TESTIMONY OF

The Honorable Mike Patterson

Executive Director, Oklahoma Department of Transportation;
Chair of the Committee on Agency Administration,
American Association of State Highway and Transportation Officials

REGARDING

FAST Act Implementations: State and Local Perspectives

BEFORE THE

Subcommittee on Highways and Transit of the Committee on Transportation and Infrastructure of the United States House of Representatives

ON

April 5, 2017

American Association of State Highway and Transportation Officials
444 North Capitol Street, N.W., Suite 249
Washington, D.C., 20001
202-624-5800
www.transportation.org
info@aashto.org

INTRODUCTION

Chairman Graves, Ranking Member Norton, and Members of the Subcommittee, thank you for the opportunity to provide the perspectives of state departments of transportation (state DOTs) on implementation of the Fixing America's Surface Transportation (FAST) Act. My name is Mike Patterson, and I serve as the Executive Director of the Oklahoma Department of Transportation (ODOT) and as Chair of the Committee on Agency Administration at the American Association of State Highway and Transportation Officials (AASHTO). Today it is my honor to testify on behalf of the great State of Oklahoma and AASHTO, which represents the transportation departments of all 50 States, Washington, DC, and Puerto Rico.

I was appointed as Executive Director of ODOT by Governor Mary Fallin in April 2013. Prior to my current role, I served as the Deputy Director for the agency for three years as well as filling the role of Chief Financial Officer since September 1999. I have also served as ODOT's Comptroller for the preceding 15 years, having begun my career with the department as the Deputy Comptroller in 1980.

My testimony today will emphasize four main points:

- Progress is being made in FAST Act implementation but concerns remain;
- FAST Act funding levels must be honored as we look to identify a long-term revenue solution for the Highway Trust Fund;
- Any new infrastructure package must build on the foundation laid by the FAST Act, and;
- The federal surface transportation program must prepare for and harness significant technological advancements.

PROGRESS IS BEING MADE IN FAST ACT IMPLEMENTATION BUT CONCERNS REMAIN

I would like to first express appreciation to you on behalf of the state DOTs for your leadership, along with your Senate and House members in partner committees, in shepherding the FAST Act in December 2015. The FAST Act represented the first comprehensive, long-term surface transportation legislation since the Safe Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users Act in 2005.

Thanks to the FAST Act, the Oklahoma Department of Transportation (ODOT) has been able to initiate the process of filing NEPA documents electronically which helps with expediting document flow, expand the use of federal resource agency liaisons to improve permitting and review processes, and expand the use of Programmatic Agreements (PA) to accelerate project delivery.

In 2004 the system of bridges managed by ODOT was ranked as one of the worst in the country with 17% of the structures being classified as Structurally Deficient. At that time, the decision was made to focus ODOT's primary resources on improving our bridges with the goal of being one of the best in the country rather than one of the worst. While additional funding at the state level over the last decade has contributed significantly to ODOT's success, the speed at which Oklahoma's bridges have improved could only happen with the support of Congress' desire to engage process improvements.

For many years ODOT has enjoyed a valuable relationship with the U.S. Army Corps of Engineers who share the desire to improve the nation's infrastructure. In an effort to improve the process within the Corps, ODOT and the Corps entered into an agreement where a dedicated Corps employee has been funded by ODOT so that needed projects were not delayed because of a lack of staff. Under the FAST Act Congress has expanded that opportunity to other federal resource agencies which will continue to provide process improvements for all state DOTs.

Additionally, the provision of the FAST Act that provides for expanded use of Programmatic Agreements has been very beneficial for ODOT. One example is ODOT's Depression-era Bridge National Register of Historic Places Evaluation Study and Programmatic Agreement which initiated streamlined treatment measures for adverse effects to historic bridges that were constructed between 1933 and 1945. This PA was successfully used to assist in the delivery of a very important bridge project.

