

Transportation Alternatives Set-Aside Related Legislation

Transportation Alternatives Eligible Projects Statutory Text

Text from 23 U.S.C. 133(h)(3), as amended by the [Infrastructure Investment and Jobs Act \(IIJA\) \(Public Law 117-58, also known as the “Bipartisan Infrastructure Law”\)](#)

- (3) ELIGIBLE PROJECTS.—Funds set aside under this subsection may be obligated for—
- (A) projects or activities described in section 101(a)(29) or 213, as those provisions were in effect on the day before the date of enactment of the FAST Act (Public Law 114–94; 129 Stat. 1312);
 - (B) projects and activities under the safe routes to school program under section 208; and
 - (C) activities in furtherance of a vulnerable road user safety assessment (as defined in section 148(a)).

Text from 23 U.S.C. 213(b) as in effect prior to the FAST Act

(b) ELIGIBLE PROJECTS.—A State may obligate the funds reserved under this section for any of the following projects or activities:

- (1) Transportation alternatives, as defined in section 101.
- (2) The [recreational trails program](#) under section 206.
- (3) The [safe routes to school program](#) under section 1404 of the SAFETEA-LU (23 U.S.C. 402 note; Public Law 109-59). Now codified as 23 U.S.C. 208.
- (4) Planning, designing, or constructing [boulevards](#) and other roadways largely in the right-of-way of former Interstate System routes or other divided highways.

Text from 23 U.S.C. 101(a)(29) as in effect prior to the FAST Act

(29) TRANSPORTATION ALTERNATIVES.—The term “transportation alternatives” means any of the following activities when carried out as part of any program or project authorized or funded under this title, or as an independent program or project related to surface transportation:

- (A) Construction, planning, and design of on-road and off- road trail facilities for pedestrians, bicyclists, and other nonmotorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).
- (B) Construction, planning, and design of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs.
- (C) Conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other nonmotorized transportation users.
- (D) Construction of turnouts, overlooks, and viewing areas.
- (E) Community improvement activities, including-
 - (i) inventory, control, or removal of outdoor advertising;
 - (ii) historic preservation and rehabilitation of historic transportation facilities;
 - (iii) vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control; and

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(iv) archaeological activities relating to impacts from implementation of a transportation project eligible under this title.

(F) Any environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation to-

(i) address stormwater management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff, including activities described in sections 133(b)(11), 328(a), and 329; or

(ii) reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.

Notes:

- 23 U.S.C. 101(a)(29)(A) and (E): FHWA interprets “including” as “including, but not limited to”.
- 23 U.S.C. 101(a)(29)(F)(i) includes activities described in 23 U.S.C. 119(g), 328(a), and 329.

Surface Transportation Block Grant Program Excerpts from 23 U.S.C. 133(b), (c), (d), (e), and (h), as amended by the [Infrastructure Investment and Jobs Act \(IIJA\) \(Public Law 117-58, also known as the “Bipartisan Infrastructure Law”\)](#)

(b) ELIGIBLE PROJECTS.—Funds apportioned to a State under section 104(b)(2) for the surface transportation block grant program may be obligated for the following:

(5) Highway and transit safety infrastructure improvements and programs, including projects eligible under section 130 and installation of safety barriers and nets on bridges.

(7) Recreational trails projects eligible for funding under section 206 including the maintenance and restoration of existing recreational trails, pedestrian and bicycle projects in accordance with section 217 (including modifications to comply with accessibility requirements under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)), and the safe routes to school program under section 208.

(8) Planning, design, or construction of boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways.

(22) Any type of project eligible under this section as in effect on the day before the date of enactment of the FAST Act, including projects described under section 101(a)(29) as in effect on such day.

(c) LOCATION OF PROJECTS.—A surface transportation block grant project may not be undertaken on a road functionally classified as a local road or a rural minor collector unless the road was on a Federal-aid highway system on January 1, 1991, except—

(1) for a bridge or tunnel project (other than the construction of a new bridge or tunnel at a new location);

(2) for a project described in paragraphs (5) through (15) and paragraph (23) of subsection (b);

(3) for a project described in section 101(a)(29), as in effect on the day before the date of enactment of the FAST Act; [refers to the TA Set-Aside]

(4) for a bridge project for the replacement of a low water crossing (as defined by the Secretary) with a bridge; and

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(5) as approved by the Secretary.

