA) to fast-track consideration of future trade deals. The Administration also continued work on several major trade agreements, including the Transatlantic Trade and Investment Partnership aimed at deepening relations with the European Union. And, before the end of the year, supporters of the Export-Import Bank successfully renewed the agency's charter for another four years.

One of the biggest trade issues looming in 2016 is Congress' potential consideration of the Trans-Pacific Partnership (TPP) agreement, one of the largest trade deals in world history. While cementing the trade pact remains a critical tenant of President Obama's pivot to Asia and his foreign policy legacy more broadly, it is unclear whether he will secure enough Congressional support for a vote before he leaves office, given trade can be a hot topic during an election year and lawmakers have already voiced concerns with several of the agreement's final provisions. At the same time, the Administration will continue to defend the nuclear agreement it negotiated with Iran and other world powers, countering lawmaker concerns with expected sanctions easing in early 2016 under the terms of that deal. Finally, Congress could also soon vote on customs and trade facilitation legislation, a bill facing opposition due to included internet taxation provisions.

TRANS-PACIFIC PARTNERSHIP

On November 5, the President transmitted notice of his intent to enter into, or sign, the TPP agreement to Congress pursuant to TPA's requirements. At a time yet unknown, the Administration will submit implementing legislation to Congress, kick-starting TPA's fast-track procedures. Many major trade and business associations, including the U.S. Chamber of Commerce and National Association of Manufacturers, waited until early January to announce conditioned support of the deal, while a number of lawmakers have been reluctant to publicly support the measure over a variety of issues.

Regardless of potential obstacles, President Obama expressed optimism for advancing the TPP deal in 2016 before the December holidays, calling it "the most pro-labor, pro-environment, progressive trade deal in history, that eliminates just about every tariff on American manufacturing goods in countries that up until this point have charged a tax, essentially, on anything that American workers and American businesses sell in these areas."

Senate Majority Leader Mitch McConnell (R-KY) warned in December that the political environment is not conducive for the TPP deal, in reference to the upcoming election season. House Speaker Paul Ryan (R-WI) was also guarded about the TPP deal's prospects in 2016, saying, "I think it's very possible, I just don't know when." Congress has scheduled only a limited number of legislative days in 2016, leaving little time to decide when TPP will move.

SANCTIONS

Efforts to implement the nuclear deal with Iran continued in late 2015. The Administration is expected to ease sanctions under the terms of the so-called Joint Comprehensive Plan of Action (JCPOA) in the first quarter of 2016, after the International Atomic Energy Agency certifies that Iran has met its commitments under the deal. In December, a United Nations panel concluded that Iran had tested a ballistic missile in October, violating Security Council Resolutions. Bipartisan Members in both chambers of Congress advocated for the Administration to respond, with some pushing for unilateral sanctions if necessary,

given sanctions related to weapons testing, terrorism, and human rights are not impacted by the JCPOA. Despite concerns from lawmakers, the Administration is making every effort to secure implementation of the JCPOA, and President Obama is expected to veto any sanctions legislation that may threaten the agreement.

The House is planning to consider Iran sanctions legislation in mid-January. The *Iran Terror Finance Transparency Act* (H.R. 3662), introduced by Representative Steve Russell (R-OK), would block the Obama Administration from lifting sanctions against certain individuals or banks without certification that they do not support terrorism, the Iranian Revolutionary Guard Corps, or Iran's alleged proliferation of weapons of mass destruction. Numerous other Iran-related bills remain pending, including nonbinding legislation that would express support for state and local government sanctions against Iran.

Lawmakers are also expected to advance additional North Korea sanctions in early 2016, following reports of nuclear testing soon after the New Year. The Administration eased some restrictions on Cuba as the two countries continue their rapprochement. The Administration released regulations in late December implementing a new sanctions program related to illicit cybersecurity activities. Finally, the Obama Administration sustained and increased sanctions on Russian individuals and entities in the last half of 2015, though the situation on the ground in eastern Ukraine remained a virtual stalemate.