The Lexington Purcell bridge—the longest deck truss bridge in the state—was constructed using Works Progress Administration labor and funds. The structure was listed on the National Register of Historic Places (NRHP) in 2003 for these reasons, and ODOT's Cultural Resources Program considers this bridge to be one of the five most historically significant bridges in the state. On January 20, 2014, several cracks and defects were discovered in multiple spans on the tension chords of the bridge. At that time, it was noted that the deck trusses were constructed with a very brittle high-strength manganese alloy steel. The bridge was load restricted pending further inspection. On January 31, 2014, additional evaluations necessitated closure of the bridge. State-funded emergency repairs were then initiated to mitigate the cracks and defects, and to reinforce and strengthen the bridge to allow for safe vehicular and pedestrian access and the bridge was reopened, with a new urgency to replace the structure. On May 7, 2014, ODOT's Cultural Resources Program formally initiated consultation with the Oklahoma State Historic Preservation Office. ODOT completed consultation and resolved adverse effects to one of the most historically significant bridges in Oklahoma in approximately two years, using the PA for the treatment of adverse effects to New Deal-era bridges constructed under Federal Relief Works Programs. We were able to employ measures outlined in the PA which eliminated the need for an individual Memoranda of Agreement, while still meeting the intent of the National Historic Preservation Act, thus expediting project delivery. This bridge is scheduled to be let to construction in July, in line with our goal of moving from one of the worst to one of the best states for bridge condition.

As exemplified above, after decades of adding layers upon layers of legislative and regulatory oversight for transportation, both the FAST Act and the Moving Ahead for Progress in the 21st Century Act (MAP-21) have instituted major programmatic and policy reforms. However, there exists still further opportunity to improve the efficiency and effectiveness of transportation programs and project delivery while remaining responsible stewards of taxpayer resources and both human and natural environments.

Regulatory Burdens

Congress should encourage the USDOT to implement provisions in both MAP-21 and the FAST Act fully consistent with legislative intent. An example of a problematic USDOT regulatory action is the onerous and unanticipated requirement regarding metropolitan planning organization (MPO) coordination. Although state DOTs and MPOs already exemplify the kinds of coordination sought, the new regulation added significant additional legal and administrative requirements that would serve as barriers to constructive and flexible approaches to planning and programming being implemented by states and MPOs today. The rule epitomized the one-size-fits-all approach that does not allow flexibility to tailor processes and solutions to the diverse needs, opportunities, and constraints faced by states and MPOs across the nation. Along with the Senate's recent passage of companion legislation to repeal this rule, we appreciate your Committee's prompt action last week to bring this before the House floor.

In addition, AASHTO supports implementing statutorily authorized performance management frameworks for highway safety, bridge and pavement, system performance, and freight before current measures are changed or new ones are added. Owing to their extremely complex nature, key regulations originating from MAP-21 are yet to be finalized by the USDOT after four years, which means much work still remains to be done on implementation of current measures. For this reason, during consideration of the FAST Act, Congress decided not to add new performance measures. Given the robust activity currently ongoing to analyze, implement, and—over time—evaluate the MAP-21 performance measures, it is important that Congress and the Administration not add any new national-level performance measures to the federal surface transportation program.

Streamlining Program and Project Delivery

To build on the successful bipartisan policy reforms in MAP-21 and the FAST Act, AASHTO asks for the opportunity to continue improving the project delivery process. California, Florida, Ohio, Texas, and Utah are participating in the National Environmental Policy Act (NEPA) assignment program made available to all states in MAP-21. Based on our collective experience, some specific changes that will make this program increasingly efficient and more attractive to the states include:

- Simplifying the assignment application and audit process;
- Allowing states to assume all of the responsibilities of the USDOT with respect to engineering and other activities related to environmental review, consultation, permitting or other action required under any federal environmental law for project review or approval, and;
- Allowing states in this program to be solely responsible for the development of their policies, guidance and procedures so long as federal laws and the USDOT requirements and guidance are met.