(d) ALLOCATIONS OF APPORTIONED FUNDS TO AREAS BASED ON POPULATION.—

(1) CALCULATION.—Of the funds apportioned to a State under section 104(b)(2) (after the set aside of funds under subsection (h))—

(A) 55 percent for each of fiscal years 2022 through 2026 shall be obligated under this section, in proportion to their relative shares of the population of the State—

(i) in urbanized areas of the State with an urbanized area population of over 200,000;

(ii) in urbanized areas of the State with an urbanized area population of not less than 50,000 and not more than 200,000;

(iii) in urban areas of the State with a population not less than 5,000 and not more than 49,999; and

(iv) in other areas of the State with a population less than 5,000; and

(B) the remainder may be obligated in any area of the State.

(2) METROPOLITAN AREAS.—Funds attributed to an urbanized area under paragraph (1)(A)(i) may be obligated in the metropolitan area established under section 134 that encompasses the urbanized area.

(3) LOCAL CONSULTATION.— [Does not apply, per 23 U.S.C. 133(h)(2)(A)(ii)]

(4) DISTRIBUTION AMONG URBANIZED AREAS OF OVER 200,000 POPULATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of funds that a State is required to obligate under paragraph (1)(A)(i) shall be obligated in urbanized areas described in paragraph (1)(A)(i) based on the relative population of the areas.

(B) OTHER FACTORS.—The State may obligate the funds described in subparagraph (A) based on other factors if the State and the relevant metropolitan planning organizations jointly apply to the Secretary for the permission to base the obligation on other factors and the Secretary grants the request.

(5) APPLICABILITY OF PLANNING REQUIREMENTS.—Programming and expenditure of funds for projects under this section shall be consistent with sections 134 and 135.

(e) OBLIGATION AUTHORITY.—

(1) IN GENERAL.—A State that is required to obligate in an urbanized area with an urbanized area population of over 200,000 individuals under subsection (d) funds apportioned to the State under section 104(b)(2) shall make available during the period of fiscal years 2022 through 2026 an amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction programs for use in the area that is equal to the amount obtained by multiplying—

(A) the aggregate amount of funds that the State is required to obligate in the area under subsection (d) during the period; and

(B) the ratio that—

(i) the aggregate amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction programs during the period; bears to

(ii) the total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to an obligation limitation) during the period.

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(2) JOINT RESPONSIBILITY.—Each State, each affected metropolitan planning organization, and the Secretary shall jointly ensure compliance with paragraph (1).

(h) STP SET-ASIDE.—

(1) In general.—Of the funds apportioned to a State under section 104(b)(2) for fiscal year 2022 and each fiscal year thereafter—

(A) the Secretary shall set aside an amount equal to 10 percent to carry out this subsection; and

(B) the State's share of that total is determined by multiplying the amount under subparagraph (A) by the ratio that—

(i) the amount apportioned to the State for the transportation enhancements program for fiscal year 2009 under section 133(d)(2), as in effect on the day before the date of enactment of MAP-21; bears to

(ii) the total amount of funds apportioned to all States for the transportation enhancements program for fiscal year 2009.

(2) ALLOCATION WITHIN A STATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), funds set aside for a State under paragraph (1) shall be obligated within that State in the manner described in subsection (d), except that, for purposes of this paragraph (after funds are made available under paragraph (5))—

(i) for fiscal year 2022 and each fiscal year thereafter, the percentage referred to in paragraph (1)(A) of that subsection shall be deemed to be 59 percent; and

(ii) paragraph (3) of subsection (d) shall not apply.

(B) LOCAL CONTROL.—A State may allocate up to 100 percent of the funds referred to in subparagraph (A)(i) if—

(i) the State submits to the Secretary a plan that describes—

(I) how funds will be allocated to counties, metropolitan planning organizations, regional transportation planning organizations as described in section 135(m), or local governments;

(II) how the entities described in subclause (I) will carry out a competitive process to select projects for funding and report selected projects to the State;

(III) the legal, financial, and technical capacity of the entities described in subclause (I);

(IV) how input was gathered from the entities described in subclause (I) to ensure those entities will be able to comply with the requirements of this subsection; and

(V) how the State will comply with paragraph (8); and

(ii) the Secretary approves the plan submitted under clause (i).