CUSTOMS BILL

The Senate and House conferenced a pending customs measure in December, suggesting quick approval before the holiday break. The bill was ultimately, and somewhat unexpectedly, sidelined over objections to included language permanently extending a ban on some internet taxes. The House already approved the measure, but the ban's opponents in the Senate are expected to raise a point of order to strike the tax provision and send the conference report back to the House. The final customs bill includes updates to trade enforcement procedures that some Democrats argue must become law before TPP enters into force, adding yet another wrinkle to the mix.

ELEMENTARY AND SECONDARY EDUCATION ACT ("NO CHILD LEFT BEHIND") REAUTHORIZATION

On December 10, the President signed the *Every Student Succeeds Act (ESSA)* (S. 1177) into law. The bill replaces the 14-year-old No Child Left Behind (NCLB) law and reauthorizes the Elementary and Secondary Education Act (ESEA) of 1965 through FY 2020. The bipartisan bill received broad support in the House and Senate, appealing to Republicans for its limitations on the role of the federal government and to Democrats for its efforts to protect low-income and minority students.

Some key provisions include:

- **State and Local Control.** Overall, the bill moves a lot of the decisions about education out of the federal Department of Education to state and local educational agencies. Increased flexibility for states and local school districts was a major priority of Republicans in the negotiations. In particular, the Department of Education's authority is more limited than in the past as it relates to testing, standards, and school turnarounds.
- **Early Childhood.** ESSA authorizes \$250 million per year for an early childhood education program similar to the current Preschool Development Grant program. The program will be administered by the Department of Health and Human Services (HHS) in coordination with the Department of Education. Democrats preferred for the program to be run by the Department of Education but

compromised with Republicans so that HHS could administer the program along with its other early education programs, such as Head Start.

- Accountability. ESSA requires states and local school districts to establish their own accountability measures and goals, including how to use test scores to determine a school's performance and developing plans to improve the lowest-performing schools. States will still have to submit their accountability plans to the Department of Education, but states can now choose their own goals to include in their accountability systems. Through the new accountability system, states will have to identify and intervene in the bottom five percent of schools based on the performance measures they design.
- NCLB Waivers. The bill outlines how states should transition from the current use of waivers under NCLB to the new law. Waivers will no longer be in effect starting on August 1, 2016, but states will still have to continue supporting the lowest-performing schools and schools with large achievement gaps until the new state accountability plans are finalized.
- Testing. ESSA maintains the standardized testing requirements of No Child Left Behind, but encourages states to reduce the number of tests. The bill maintains the federal requirement for 95 percent participation in tests, but school districts with less than this participation rate would not be considered failures, as the policy currently stands under NCLB.
- Standards. ESSA requires states to adopt "challenging" academic standards but prohibits the Department of Education from setting national academic standards, such as Common Core.
- Teacher Evaluation. ESSA eliminates the term "highly qualified teacher" created under NCLB and further prohibits the Education Department from creating standards for the evaluation of teachers.
- School Choice. The final bill does not include the House provisions related to Title I portability that would allow federal funds to follow a student to the school of their choice. Additionally, the bill does not change the Title I formula, as the Senate bill proposed, to ensure that a greater share of Title I formula dollars go to districts with higher concentrations of students in poverty.

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From: Squire Patton Boggs (US) LLP
Date: December 8, 2015
Subject: Summary of Fixing America's Surface Transportation Act (FAST Act)

I. Executive Summary

The conference report on the surface transportation reauthorization bill, the Fixing America's Surface Transportation Act (FAST Act), was signed into law on Friday, December 4, after passing the House on a 359-65 vote and in the Senate on an 83-16 vote on Thursday, December 3. The text of the law can be found [here](#).