Other expediting measures include decoupling fiscal constraint requirements from NEPA approval to allow construction-ready projects to proceed through environmental reviews and progress as money becomes available; ensuring that the statutory authority provided to adopt planning decisions in the NEPA process includes all of the flexibility previously provided in the planning regulations; and providing flexibility in developing project schedules and programmatic categorical exclusion agreements.

Beyond NEPA, many opportunities exist to streamline project delivery through updates to the Endangered Species Act, Section 4(f) reviews for historic sites, the Land and Water Conservation Fund Act, and transportation air quality conformity under the Clean Air Act. AASHTO welcomes the opportunity to provide specific recommendations for improvement in any of these areas. We also look forward to continued collaboration with the USDOT's Build America Bureau. This would build upon our robust existing partnership through the AASHTO Center for Excellence in Project Finance by closely engaging with the Bureau's Federal Infrastructure Permitting Dashboard that was created under your leadership in the FAST Act.

FAST ACT FUNDING LEVELS MUST BE HONORED AS WE LOOK TO IDENTIFY A LONG-TERM REVENUE SOLUTION FOR THE HIGHWAY TRUST FUND

The FAST Act's authorization of $305 billion for federal highway, highway safety, transit, and passenger rail programs from 2016 to 2020 could not have been timelier in spurring our economic growth and investing in our multimodal transportation infrastructure. In order to maximize the FAST Act's potential:

- The FAST Act's annual obligation authority must be fully honored in the FY 2017 appropriations process and beyond;
- Funding for transportation programs should not be reduced as proposed in the President's FY 2018 budget;
- Contract authority provided in surface transportation authorizations should not be rescinded, and;
- The structural cash flow deficit in the federal Highway Trust Fund (HTF) must be resolved for the long term.

<u>Honoring FAST Act Obligation Authority in Appropriations</u>
An important funding feature of the FAST Act was to authorize a 5.6 percent increase in highway funding from FY 2015 to FY 2016, with subsequent annual adjustments between 2.1 and 2.4 percent. For the mass transit program, the FAST Act authorized a 10.2 percent increase between FY 2015 and FY 2016, with subsequent annual increases up to 3.3 percent. In addition to avoiding a series of short-term extensions of program authorization because the FAST Act is in place until 2020, AASHTO is especially grateful to Congress for being able to build in increases in annual authorized funding levels above inflation.

There are two implementation challenges state DOTs currently face, however, due to the lack of a full-year Fiscal Year 2017 appropriations measure that honors the FAST Act funding levels you provided.

First, building on multiyear FAST Act apportionments of contract authority, states can't make good on their planned investments for any given fiscal year if a full year's worth of obligation authority is not provided on October 1. Continuing resolutions that provide only a portion of obligation authority mean that even if we are ready to proceed with our much-needed projects, we can only commit federal dollars to a small portion of those projects. Missing the construction window due to piecemeal availability of federal obligation authority—especially in cold-weather states—can mean that some projects are delayed until the following year.

Second, because continuing resolutions have placed a freeze on obligation authority at the FY 2016 level, the Federal Highway Administration (FHWA) is unable to provide amounts anticipated under the FAST Act. For FY2016, FHWA has been able to provide only $42.2 billion of obligation authority this fiscal year at an annualized rate as opposed to $43.2 billion expected under the FAST Act. This translates to states around the nation receiving over $1 billion less in federal highway funding, with corresponding reductions in funding at the state and local level that could have been put to important use throughout the country. In addition, operating under a continuing resolution has prevented transit and passenger rail agencies from accessing $199 million authorized for positive train control (PTC) in the FAST Act for FY 2017. Given that FY2017 is the only year for authorized PTC funding from the Mass Transit Account, this critical safety funding would lapse if continuing resolutions are extended for the rest of FY 2017.

