

## **House Approves Final Version of Five-Year Highway Bill**

The U.S. House of Representatives approved a final version of a five-year \$305 billion highway reauthorization. The FAST Act became law on December 4, 2015 and it's over 1,300 pages long, dealing with subjects ranging from AMTRAK to hazmat, distracted driving, and used car lots selling recalled cars. The bill replaces MAP-21, which expired over a year ago and Congress passed over 30 short-term extensions before reaching agreement on FAST.

Here is a summary of the key provisions:

### **Funding**

The new Highway Bill, called the Fixing America's Surface Transportation Act, or FAST Act, provides for \$305 billion over five years for highways, transit, etc. Though funding for five years is welcome, the amount falls short of needed investment, and there is no stable long-term source of funding, as there could be if fuel taxes were raised and indexed for inflation. Therefore, when the FAST Act expires (along with the short-term extensions that Congress uses to kick the can down the road), funding issues will have to be faced again. Overall, the bill would guarantee the solvency of the Highway Trust Fund through fiscal year 2020. It would require offsets for a general fund transfer to the trust fund of \$70 billion. About \$50 billion of that would be dedicated to highways programs, with \$18 billion directed to mass transit systems. In Section 6020, Congress provided for grants to states to explore user fee options for highway infrastructure funding. This could lead to more research on approaches like a Vehicle Miles Traveled (VMT) fee.

### **Red Tape**

The FAST Act, like MAP-21, calls for faster permitting and approval of infrastructure projects.

### **Port Performance**

Section 6018 calls for collection of port performance statistics at the largest U.S. ports (the top 25 by tonnage, by TEUs, and for dry bulk). A working group will be established to help determine appropriate performance measures.

### **Truck Sizes and Weights**

Efforts to relax the federal freeze preventing large trucks on interstate highways from exceeding 80,000 lbs. gross vehicle weight were unsuccessful, though several localized exceptions – e.g., for logging trucks – were approved. The effort led by FedEx and UPS to be allowed to use twin 33 foot trailers was not addressed in the FAST Act, but might be covered by separate appropriations legislation.

### **Studies**

Various studies are called for. Two involve loading/unloading detention and motor carrier insurance. In Section 5501, DOT's Inspector General is given one year to report on delays experienced by truck drivers waiting to load or unload, and the impact of such delays on safety, driver pay and the efficiency of the transportation system and the economy. Section 5509 provides that if FMCSA conducts a rulemaking proceeding to consider whether motor carriers should carry more insurance, certain issues must be addressed, including the sufficiency of current insurance levels, the ability of the insurance industry to provide more insurance, and impacts on safety.

### **National Hiring Standards**

It was hoped that provisions on this issue would help limit exposure to negligent hiring lawsuits for shippers and brokers using carriers that are properly registered and insured, and which do not have an Unsatisfactory safety rating. Unfortunately, the "Duncan Act" was not included in the FAST Act.

### **CSA**

Congress clearly signaled its unhappiness with FMCSA's Compliance, Safety, Accountability program, which incorporates the Safety Measurement System with its BASICS scores and "golden triangles." Numerous government studies have criticized these FMCSA programs, and in sections 5221 to 5225 of the FAST Act, Congress called for a study looking into problems with these programs. FMCSA must then adopt and implement corrective action, and until it does, it cannot post BASICS information. These scores have already been removed from the FMCSA website. (This may help a little in reducing shippers' exposure to negligent hiring lawsuits, since tort lawyers may have more trouble arguing that carriers known to be unsafe were hired.)

### **Driver Shortage**

Section 5401 should facilitate the hiring of veterans as truck drivers. Section 5404 sets up a pilot program to look into whether veterans between 18 and 21 years old should be able to operate CMVs in interstate commerce (many such veterans are already operating in intrastate commerce).

### **Multimodal Freight Transportation**

In a nod to freight (and to multimodalism), the FAST Act calls for development of a National Freight Strategic Plan and a National Freight Multimodal Freight Network, and also encourages similar efforts by the states. Major gateways and bottlenecks are to be identified, in hopes of improving efficiency and performance. See Section 8001. Also provided for and funded are the Nationally Significant Freight and Highway Projects Program and the National Highway Freight Program.

### **FMCSA Rulemaking**

For too long, FMCSA has avoided rulemaking proceedings in which stakeholders like NASSTRAC can be heard, and it has ignored many congressionally imposed deadlines. In an extraordinary vote of no confidence, Congress ordered FMCSA to have more rulemakings, including advance rulemakings for major rules. FMCSA must consider alternatives to its preferred outcome, and the best available science, and give more consideration to impacts on carriers of all sizes. Better Regulatory Impact Analyses are required, and regulations are subject to review every five years. See Sections 5202-5203.

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