The FAST Act authorizes \$305 billion over fiscal years 2016 to 2020, including \$225.2 billion for highways and \$48.7 billion for transit; providing a \$12.9 billion increase in contract authority over the House's Surface Transportation Reauthorization and Reform Act (STRR Act) and a \$681 million increase over the Senate's Developing a Reliable and Innovative Vision for the Economy Act (DRIVE Act). In FY 2016, the law provides an increase of 5.1 percent (\$2.1 billion) for highway spending, which then continues to grow at 2.1 to 2.4 percent per year through FY 2020. The bill increases transit funding by nearly 18 percent over five years. Highway Trust Fund revenues are insufficient to support these authorization levels, so the bill transfers \$70 billion from the General Fund to the Highway Trust Fund and offsets this increased spending with over \$70 billion in budgetary "pay-fors," primarily through transferring funds from a Federal Reserve surplus account to the General Fund.

The FAST Act continues nearly all of the highway and transit formula programs of MAP-21, and focuses much of the increase in highway funding on two new freight programs, one formula-based and one discretionary. The bill does not include a large discretionary grant program with eligibility for transit projects, like the Senate DRIVE Act's Assistance for Major Projects program, but the FAST Act does reestablish the bus and bus facilities discretionary grant program, converts the Surface Transportation Program into a block grant, promotes and increases access to innovative finance tools, and builds on the environmental streamlining and project acceleration provisions of previous authorization bills.

The bill also reauthorizes Amtrak, realigning funding to reflect and support Amtrak's two lines of business by establishing a Northeast Corridor Improvement account and a National Network account for the remainder

of Amtrak's nationwide system. The bill also provides \$199 million in contract authority in FY 2017 from the mass transit account of the Highway Trust Fund to support deployment of positive train control (PTC) systems. The short-term transportation extension bill passed in late October extended the PTC compliance deadline for three years, until December 31, 2018.

II. Federal-aid Highway Programs

- **Nationally Significant Freight and Highway Projects (NSFHP)** (Section 1105): The bill establishes a competitive discretionary grant program for large projects on the National Highway Freight Network, highway or bridge projects on the National Highway System, intermodal projects on the National Multimodal Freight Network, or rail-highway grade crossing and separation projects. NSFHP funding can be used to pay for TIFIA subsidy and administrative costs. Local governments and Metropolitan Planning Organizations are eligible to apply directly for grants. Provides \$800 million in FY 2016, increasing \$50 million each year to \$1 billion in FY 2020.
- **National Highway Freight Program** (Section 1116): The bill establishes a formula funding freight program to provide funding to each State in proportion with the State's share of primary highway freight system mileage relative to the total primary highway freight system mileage. During redesignation of the primary highway freight system, every five years, the system mileage may be increased by up to 3 percent. Provides \$1.15 billion in FY 2016, \$1.1 billion in FY 2017, \$1.2 billion in FY 2018, \$1.35 billion in FY 2019, and \$1.5 billion in FY 2020. This is higher than the DRIVE Act's level in FY 2016, but significantly lower in FYs 2017-2020.
- **Surface Transportation Block Grant Program** (Section 1109): The bill changes the Surface Transportation Program into a block grant program, and increases the amount suballocated on the basis of population from the current 50 percent to 51 percent for FY 2016, increasing 1 percent each year to 55 percent in FY 2020. It is not completely clear how changing the program into a block grant to states will affect how the program is administered, as it will likely be different in each state.
 - Provides \$11.16 billion in FY 2016, \$11.42 billion in FY 2017, \$11.67 billion in FY 2018, \$11.88 billion in FY 2019, and \$12.14 billion in FY 2020.
 - Repeals the Transportation Alternatives Program (TAP), and replaces the 2 percent set-aside with a set-aside of \$835 million per year in FY 2016 and FY 2017 and \$850 million each year from FY 2018 through FY 2020 that may be spent on all projects or activities that were previously eligible under TAP. These set-aside amounts are higher than the \$819 million authorization for transportation alternatives for FYs 2014 and 2015 under MAP-21. Only 50 percent of these funds will be suballocated on the basis of population.
- **Congestion Mitigation and Air Quality Improvement Program** (Section 1114): Makes vehicle-to-vehicle technologies and diesel retrofits for vehicles that are used in port infrastructure projects CMAQ-eligible for PM2.5 nonattainment or maintenance areas. Makes port-related equipment and vehicles operated within a PM2.5 nonattainment or maintenance area CMAQ-eligible. Provides

\$2.31 billion in FY 2016, \$2.36 billion in FY 2017, \$2.41 billion in FY 2018, \$2.45 billion in FY 2019, and \$2.5 billion in FY 2020.