<u>The President's FY 2018 Budget Outline</u>

The President's "skinny budget" released on March 16, 2017, proposed a 13 percent reduction in discretionary funding for the US Department of Transportation (USDOT) by eliminating federal subsidies on long-distance Amtrak routes and the Essential Air Services program administered by the Federal Aviation Administration, limiting the Federal Transit Administration's Capital Investment Grants to already-executed full funding grant agreements, and eliminating the National Infrastructure Investments account (otherwise known as the TIGER discretionary grant program).

For state DOTs, any action that results in a reduction to our nation's transportation system investment raises concerns. But we are anxious to see the President's full infrastructure investment package to put the proposals outlined in the FY 2018 budget in context and we look forward to working with this Committee and others in Congress on these issues.

<u>Rescission of Unobligated Contract Authority</u>

The FAST Act includes a provision which would rescind $7.6 billion of unobligated highway contract authority on July 1, 2020. In addition, the Senate Subcommittee on Transportation, Housing and Urban Development, and Related Agencies included a $2.2 billion rescission in its proposed FY 2017 appropriations package last year. Both of these rescissions exempt certain categories of funds, including suballocated Surface Transportation Block Grant Program funds used by localities, safety funds, and allocated programs such as earmarks, Federal Lands Highway, and TIFIA. As a result, $9.8 billion in rescissions would need to be absorbed by only $9.4 billion of unobligated contract authority currently estimated to be available from formula apportionments to the states. Further, both the FAST Act and Senate Appropriations rescissions require states to rescind contract authority in a proportional manner across all applicable program categories, regardless of the relative balance contained within each program category.

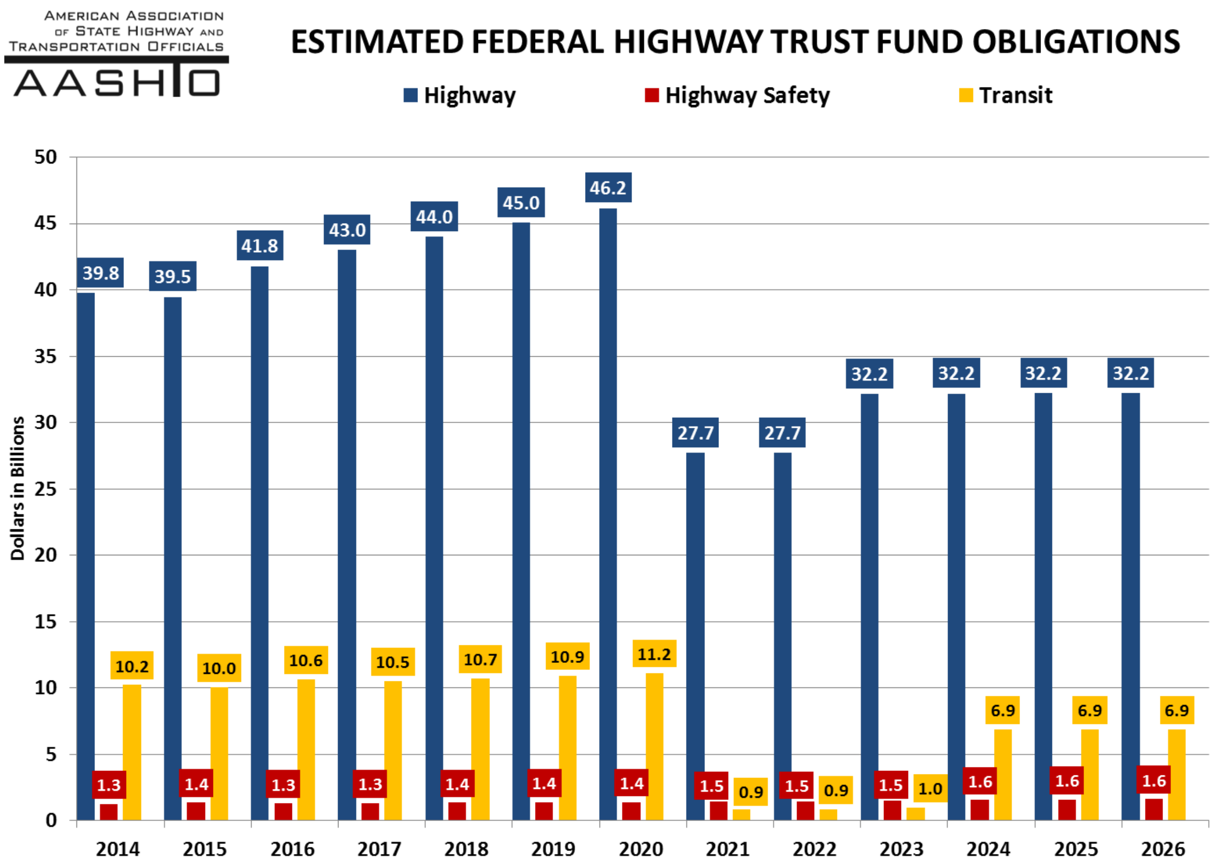
The balance of unobligated contract authority that state DOTs carry from year to year has provided important flexibility to apply scarce annual obligation authority to highway program categories of greatest priority based on each state's investment needs. We saw rescissions totaling some $21.2 billion of unobligated contract authority between 2002 and 2011. We ask Congress to remove rescissions from authorizing legislation like the FAST Act and any appropriations bills because they run the risk of reducing contract authority to the point where obligation authority cannot be utilized—resulting in dollars "left on the table" and a real loss of critically needed investments throughout the country.

