THE BOND BUYER
Thursday, January 5, 2017

Florida Train Lawsuits Reveal 'Disturbing' Federal Financing Policies

By Shelly Sigo

BRADENTON, Fla. – The U.S. Department of Transportation told a Florida congressman that the agency "does not evaluate ridership, revenue, or creditworthiness" when project developers request a private activity bond allocation.

The USDOT provided the information in a Nov. 1 letter to U.S. Rep. Bill Posey, R-Fla., who had written the agency nearly six months earlier seeking answers about alleged scandals involving a government consulting firm.

The same consulting firm also performed a ridership and revenue study for All Aboard Florida, the company developing a privately owned passenger train system between Miami and Orlando.

Posey wrote to the USDOT in May 2016 letter to say that he understood the consulting firm's ridership and revenue study had been used in 2014 to assist the agency in determining that AAF was eligible to receive $1.75 billion in tax exempt bond financing for the 235-mile project.

"The U.S. Department of Transportation does not evaluate ridership, revenue, or creditworthiness in determining the eligibility of projects for Private Activity Bond allocations, and therefore did not consider the study in connection with its PAB allocation to the AAF project," Blair Anderson, USDOT Under Secretary for Policy, said in a response to Posey.

The correspondence between USDOT and Posey was made available in federal lawsuits filed by Martin and Indian River counties, who are pursuing the first-ever challenge of a USDOT bond allocation contending that the financing should have been considered during a federal environmental review process, but was not, in violation of federal law.

It is "a surprising claim that DOT did not consider the economics of the AAF Project in December 2014, even though the $1.75 billion PAB allocation effected up to a $600 million federal subsidy for AAF," the counties said in a joint court filing Dec. 21.

The lack of "vetting" from the USDOT regarding its approval process for private activity bonds is disturbing, said George Cecala, spokesman for Rep. Posey.

Posey has cited public safety concerns about the project and opposed what he calls federal subsidies for AAF and other rail projects in the form of federal low-interest loans and PABs.

"We've been working on this for quite some time," Cecala said Tuesday. "All along we've been trying to provide some accountability to the project on behalf of taxpayers."

A spokeswoman for the USDOT said the agency could not comment on the PAB application review process at this time.

Cecala said the congressman is concerned about the bond approval process and plans to wait until President-elect Donald Trump is in office to discuss new federal policies toward financing passenger train projects that have been favored by the Obama administration.

He also said potential investors in All Aboard Florida's bonds may think that the USDOT has vetted the project, "when in fact they've rubber stamped it."

"They are putting this out as an investment tool and saying it's appropriate, and haven't studied it," Cecala said. "We think that's disturbing."

Martin and Indian River counties said they believe an evaluation of AAF's financing plan and revenue study – and DOT's consideration of that plan and revenue study – are critical to assessing the status of their lawsuits, which are now being considered for dismissal due to a new financing strategy employed by All Aboard Florida.

The lawsuits, filed in 2015, were headed for a final judgment after U.S. District Judge Christopher R. Cooper ruled Aug. 16.

Cooper determined that the counties had proved the USDOT's bond allocation should have been considered in the environmental review process under the National Environmental Policy Act before a decision was made to award the financing.

With a decision looming that could – for the first time ever – subject the agency's PABs to the rigorous federal review process AAF changed course and asked USDOT to rescind its $1.75 billion authorization.

AAF then submitted a request for a $600 million bond allocation saying that the proceeds would be used to finance construction work on phase one of its project along a 67-mile corridor from Miami to West Palm Beach, with a stop in Fort Lauderdale.

USDOT approved the smaller allocation Nov. 22 for phase one, which has received federal environmental review clearance.

AAF also told the USDOT that it would submit at a later date a separate application for $1.15 billion in PABs for the second phase of its project, which has not completed the NEPA review process.

By bifurcating the bond financing requests, AAF left unfunded the second phase of the project: the 168 miles from West Palm Beach to Orlando, which would take the train through Martin and Indian River counties without stopping.

The new financing strategy led AAF and USDOT to argue that the legal challenges brought by the two counties were moot.

AAF and USDOT filed motions to dismiss the suits Nov. 28.

All Aboard Florida has said that it remains committed to building the entire project.

On Dec. 8, the counties filed motions seeking a stay and for permission to conduct a "limited" amount of discovery to examine documents that they said would shed light on the evolution of the new financing plan developed by AAF and its bearing on the status of their suits.

The motions requesting additional documents were opposed by the U.S. Attorney General, which represents the U.S. Department of Transportation, and All Aboard Florida.

In the new court filing Dec. 21, the counties said that AAF and DOT appear to be treating their lawsuits and the environmental review of the project as a "game of credit yo-yo," in order to wait for the suits to be dismissed before authorizing bond financing for the second phase of the project.

Cooper has yet to rule on the requests for discovery.

However, under the current schedule he has ordered the counties to respond to the motions to dismiss by Jan. 13.

AAF and USDOT must file their replies by Jan. 27.

SOURCEMEDIA™

© 2017 SourceMedia. All rights reserved.