- **National Highway Performance Program (NHPP)** (Section 1106): Allows NHPP funding to be used to pay TIFIA subsidy and administrative costs and allows NHPP funds to be used for bridges off the NHS. Provides \$22.33 billion in FY 2016, \$22.83 billion in FY 2017, \$23.26 billion in FY 2018, \$23.74 billion in FY 2019, and \$24.24 billion in FY 2020.
- **Highway Safety Improvement Program (HSIP)** (Section 1113): Makes vehicle-to-infrastructure technologies, pedestrian hybrid beacons, median separation, and other physical infrastructure safety projects eligible for HSIP funding. Provides \$2.23 billion in FY 2016, \$2.28 billion in FY 2017, \$2.32 billion in FY 2018, \$2.36 billion in FY 2019, and \$2.41 billion in FY 2020.
- **Construction of Ferry Boats and Ferry Terminal Facilities** (Section 1112): Increases funding from \$67 million to \$80 million per year, and adjusts the formula for distribution of funds from 20 percent based on the number of ferry passengers, 45 percent based on the number of vehicles, and 35 percent based on total route miles to 35 percent each for the number of passengers and number of vehicles and 30 percent for the total route miles.

III. Infrastructure Finance

- **Transportation Infrastructure Finance and Innovation Act (TIFIA)** (Section 2001): The bill reauthorizes the TIFIA credit assistance program at levels significantly below MAP-21: \$275 million for each of FY 2016 and FY 2017, \$285 million for FY 2018, and \$300 million for each of FY 2019 and FY 2020. To ensure sufficient funding for the pipeline of anticipated projects under these new authorization levels, the bill also repeals the redistribution of unused funds to other programs, a provision that was included both the House and Senate bills. Additionally, States may use their NHPP and STP apportionments to pay the subsidy and administrative costs for projects receiving TIFIA assistance.
 - The conferees adopted much of the Senate bill's TIFIA language, including the loans-to-lenders program in which State Infrastructure Banks (SIBs) can apply for TIFIA assistance to capitalize a rural projects fund and re-lend the loan proceeds to downstream rural infrastructure projects.
 - The bill adopts the Senate bill provision expanding TIFIA eligibility to include projects "to improve or construct public infrastructure" that is located within walking distance of, and accessible to public transportation, an intermodal facility, or a public utility.
 - The bill adopts the House provision requiring the Secretary to establish a streamlined and expedited application process for project sponsors seeking loans of no more than \$100 million for projects secured by pledged revenues not affected by project performance (such as tax revenues).

- State Infrastructure Banks: The bill also restores states' authority to capitalize their state infrastructure banks with federal-aid highway apportionments for FY 2016 through FY 2020.
- **National Surface Transportation and Innovative Finance Bureau** (Section 9001): establishes a Finance Bureau that will administer TIFIA, the Railroad Rehabilitation and Improvement Financing (RRIF) program, and the new NSFHP discretionary grant program for freight projects. The Bureau will also develop and promote best practices for public-private partnerships (P3s), provide advice to state and local governments, and require project sponsors to undergo a value for money analysis and make it publicly available. The Bureau will also make highway and surface freight transfer facility private activity bond allocations, but the bill does not increase the \$15 billion cap on such bonds.
- **Water Infrastructure Finance and Innovation Act** (WIFIA) (Section 1445): The FAST Act also amends WIFIA to strike the provision prohibiting communities from funding water infrastructure projects with a combination of WIFIA assistance and tax-exempt debt.
 - Under the terms of the WIFIA program, project sponsors can secure a low-interest loan for up to 49 percent of project costs; the remaining 51 percent must come from other sources. Tax-exempt bonds will generally be the most cost-effective source for the required non-WIFIA share of project costs, so permitting project sponsors to use tax-exempt debt with WIFIA assistance will ensure the WIFIA program works as intended to reduce project costs and accelerate investment in much-needed major infrastructure improvements.
 - While funding has been appropriated for the administrative costs of standing up the EPA's WIFIA office, appropriations necessary to support WIFIA loans to project sponsors are expected in FY 2017.
- **Regional Infrastructure Accelerator Demonstration Program** (Section 1441):
 - Modeled on the West Coast Infrastructure Exchange, the new Regional Infrastructure Accelerator program established in the bill provides \$12 million in General Funds for the Secretary to establish one or more regional entities to develop financing strategies and otherwise promote and accelerate the development of projects eligible for TIFIA assistance.
 - Each regional entity would serve a defined geographical area and advance the following purposes: evaluate and promote innovative financing methods for local projects; build capacity of State, local, and tribal governments to evaluate and structure projects involving private capital; provide technical assistance and information on best practices to potential project sponsors; foster a pipeline of projects available for investment; bundle small and rural projects to make them more marketable to investors; and reduce transaction costs for public project sponsors.
- **Tolling, HOV Eligibility, Interstate Reconstruction and Rehabilitation** (Section 1411):