Long-term Highway Trust Fund Solvency

It should be recognized that the FAST Act provides only a near-term, though absolutely necessary, reprieve when it comes to federal surface transportation funding. That is because the HTF continues to remain at a crossroads. The HTF has provided stable, reliable, and substantial highway and transit funding for decades since its inception in 1956, but this is no longer the case. Since 2008, the HTF has been sustained through a series of General Fund transfers now amounting to $140 billion. According to the January 2017 baseline of the Congressional Budget Office, HTF spending is estimated to exceed receipts by about $17 billion in FY 2021, growing to about $24 billion by FY 2027. Furthermore, the HTF is expected to experience a significant cash shortfall in FY 2021, since it cannot incur a negative balance.

Framing this HTF "cliff" in terms of federal highway obligations, AASHTO estimates that states may see a 40 percent drop from FY 2020 to the following year—from $46.2 billion to $27.7 billion in FY 2021. In the past, such similar shortfall situations have led to the possibility of reduction in federal reimbursements to states on existing obligations, leading to serious cash flow problems for states and resulting project delays. Perhaps more alarmingly, due to a steeper projected shortfall in the Mass Transit Account, new federal transit obligations are expected to be zeroed out between FY 2021 and FY 2023 excluding any "flex" of highway dollars to transit. Simply put, this is a devastating scenario that we must do all we can to avoid.

ESTIMATED FEDERAL HIGHWAY AND TRANSIT OBLIGATIONS BEYOND FY 2020 WITH NO ADDITIONAL REVENUES TO THE HIGHWAY TRUST FUND



ANY NEW INFRASTRUCTURE PACKAGE MUST BUILD ON THE FOUNDATION LAID BY THE FAST ACT

AASHTO and its member DOTs, like many in the transportation industry, recognize a special opportunity this year to enact a major infrastructure investment initiative given the high degree of interest from the Trump Administration and strong bipartisan support in Congress. As you and the President consider the design of this package for transportation infrastructure, we offer the following recommendations.

