



## TOLLING AND HIGH-OCCUPANCY VEHICLES

### Purpose

The FAST Act includes a number of provisions that modify Federal requirements related to high-occupancy vehicle (HOV) facilities and the tolling of highways.

**Statutory citations:** FAST Act § 1411; SAFETEA-LU § 1604(c); TEA-21 § 1216(b); 23 U.S.C. 129 and 166

### Provisions

#### Performance of HOV facilities

If the performance of an HOV facility becomes degraded (i.e., average speeds fall below specified minimums), the FAST Act requires the public authority to submit to DOT for approval a plan detailing the actions that will be taken to make significant progress toward bringing the facility into compliance with minimum average operating speed performance standards through changes to the operation of the facility. The FAST Act also allows DOT, upon request of a public authority, to grant a waiver for compliance requirements in certain instances if: (1) the waiver is in the best interest of the traveling public; (2) the public authority is meeting the conditions under 23 U.S.C. 166(d)(1)(D); and (3) the public authority is making a good faith effort to improve performance of the facility. [23 U.S.C. 166(d)(1)]

#### Consultation regarding tolls

The FAST Act requires public authorities operating a high-occupancy toll (HOT) or low emission and energy-efficient vehicle toll lane on the Interstate System and located in a metropolitan planning area (established under 23 U.S.C. 134) to consult with the metropolitan planning organization for the area regarding the placement and amount of tolls on the facility. [23 U.S.C. 166(g)]

#### Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP)

The FAST Act sets time limits for a State with a provisionally-approved application for a pilot project to: (1) move from a provisionally-approved application to a complete application that fully satisfies the program's eligibility criteria and selection criteria; (2) complete the environmental review and permitting process under the National Environmental Policy Act (NEPA) for the pilot project; and (3) execute a toll agreement with DOT. These time limits are—

- One year for provisional approvals in place *prior* to the enactment of the FAST Act (December 4, 2015); and
- Three years for provisional approvals *subsequent* to enactment of the FAST Act.

DOT may extend either provisional approval by an additional year if certain conditions are met. The State must demonstrate material progress toward the implementation of the project as evidenced by: (1) substantial progress in completing the environmental review and permitting process for the pilot project under NEPA; (2) funding and financing commitments for the pilot project; (3) expressions of support for the pilot project from State and local governments, community interests, and the public; and (4) submission of a facility management plan. [FAST Act § 1411(c); TEA-21 § 1216(b)(6)]

#### Over-the-Road Buses

The FAST Act amended 23 U.S.C. 129 and 23 U.S.C. 166 to expressly address access to toll or HOV facilities for over-the-road buses<sup>1</sup>.

On toll facilities subject to 23 U.S.C. 129, the FAST Act requires the relevant public authority to allow over-the-road buses that serve the public to access the facility under the same rates, terms, and conditions as offered to public transportation buses. [23 U.S.C. 129(a)(9)-(10)]

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<sup>1</sup> 42 U.S.C. 12181 defines the term "over-the-road bus" to mean a bus characterized by an elevated passenger deck located over a baggage compartment.

For HOV facilities under 23 U.S.C. 166, the FAST Act requires any authority that allows public transportation vehicles to use an HOV facility to provide equal access to the facility under the same rates, terms, and conditions to all public transportation vehicles and over-the-road buses serving the public . If an authority operates HOT lanes that allow vehicles not otherwise exempt under 23 U.S.C. 166(b) to pay a toll to use the facility, the authority must ensure that over-the-road buses serving the public are provided access to the facility under the same rates, terms, and conditions as public transportation buses. [23 U.S.C. 166(b)(3), (b)(4), (f)(4), and (f)(6)]

Approval of Interstate System Construction Toll Pilot Program (ISCTPP) applications

The FAST Act allows DOT to approve a State's application for tolling under the ISCTPP (SAFETEA-LU § 1604(c)) if at least part of the application was submitted before the original deadline specified in SAFETEA-LU (i.e., before August 10, 2015). [FAST Act § 1411(d)]