P3 Bulletin

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THE SOCIAL COLLECTIVE

THE US P3 MARKET IS BECOMING INCREASINGLY CREATIVE AS IT TRIES TO DEVELOP A SOCIAL INFRASTRUCTURE PIPELINE

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ACTING FAST

The US can now begin to plan for its transportation future

For the first time in over a decade, Congress passed a long-term transportation bill, 'Fixing America's Surface Transportation', which provides $305bn in funding over five years.

The FAST Act programs focus on improving roads, bridges, transit systems and rail transportation networks. The funding amounts to approximately a 15% increase to the current level.

The greatest benefit to the infrastructure world, in general, is that the Act provides certainty to state and local governments, and the business sector around funding levels, which should assist in – or at least reduce some of the anxiety around – critical financial planning of major infrastructure projects.

Specifically, the Act provides $233bn for highways, $49bn for transit and $10bn for federal passenger rail to Amtrak, all over a period of five years. States will receive federal funding for major projects based on a formula.

In general, states have relied on federal transportation funding derived from motor fuel taxes, which are deposited into the Highway Trust Fund (HTF) for completing transportation infrastructure projects. The Act does not raise the 18.4 cents per gallon federal gasoline tax, which has not been increased in 20 years. Congress raised the additional funds by reallocating funds from other federal budget items.

So in essence, this is not new federal spending, rather existing federal dollars that have been reallocated to transportation under the FAST Act. However, the long-term funding of the Highway Trust Fund still remains an issue.

Those projects funded by the HTF generally involve procurement processes where contractors submit proposals and the state selects the best bid. This is considered a traditional design-bid-build concept, whereby states specify their requirements, issue a request for proposal and select the best bid.

But with states and local government facing major fiscal challenges, many in recent years have explored the P3 model to leverage private investment to launch infrastructure projects.

TIFIA

The Transportation Infrastructure Finance and Innovation Act (TIFIA) helps make projects more feasible by lowering the cost of capital by providing lower cost debt, but is not a grant program. The FAST Act, unfortunately, reduced TIFIA funding, which often serves to fund P3 projects.

The new law reduces funding from $1bn over the last two years to $275m in 2016, but increases TIFIA funding to $300m for 2019 and 2020. This reduction has been met with some criticism from the private investment sector, though it's worth noting that TIFIA has not used all of its allocated funds in the last few years.

On the upside, the Act allows smaller projects to be eligible for TIFIA funding, by reducing the project minimum from $50m to $10m. This could allow more projects to be funded, if private dollars can be leveraged with these smaller TIFIA funds. On balance, the fact that the federal law provides funding security for five years outweighs concerns regarding the decrease in the TIFIA program funding.

The FAST Act provides another boost to P3 projects by codifying the current USDOT practice of allowing costs related to P3 projects using an availability payment concession model to qualify for federal reimbursement.

Flexibility

Like most prior transportation bills, the majority of the funds will be channeled through the states. About 90% of the federal funding is distributed to the state departments of transportation for allocation. However, the Act increased the amount of funds from the Surface Transportation Program (STP) that is dedicated to specific metropolitan regions from 50% to 55%. The new law converts the STP to a block grant program, which maximizes the flexibility of STP for states and local governments.

The FAST Act also established the National Surface Transportation and Innovative Finance Bureau as a 'one-stop-shop' for states and local government to receive federal financing and funding assistance.

Nationally Significant Freight and Highway Projects Program

The FAST Act created this new grant program, funded at $4.5bn over five years, for "nationally significant" projects costing more than $100m that improve the movement of both freight and people, increase competitiveness, reduce bottlenecks, and improve intermodal connectivity. The funds will be released based on a competitive nationwide selection process.

Streamlining Approval Process

One of the best aspects of the FAST Act, at least from the P3 perspective, is that it streamlines the environmental review and permitting process in order to accelerate project approvals, all without sacrificing environmental regulatory standards. The Act seeks to align environmental reviews for historic properties, and establish a new pilot program to allow up to five states to substitute their own environmental regulatory framework for the National Environment Policy Act (NEPA) if the state's law and regulations are at least as strict as NEPA's.

Conclusion

Overall, the FAST Act will help maintain growth in investment for major transportation projects, provide more certainty for smart long-term planning, and improve transportation networks in the long-run. It is incumbent on states and local governments to research and explore available funding options set forth in the FAST Act framework that address their infrastructure needs and proactively seek out private sector partners to help them convert their transportation and infrastructure needs into reality.