Utilize the Existing Formula-based Funding Structure

For over one hundred years—and as exemplified by the FAST Act—we as a nation have enjoyed the fruits of the federal government's highly successful partnership with state DOTs to build and maintain our nation's surface transportation system. From the Federal-aid Road Act of 1916 establishing the foundation of a federally-funded, state-administered highway program that has been well-suited to a growing and geographically diverse nation like ours, federal investment in all modes of transportation have allowed states and their local partners to fund a wide range of projects that serve the interest of the nation as a whole. Thanks to the federal surface transportation program's flexibility that defers project selection and investment decision-making to state and local governments based on extensive public input, diverse communities in rural, suburban, and urban areas of the country have all been able to help people get to and from work, and help goods get access to a larger market than ever before in a way that best meet their unique needs.

Based on the federal surface transportation program's long track record of efficiency and flexibility, we recommend that any increase in federal funds should flow through the existing FAST Act formula-based program structure rather than through untested new approaches that will require more time and oversight. Any effort that does not rely on the existing federal surface transportation program, such as an approach that chooses only certain projects based on a priority list, would leave most of the country behind no matter the size of such a list. In addition, I believe this type of a top-down approach from Washington will not only undermine the state and local prerogatives honored in the FAST Act, but also impede timely and successful delivery of the new infrastructure package.

Putting the program framework that built the Interstate Highway System and the National Highway System—the backbone of our national network of roads and bridges that drive our national economy—into work again to deploy additional federal resources represent the optimal approach to serve each and every corner of our country, improving mobility and quality of life in urban, suburban, and rural areas.

Direct Funding Instead of Financing Tools

Beyond fixing the HTF, it cannot be emphasized enough that any major transportation infrastructure package must focus on direct funding rather than on federal financing support. This is because financing tools that leverage existing revenue streams—such as user fees and taxes—are typically not viable for most transportation projects in the United States. Many of AASHTO's member DOTs appreciate the ability to access capital markets to help speed up the delivery of much-needed transportation improvements, and many states already rely on various forms of financing and procurement ranging from bonding, TIFIA credit assistance, state infrastructure banks, and public-private partnerships.

That being said, states fully recognize the inherent limitations of financing for the vast spectrum of publicly-valuable transportation projects. The reality is that most transportation projects simply cannot generate a sufficient revenue stream through tolls, fares, or other user fees to service debt or provide return on investment to private-sector equity holders. In 2014, such non-direct funding sources amounted to less than 18 percent of total capital outlays.

The state DOTs continue to support a role for financing and procurement tools such as public-private partnerships given their ability to not only leverage scarce dollars, but to also better optimize project risks between public and private sector partners best suited to handle them. But we also maintain that financing instruments in the form of subsidized loans like TIFIA, tax-exempt municipal and private activity bonds, infrastructure banks, and tax code incentives are insufficient in and of themselves to meet most transportation infrastructure investment needs we face.

Focusing on Transportation Investments that Produce Long-term Benefits

Though certainly significant, benefits from investment in transportation infrastructure goes well beyond short-term construction jobs created. A well-performing transportation network allows businesses to manage inventories and move goods more cheaply, access a variety of suppliers and markets for their products, and get employees reliably to work. American families benefit both as consumers from lower priced goods and as workers by gaining better access to jobs.

The FHWA estimates that each dollar spent on road, highway and bridge improvements results in an average benefit of $5.20 in the form of reduced vehicle maintenance costs, reduced delays, reduced fuel consumption, improved safety, reduced road and bridge maintenance costs, and reduced emissions as a result of improved traffic flow. Similarly, the American Public Transportation Association estimates that in the long term, a program of enhanced investment sustained over 20 years can have a total effect on the economy in the range of 3.7 times the amount being spent annually.

When we as a nation make significant investments our transportation infrastructure, it generates a multi-decade return on that investment to all sectors of the economy in the form of improved productivity and quality of life. The current fiscal environment does not require a rapid deployment of public dollars to resuscitate the national and global economy like what we saw in 2008. Rather, right now is the opportune time to secure our economic future for the long-term through modernized public capital stock in transportation. As such, the infrastructure package must focus on programs and projects that generate most benefits through the entire lifecycle, rather than mandating short spending deadlines which will lead to less efficient use of taxpayer dollars due to project sponsors' inability to address longer-term needs.

