



## MEMO

**To:** Public Art Network  
**From:** Kate McClanahan, Government Affairs, Director of Federal Affairs  
Patricia Walsh, Local Arts Advancement, Public Art Programs Manager  
**Date:** September 14, 2016  
**Re:** New Federal Changes Impacting the Arts in Local Transit Projects

This is a memo to public art leaders to provide an update on federal implementation of the Fixing America's Surface Transportation (FAST) Act, which contains a **new prohibition** on federal funds **to pay for the incremental costs of incorporating art or non-functional landscaping into transit facilities, including the cost of an artist on the design team.** The effective date of this new restriction **applies to any grants or loans entered into with the Federal Transit Administration (FTA) December 4, 2015 or later.** This memo has three parts: [Background](#), [Current Status](#), [Actions to Take](#).

### ***Background***

***Legislative background:*** In December 2015, Congress overwhelmingly passed bipartisan legislation to reauthorize highway and transit programs for five years, lasting until Fiscal Year 2020. (Note: It is possible for the authorization to last much longer. Authorizations typically stay on the books past their expiration. Before this reauthorization, there were 36 previous short-term extensions, including the just 2-year MAP-21 previous reauthorization. The FAST Act is the first long-term highway bill in more than a decade!) **Despite the earlier congressional gridlock, the FAST Act ended up passing by large majorities: The vote was 359-65 in the House and 83-16 in the Senate.**

***How the arts restriction got in the final legislation:*** The restricting language first appeared in text included in the initial, introduced, bipartisan bill sponsored in the House by Transportation & Infrastructure Committee Chairman Bill Shuster (R-PA), Ranking Member Peter DeFazio (D-OR), Highways and Transit Subcommittee Chairman Sam Graves (R-MO), and Ranking Member Eleanor Holmes Norton (D-DC). The bill, *Surface Transportation Reauthorization and Reform Act*, H.R. 3763, was the House proposal for reauthorizing surface transportation and transit programs for six years. The House committee leaders introduced the bill on October 20, 2015. It advanced out of committee two days later on a voice vote. It did not see any further House action. At the time, the prohibiting language treated “art” and “landscaping” the same without distinction.

Preceding this House action, the Senate had already advanced their reauthorization proposal out of committee. Their version did not include any restrictions to art or landscaping. This equally bipartisan bill, *Developing a Reliable and Innovative Vision for the Economy (DRIVE) Act*, S.1647, was introduced by Senate committee leadership on June 23, 2015 and advanced out of the Environment & Public Works Committee unanimously a day later!

What happened next was the House voted to use their House text to go to conference with the Senate, in hopes of producing a final bill. That House vote was in November. And then, in less

than a month, the conference report was filed, the House and Senate voted on it the next day, December 3. The President signed it into law the very next day, December 4th.

**During that month-long conference negotiation, the key word modifying landscaping to “nonfunctional” was added, essentially eliminating the impact to landscaping and retaining the full impact to art.**

How all of this came to pass has different perspectives. Many transportation organizations were lobbying on the bill. Keep in mind, these are massive bills; the FAST Act authorizes \$305 billion over fiscal years 2016 through 2020 for highway, highway and motor vehicle safety, public transportation, motor carrier safety, hazardous materials safety, rail, and research, technology, and statistics programs. There was also some negotiation to ensure that a transit title was included in a final bill. Some conservative Republicans opposed a federally-funded transit title; others wanted to devolve transportation responsibility to the states and remove all federal funding entirely. The final result, given its vote tally, was a compromise—and one widely supported in the end. The art restriction wasn't highlighted in press releases or talking points to leverage support, so it is likely that its inclusion was of interest to a small audience. In addition, given the speed of the bill's advancement, it is equally arguable that few knew it was included. But someone did—especially given that its language was directly modified during negotiations to limit its impact to landscaping. Americans for the Arts consulted with Public Art Network members, and at their request, did not actively lobby on the reauthorization—its passage also was not widely anticipated.

Going forward, the wording is an odd juxtaposition, and more concerning, it continues a progression of restrictions to public art. (Public art leaders and administrators may recall that in the last reauthorization, MAP-21, another significant change occurred, in that “stand-alone” art was prohibited, but incorporating art into facilities and including an artist on the design team were still eligible expenses. The FAST Act now prohibits those previously permitted allowances!) Again, **these restrictions apply only for transit projects, which include bus, subway, light rail, commuter rail, trolley, and ferry projects; i.e., not highways.** On the highway side – i.e., projects funded through the Federal Highway Administration (FHWA) – there are no eligibility changes.<sup>1</sup>