(3) ELIGIBLE PROJECTS.—Funds set aside under this subsection may be obligated for—

(A) projects or activities described in section 101(a)(29) or 213, as those provisions were in effect on the day before the date of enactment of the FAST Act (Public Law 114–94; 129 Stat. 1312);

(B) projects and activities under the safe routes to school program under section 208; and

(C) activities in furtherance of a vulnerable road user safety assessment (as defined in section 148(a)).

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(4) ACCESS TO FUNDS.—

(A) ELIGIBLE ENTITY DEFINED.—In this paragraph, the term “eligible entity” means—

- (i) a local government;
- (ii) a regional transportation authority;
- (iii) a transit agency;
- (iv) a natural resource or public land agency;
- (v) a school district, local education agency, or school;
- (vi) a tribal government;
- (vii) a metropolitan planning organization that serves an urbanized area with a population of 200,000 or fewer;
- (viii) a nonprofit entity;
- (ix) any other local or regional governmental entity with responsibility for or oversight of transportation or recreational trails (other than a metropolitan planning organization that serves an urbanized area with a population of over 200,000 or a State agency) that the State determines to be eligible, consistent with the goals of this subsection; and
- (x) a State, at the request of an entity described in clauses (i) through (ix).

(B) COMPETITIVE PROCESS.—A State or metropolitan planning organization required to obligate funds in accordance with paragraph (2) shall develop a competitive process to allow eligible entities to submit projects for funding that achieve the objectives of this subsection.

(C) SELECTION.—A metropolitan planning organization for an area described in subsection (d)(1)(A)(i) shall select projects under the competitive process described in subparagraph (B) in consultation with the relevant State.

(D) PRIORITIZATION.—The competitive process described in subparagraph (B) shall include prioritization of project location and impact in high-need areas as defined by the State, such as low-income, transit-dependent, rural, or other areas.

(5) CONTINUATION OF CERTAIN RECREATIONAL TRAILS PROJECTS.—For each fiscal year, a State shall—

(A) obligate an amount of funds set aside under this subsection equal to the amount of the funds apportioned to the State for fiscal year 2009 under section 104(h)(2), as in effect on the day before the date of enactment of MAP-21, for projects relating to recreational trails under section 206;

(B) return 1 percent of those funds to the Secretary for the administration of that program; and

(C) comply with the provisions of the administration of the recreational trails program under section 206, including the use of apportioned funds described in subsection (d)(3)(A) of that section.

(6) STATE FLEXIBILITY.—

(A) RECREATIONAL TRAILS.—A State may opt out of the recreational trails program under paragraph (5) if the Governor of the State notifies the Secretary not later than 30 days prior to apportionments being made for any fiscal year.

(B) LARGE URBANIZED AREAS.—A metropolitan planning area may use not to exceed 50 percent of the funds set aside under this subsection for an urbanized area described in subsection (d)(1)(A)(i) for any purpose eligible under subsection (b).

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(C) IMPROVING ACCESSIBILITY AND EFFICIENCY.—

(i) IN GENERAL.—A State may use an amount equal to not more than 5 percent of the funds set aside for the State under this subsection, after allocating funds in accordance with paragraph (2)(A), to improve the ability of applicants to access funding for projects under this subsection in an efficient and expeditious manner by providing—

(I) to applicants for projects under this subsection application assistance, technical assistance, and assistance in reducing the period of time between the selection of the project and the obligation of funds for the project; and

(II) funding for 1 or more full-time State employee positions to administer this subsection.

(ii) USE OF FUNDS.—Amounts used under clause (i) may be expended—

(I) directly by the State; or

(II) through contracts with State agencies, private entities, or nonprofit entities.

(7) FEDERAL SHARE.—

(A) REQUIRED AGGREGATE NON-FEDERAL SHARE.—The average annual non-Federal share of the total cost of all projects for which funds are obligated under this subsection in a State for a fiscal year shall be not less than the average non-Federal share of the cost of the projects that would otherwise apply.