AASHTO and its member are well-prepared to work with Congress to take advantage of our strong, productive partnerships with federal and local governments to deliver on a major infrastructure initiative.

THE FEDERAL SURFACE TRANSPORTATION PROGRAM MUST PREPARE FOR AND HARNESS SIGNIFICANT TECHNOLOGICAL ADVANCEMENTS

I believe that we are at an inflection point in transportation that is as significant as when the engine was merged with the horse and buggy; today it's the merger of technology with the car and truck as we know it. This will change the way we move goods, services and people on our roads and highways. In the future, I view data as the new asset that will dramatically enhance public safety, save lives on our roadways, improve mobility, enhance program and operational efficiency, and create jobs. It is important now more than ever, that we maintain relationships from local, state and federal levels to ensure our transportation system is not a bottleneck of continued innovation. To that end, state DOTs appreciate your vision and leadership for the future articulated through the Advanced Transportation and Congestion Management Technologies Deployment Program in the FAST Act.

Governments will need to build, redesign, and adapt roads, highways, and bridges to accommodate the autonomous and connected vehicle. Traditional investments include providing better lighting, consistent roadway design, and better signage. Spectrum for vehicle-to-infrastructure systems using Dedicated Short Range Communications needs to be preserved, and rural broadband expanded. AASHTO also believes the National Highway Traffic Safety Administration must continue moving forward with industry on the proposal to establish a Federal Motor Vehicle Safety Standard for vehicle-to-vehicle communications (V2V). Cooperative V2V and vehicle-to-infrastructure (V2I) safety systems are needed to support fully automated vehicles, supported by robust research and deployment. Institutional capacity and workforce skills will need to be upgraded to operate, maintain and secure new smart roads and intelligent vehicles. States such as Florida, Michigan and Nevada have taken the initiative of policy changes at the state level, coupled with new guidance and standards at the national level, to effectively prepare for technological advancements in this space that will provide a greater overall public value in the future.

We also see much potential when it comes to the use of drones, or Unmanned Aerial Vehicles (UAVs). As of this past year, AASHTO identified 17 state DOTs conducting research regarding the use of UAVs. The aircraft have assisted state DOTs with bridge inspections, accident clearance, surveying and identifying, monitoring and mitigating risks posed by landslides, rockslides and flooding.

Another area that has seen rapid gains is the use of "big data," which refer to volume (large amounts of data), variety (different data being combined), and velocity (the speed at which new data is being produced and added to the analysis), used to analyze data that reveal patterns, trends, and associations, especially relating to traffic patterns, human behavior, and interactions. An example can be seen in 17 states partnering with the Waze, a popular driving app. Under its Connected Citizens Program, there has been increased and ongoing partnership between Waze and various governmental agencies to share publicly-available incident and road closure data to facilitate smoother movement of vehicles and people.

Clearly, there is demand for greater funding support for research and innovation beyond those provided through the FAST Act. In addition, a balanced, soft-touch approach from the federal government when setting national goals and policy pertaining to the intersection of transportation infrastructure and technology will better enable state DOTs to harness and deploy a multitude of enhancements efficiently and effectively.

CONCLUSION

Implementing and further building on the FAST Act, state DOTs remain fully committed to assist Congress and the Administration in ensuring long-term economic growth and enhanced quality of life through robust multimodal transportation investments.

Just last month, hundreds of state DOT leaders from all corners of our country were only a few blocks away attending AASHTO's 2017 Washington Briefing. Over three days of productive discussions, many of my colleagues and I were on Capitol Hill meeting with the respective Congressional delegations. As we did then, and as I do again now, AASHTO and the state DOTs will continue advocating for the reaffirmation of a strong federal-state partnership to address our surface transportation investment needs.

I want to thank you again for the opportunity to testify today, and I am happy to answer any questions that you may have.