**The federal change to the transit title restricting funding for art is sweeping and significant.** It is a clear funding prohibition, but still retains some potential “gray area.” For instance, it raises some question about how “incremental costs” may be defined. It also opens opportunity for ways to think about incorporating art into transit facilities without an added cost. For example, art and good design often save lives, improve safety, increase utilization, improve the movement and flow of people and goods, and create demand. Thus, methods for calculating cost beyond materials and labor to include these macro-impacts could be an interesting study. Moreover, definitions of what is an artist may also be a point of discussion. A design team might all be designers, architects, or community planners—without artists. Although these word considerations may seem to discourage the celebration and pride that art by its very nature instills, it is a possible throughway until Congress catches up on understanding the importance and the impact art and

---

<sup>1</sup> This is an important distinction. The reauthorization includes multiple titles. One of these, Title III, is public transportation, also known as transit. This is where the art impact is. The Federal Transit Administration (FTA) has jurisdiction of this. Another title, Title I, is federal-aid highways. This is perceived more as the “bailiwick” of these reauthorizations; i.e., federal roads and bridges. The Federal Highway Administration (FHWA) has jurisdiction of this. There are no new art restrictions to this title.

good design have on their transportation systems on which their constituents, communities, and the nation as a whole rely. In the absence of clear definitions and federal guidance, these determinations may be made case-by-case by lawyers.

*What's happened since passage:* Since passage of the FAST Act in December 2015, Americans for the Arts' Government Affairs and Public Art teams have been tracking developments and relaying updates to members and the public art sector.

- In May, Americans for the Arts' Patricia Walsh, Public Art Programs Manager and Kate McClanahan, Director of Federal Affairs, moderated a virtual conversation to review and discuss the new federal changes impacting the arts in local transit projects in communities. Many throughout the country administering these programs shared feedback on how these changes may impact (or already are impacting) their local programs. The one-hour program was free and open to all. A recording is viewable through our ArtsU platform: <https://artsu.americansforthearts.org/products/virtual-conversation-arts-in-transit-transportation-projects>.
- At our convention in Boston in June, we updated the United States Urban Arts Federation on the federal changes impacting their communities.
- Currently, we are adding to and creating a larger listserv open to all interested individuals and organizations as a way to communicate and share info as implementation moves forward.
- We are preparing our advocacy strategy for the next authorization by gathering feedback and impact data in order to unite behind a legislative position, which could also be communicated in the next Arts Advocacy Day (March 2017), including as a Statement of Concern.

*Administrative Actions:* With the FAST Act in place, the Federal Transit Administration (FTA) is implementing the transit portions of the new law, including the law's prohibition on federal grants or loans to pay for the incremental cost of incorporating art into transit facilities.

- In February, the FTA put out a [Notice of FTA Transit Program Changes](#), which listed the art restriction and its requirement in all FTA programs.
- The FTA also has in place a dedicated one-stop shop [website](#) with webinar opportunities as implementation progresses.
- An important note: While the law change prohibits FTA funds for incorporating art or non-functional landscaping into transit facilities, **local communities can still use their funds to use art to enhance public transit facilities**. They cannot, however, use those funds to "match" federal funds, since all local funds used as match must be spent on eligible activities, but local funding could remain an option for some.

### ***Current Status***

Because transit projects tend to be multi-year initiatives, **much of the impact of the new law has yet to be felt**, and as a result, there hasn't been the urgent level of concern that should be expected.

Long-term, despite the success of enacting this multi-year bill, the Highway Trust Fund remains insolvent. Even in a scenario where Congress agrees on a way to fund in the future, many members of Congress, even arts champions, have different pressing priorities for how to invest funds, including paratransit, bus procurement, and fixing maintenance backlogs and disrepair. In

that mix, **there is not enough of a sense that the arts are not an extra, but instead a vital component in public transportation, encouraging use, revitalizing neighborhoods, mitigating crime, and driving tourism, just to name a few.** This communication remains an area of focus and recommendation in the work ahead, in order to have the best chance of success in impacting policy decision-makers.

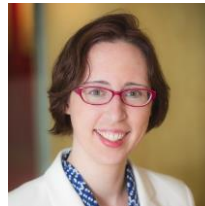
### ***Actions to Take Now***

- 1) **Join our listserv** to stay informed & to receive and share best practices for navigating this new restriction. Contact Patricia Walsh, Americans for the Arts Public Art Programs Manager to be added: [pwalsh@artsusa.org](mailto:pwalsh@artsusa.org).
- 2) **Be in touch with your regional FTA office**, your direct on-the-ground federal contact. The offices are linked on FTA's FAST Act resource [page](#).
- 3) If you have **specific questions where a direct, federal agency answer may be helpful, let us know**. The FTA may consider publishing an FAQ if they get interest and questions. (Right now, they have not been hearing much feedback on this very significant change for the field!)
- 4) **Stay in touch and let us know what additional resources, tools, or advocacy outreach you may be interested in receiving.**



**Patricia Walsh**  
Public Art Programs  
Manager

 [Email](mailto:pwalsh@artsusa.org)



**Kate McClanahan**  
Director of Federal  
Affairs

 [Email](mailto:kate.mcclanahan@fta.gov)