(B) FLEXIBLE FINANCING.—Subject to subparagraph (A), notwithstanding section 120—

(i) funds made available to carry out section 148 may be credited toward the non-Federal share of the costs of a project under this subsection if the project—

(I) is an eligible project described in section 148(e)(1); and

(II) is consistent with the State strategic highway safety plan (as defined in section 148(a));

(ii) the non-Federal share for a project under this subsection may be calculated on a project, multiple-project, or program basis; and

(iii) the Federal share of the cost of an individual project in this section may be up to 100 percent.

(C) REQUIREMENT.—Subparagraph (B) shall only apply to a State if the State has adequate financial controls, as certified by the Secretary, to account for the average annual non-Federal share under this paragraph.

(8) ANNUAL REPORTS.—

(A) IN GENERAL.—Each State or metropolitan planning organization responsible for carrying out the requirements of this subsection shall submit to the Secretary an annual report that includes—

(i) the number of project applications received for each fiscal year, including—

(I) the aggregate cost of the projects for which applications are received; and

(II) the types of projects to be carried out, expressed as percentages of the total apportionment of the State under this subsection; and

(ii) a list of each project selected for funding for each fiscal year, including, for each project—

(I) the fiscal year during which the project was selected;

(II) the fiscal year in which the project is anticipated to be funded;

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- (III) the recipient;
- (IV) the location, including the congressional district;
- (V) the type;
- (VI) the cost; and
- (VII) a brief description.

(B) PUBLIC AVAILABILITY.—The Secretary shall make available to the public, in a user-friendly format on the Web site of the Department of Transportation, a copy of each annual report submitted under subparagraph (A).

(i) TREATMENT OF PROJECTS.—Notwithstanding any other provision of law, projects funded under this section (excluding those carried out under subsection (h)(5)) shall be treated as projects on a Federal-aid highway under this chapter.

§ 126. Transferability of Federal-aid highway funds

(a) IN GENERAL.—Notwithstanding any other provision of law, subject to subsection (b), a State may transfer from an apportionment under section 104(b) not to exceed 50 percent of the amount apportioned for the fiscal year to any other apportionment of the State under that section.

(b) APPLICATION TO CERTAIN SET-ASIDES.—

(1) IN GENERAL.—Funds that are subject to sections 104(d) and 133(d)(1)(A) shall not be transferred under this section.

(2) FUNDS TRANSFERRED BY STATES.—Funds transferred by a State under this section of the funding set aside for a State under section 133(h) for a fiscal year—

(A) may only come from the portion of those funds that are available for obligation in any area of the State under section 133(h); and

(B) may only be transferred if the Secretary certifies that the State—

(i) held a competition in compliance with the guidance issued to carry out section 133(h) and provided sufficient time for applicants to apply;

(ii) offered to each eligible entity, and provided on request of an eligible entity, technical assistance; and

(iii) demonstrates that there were not sufficiently suitable applications from eligible entities to use the funds to be transferred.

§ 217. Bicycle transportation and pedestrian walkways

(a) Use of STP and Congestion Mitigation Program Funds.—Subject to project approval by the Secretary, a State may obligate funds apportioned to it under [sections 104\(b\)\(2\) and 104\(b\)\(4\) of this title](#) for construction of pedestrian walkways and bicycle and shared micromobility transportation facilities and for carrying out nonconstruction projects related to safe access for bicyclists and pedestrians.

(b) Use of National Highway Performance Program Funds.—Subject to project approval by the Secretary, a State may obligate funds apportioned to it under [section 104\(b\)\(1\) of this title](#) for construction of pedestrian walkways and bicycle transportation facilities on land adjacent to any highway on the National Highway System.

(c) Use of Federal Lands Highway Funds.—Funds authorized for forest highways, forest development roads and trails, public lands development roads and trails, park roads, parkways, Indian reservation roads, and public lands highways shall be available, at the discretion of the department charged with the administration of such funds, for the construction of pedestrian walkways and bicycle transportation facilities.