- Requires equal access to HOV facilities for all public transportation vehicles and public or private over-the-road buses.
- Extends, with some modifications, the provisions authorizing public authorities to permit various types of energy efficient and low-emission vehicles to use HOV lanes as follows:
 - May permit alternative fuel vehicles and qualified plug-in electric drive vehicles to use HOV facilities until the end of FY 2025; and
 - May permit certified low emission and energy-efficient vehicles to use HOV facilities until the end of FY 2019.
- Provides greater flexibility in the HOV facility maintenance-of-operating-performance provisions, and permits US DOT to waive sanctions for degraded HOV operations upon a finding that such waiver is in the public interest and the authority has made a good faith effort to improve facility performance.
- Adopts the House bill provisions amending the Interstate reconstruction pilot program to (1) require applicants for a slot in the pilot program to have approved enabling legislation necessary for their proposed toll project to proceed; and (2) establish requirements for project completion, including a general term that provisionally approved applications shall expire 3 years after initial approval, and that previous provisionally approved applications must meet the pilot program requirements within one year of enactment of the FAST Act, or their application will expire.

IV. Innovation

- **Intelligent Transportation Technologies Deployment** (Sections 6003 and 6004): Includes an Advanced Transportation and Congestion Technologies Deployment Initiative (Section 6004) to provide \$60 million in grant funding for the installation and operation of technologies to improve safety, efficiency, system performance, and infrastructure return on investment. Provides \$67.5 million per year for the Technology and Innovation Deployment Program (Section 6003).
- **Future Interstate Study** (Section 6021): Requires the Secretary to enter into an agreement with the Transportation Research Board (TRB) to study the actions needed to upgrade and restore the National System of Interstate and Defense Highways.
- **Surface Transportation System Funding Alternatives** (Section 6020): Establishes a user-fee financing demonstration program to make grants to States to test the design, acceptance, and implementation of user-based alternative mechanisms for generating revenues for the HTF. Funds the grant program at \$15 million in FY 2016 and \$20 million per year for FY 2017 through FY 2020.