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(d) State Bicycle and Pedestrian Coordinators.-Each State receiving an apportionment under sections 104(b)(2) and 104(b)(4) of this title shall use such amount of the apportionment as may be necessary to fund in the State department of transportation up to 2 positions of bicycle and pedestrian coordinator for promoting and facilitating the increased use of nonmotorized modes of transportation, including developing facilities for the use of pedestrians and bicyclists and public education, promotional, and safety programs for using such facilities.

(e) Bridges.-In any case where a highway bridge deck being replaced or rehabilitated with Federal financial participation is located on a highway on which pedestrians or bicyclists are permitted to operate at each end of such bridge, and the Secretary determines that the safe accommodation of pedestrians or bicyclists can be provided at reasonable cost as part of such replacement or rehabilitation, then such bridge shall be so replaced or rehabilitated as to provide such safe accommodations.

(f) Federal Share.-For all purposes of this title, construction of a pedestrian walkway or a bicycle or shared micromobility transportation facility shall be deemed to be a highway project and the Federal share payable on account of such construction shall be determined in accordance with section 120(b).

(g) Planning and Design.-

(1) In general.-Bicyclists and pedestrians shall be given due consideration in the comprehensive transportation plans developed by each metropolitan planning organization and State in accordance with sections 134 and 135, respectively. Bicycle transportation facilities and pedestrian walkways shall be considered, where appropriate, in conjunction with all new construction and reconstruction of transportation facilities, except where bicycle and pedestrian use are not permitted.

(2) Safety considerations.-Transportation plans and projects shall provide due consideration for safety and contiguous routes for bicyclists and pedestrians. Safety considerations shall include the installation, where appropriate, and maintenance of audible traffic signals and audible signs at street crossings.

(h) Use of Motorized Vehicles.-Motorized vehicles may not be permitted on trails and pedestrian walkways under this section, except for-

- (1) maintenance purposes;
- (2) when snow conditions and State or local regulations permit, snowmobiles;
- (3) motorized wheelchairs;
- (4) when State or local regulations permit, electric bicycles; and
- (5) such other circumstances as the Secretary deems appropriate.

(i) Transportation Purpose.-No bicycle project may be carried out under this section unless the Secretary has determined that such bicycle project will be principally for transportation, rather than recreation, purposes.

(j) Definitions.-In this section, the following definitions apply:

(1) Bicycle transportation facility.-The term "bicycle transportation facility" means a new or improved lane, path, or shoulder for use by bicyclists and a traffic control device, shelter, or parking facility for bicycles.

(2) Electric bicycle.-

(A) In general.-The term "electric bicycle" means a bicycle-

(i) equipped with fully operable pedals, a saddle or seat for the rider, and an electric motor of less than 750 watts;

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(ii) that can safely share a bicycle transportation facility with other users of such facility; and

(iii) that is a class 1 electric bicycle, class 2 electric bicycle, or class 3 electric bicycle.

(B) Classes of electric bicycles.-

(i) Class 1 electric bicycle.-For purposes of subparagraph (A)(iii), the term "class 1 electric bicycle" means an electric bicycle, other than a class 3 electric bicycle, equipped with a motor that-

(I) provides assistance only when the rider is pedaling; and

(II) ceases to provide assistance when the speed of the bicycle reaches or exceeds 20 miles per hour.

(ii) Class 2 electric bicycle.-For purposes of subparagraph (A)(iii), the term "class 2 electric bicycle" means an electric bicycle equipped with a motor that-

(I) may be used exclusively to propel the bicycle; and

(II) is not capable of providing assistance when the speed of the bicycle reaches or exceeds 20 miles per hour.

(iii) Class 3 electric bicycle.-For purposes of subparagraph (A)(iii), the term "class 3 electric bicycle" means an electric bicycle equipped with a motor that-

(I) provides assistance only when the rider is pedaling; and

(II) ceases to provide assistance when the speed of the bicycle reaches or exceeds 28 miles per hour.

(3) Pedestrian.-The term "pedestrian" means any person traveling by foot and any mobility-impaired person using a wheelchair.

(4) Wheelchair.-The term "wheelchair" means a mobility aid, usable indoors, and designed for and used by individuals with mobility impairments, whether operated manually or motorized.