V. Public Transportation

- The FAST Act reauthorizes Urbanized Area Formula Grants, Rural Formula Grants, and the Fast Growth/High-Density program and provides for modest growth in these programs. It significantly increases State of Good Repair funding from \$2.17 billion in FY 2015 to \$2.51 billion in FY 2016 and increasing to \$2.68 billion in FY 2020. The bill also greatly increases funding for buses and bus facilities, more closely aligning overall public transportation funding to the historical 40 New Starts/ 40 Rail/ 20 Bus proportions that were altered in MAP-21.
- **Grants for Buses and Bus Facilities** (Section 3017): The bill reauthorizes the bus and bus facilities formula program and reestablishes a bus discretionary program for projects to replace, rehabilitate, purchase, or lease buses, bus equipment, and bus facilities. The conferees did not adopt the House provision striking High-Density state apportionments under § 5340(d) and redirecting those funds to the bus discretionary program.
 - Within the bus formula program, the bill establishes a pilot program for cost-effective capital investment by permitting transit agencies in a State to pool their formula funds; the State must ensure that each transit agency participating in the pool receives an amount of funds equal to what each would otherwise individually receive over the five-year period of the bill. Provides level funding for the bus formula program in FY 2016, \$427 million, increasing to \$464 million in FY 2020.
 - Within the bus discretionary program, the bill permits a State to submit a statewide application on behalf of a transit agency operating in rural areas or other areas for which the State allocates funds. Bus discretionary grant applicants in urbanized areas must meet the requirements of §5307, and applicants in rural areas must meet the requirements of § 5311. No single grantee may be awarded more than 10 percent of total available grants. The bus discretionary program (inclusive of no or low emission grants) is funded at \$264 million in FY 2016, \$284 million in FY 2017, \$302 million in FY 2018, \$322 million in FY 2019, and \$344 million in FY 2020.
 - Discretionary grants for low or no emission vehicles, equipment, and facilities (including retrofitting facilities for charging stations) are moved out of research programs and into the bus program, to reflect the conferees' intent that such grants should support vehicles and facilities that are ready for use in public transportation service. Grant applicants must meet the requirements of § 5307.
- **Fixed Guideway Capital Investment Grants** (Section 3005): The bill reauthorizes the Capital Investment Grants program with only minor changes in project eligibility criteria and increases General Fund authorizations for the program from the MAP-21 level of \$1.9 billion per year to \$2.3 billion per year (flat-line authorizations over the 5-year life of the bill). The final funding levels each year remain within the control of the annual appropriations process.
 - Small Starts: The bill provides some increased flexibility in funding corridor-based bus rapid transit projects by striking the requirement for short headways on weekend days. Additionally, the bill increases the caps on Small Starts projects: the limit on total project

costs is increased from \$250 million to \$300 million, and the cap on eligible § 5309 costs is increased from \$75 million to \$100 million.

- Federal Share of Project Costs: The bill retains the 80 percent federal share provision for new fixed guideway projects, Small Starts, and Core Capacity projects, but reduces the § 5309 share (the amount of any Full Funding Grant Agreement (FFGA)) for any new fixed guideway capital project to 60 percent of capital project costs.
- STP Funding: The conferees did not adopt the House provision banning the use of Surface Transportation Block Grant Program (STBGP) funding for new fixed guideway capital projects.
- Expedited Project Delivery Pilot Program: The bill establishes a pilot program in which the Secretary may enter into as many as 8 FFGAs to expedite the delivery of new fixed guideway, Small Starts, or Core Capacity projects undertaken via public-private partnership arrangements. The federal share of project costs under this pilot is limited to 25 percent.
- **Enhanced Mobility of Seniors and Individuals with Disabilities** (Section 3006):
 - Reauthorizes § 5310 with modest funding increases and directs the Secretary to collect, review, and disseminate best practices to public transportation agencies.
 - Establishes a pilot program to provide grants for innovative projects that improve the coordination of transportation services and non-emergency medical transportation services for the transportation disadvantaged. Grants require a 20 percent local match. Provides \$2 million from the Highway Trust Fund in FY 2016, \$3 million in FY 2017, \$3.25 million in FY 2018, and \$3.5 million in FY 2019 and FY 2020.

VI. Planning

- **Metropolitan Transportation Planning** (Sections 1201 and 3003):
 - Provides that representation on MPOs must be determined by the bylaws or enabling statute of the MPO, and allows a representative of a public transportation provider to serve as a representative of a local municipality.
 - Adds intermodal facilities that support intercity transportation, including intercity buses and bus facilities, to items allowed in a transportation improvement program (TIP).
 - Encourages MPO officials to consult and coordinate with officials responsible for tourism and natural disaster risk reduction.
 - Adds improving the reliance and reliability of the transportation system and reducing or mitigating stormwater impacts of surface transportation and enhancing travel and tourism as issues that the metropolitan planning process should address.
 - Adds intercity bus operators and employer-based commuting programs such as a carpool program, transit benefit program, parking cash-out programs, shuttle program, or telework program as ways travel demand can be reduced through congestion management.

- Provides that MPOs may develop a congestion management plan that will (1) develop regional goals to reduce vehicle miles traveled during peak commuting hours; (2) identify existing public, employer-based, and other transportation services that support access to jobs; and (3) identify projects and programs to reduce congestion and increase job access opportunities. In developing the congestion management plan, requires MPOs to consult with employers, private and nonprofit providers of public transportation, transportation management organizations, and organizations that provide job access reverse commute projects or job-related services to low-income individuals.
- **Statewide and Nonmetropolitan Transportation Planning** (Sections 1202 and 3003):
 - Makes similar changes to statewide and nonmetropolitan transportation planning provisions, including allowing intermodal facilities that support intercity transportation to be included in a TIP, and improving the reliance and reliability of transportation systems and enhancing travel and tourism as issues the planning process should address. Requires the use of a performance-based approach for statewide and nonmetropolitan transportation planning.

VII. Environmental Streamlining and Accelerated Project Delivery (Sections 1301-1318)

- **Eliminating Duplication of Environmental Reviews:** To eliminate the duplication of environmental reviews at the state and federal levels, directs the Secretary to establish a pilot program to authorize up to 5 states to conduct environmental reviews and make approvals for projects, either using the State’s environmental requirements or National Environmental Protection Act (NEPA) requirements. States in the pilot program may exercise the authority for locally administered projects for up to 25 local governments. The Secretary must approve or disapprove of applications to the pilot program within 120 days.
- **Satisfaction of Requirements for Certain Historic Sites:** Requires the Secretary to coordinate with the Interior Department and the Advisory Council on Historic Preservation to establish implementing regulations and procedures to align NEPA requirements with rules regarding historic sites. Provides that if the Secretary in an analysis required by NEPA makes the determination that there is no feasible alternative to the use of a historic site for a public transportation or highway project, and the State and tribal historic preservation officers, the Council, and the Secretary of the Interior concur, that no further analysis is required.
- **Treatment of Certain Bridges Under Preservation Requirements:** Codifies a 2012 FHWA regulation exempting common post-1945 concrete or steel bridges or culverts from individual review. Relaxes requirements under the Migratory Bird Treaty Act for repairs to bridges in “serious” condition.
- **Programmatic Agreements:** Directs USDOT to establish a programmatic agreement template that can be used for individual projects, and requires the terms of a finalized programmatic agreement be given substantial weight by all agencies involved in the review process. Allows the use of programmatic agreements to speed approval time by processing categorical exclusions as a group instead of on a case-by-case basis.

- **Transparency:** Expands the use of a federal Permitting Dashboard for all transportation projects requiring an Environmental Impact Statement or Environmental Assessment, to allow the public to track the federal review process.
- **Accelerated Decisionmaking in Environmental Reviews:** Requires a lead agency, “to the maximum extent practicable,” to combine a final environmental impact statement and record of decision into a single document unless substantial changes to the proposed action are made by the environmental impact statement or there is a significant new circumstance or information relevant to environmental concerns. Allows the lead agency to use errata sheets to modify a final environmental impact statement if the changes are confined to factual corrections or explanations. Allows for the adoption and incorporation of documents by reference.
- **Emergency Exemptions:** Provides additional exemptions and expedited procedures for projects to repair damaged roads, highways, railways, bridges, or transit facilities during emergency situations.
- **Efficient Environmental Reviews for Project Decisionmaking:** Directs USDOT to develop guidelines for conducting coordinated project reviews, and to develop an environmental checklist to be used when coordinating agencies set project review schedules.
- **Deadlines:** Establishes the following deadlines to speed up the environmental review and approval processes:
 - 45-day deadline to identify all participating agencies;
 - 45-day deadline for the receipt from project application for USDOT to decide whether to initiate the environmental review process;
 - 45-day deadline for USDOT to requests for a modal administration to act as lead agency, which may be extended by 45 additional days with new information; and
 - 90-day deadline to develop a coordination plan to receive comments from participating agencies.