



Dear Members of the Media,

As you continue to write stories about high speed rail, Brightline and activity at the Florida legislative level, please consider the following information regarding a final supplemental report issued by OPPAGA about the operation of the FDFC.

Attachments: [FDFC follow up report by the Office of Program Policy Analysis and Government Accountability \(OPPAGA\)](#), February 28, 2018 & [letter from CARE FL, Indian River County and Martin County to the Joint Legislative Auditing Committee \(JLAC\)](#), November 15, 2017

In November 2017, Senator Debbie Mayfield, co-chair of JLAC, held a hearing on a number of issues including the Florida Development Finance Corporation (FDFC) and its activity and decisions it made related to Private Activity Bonds issued to All Aboard Florida for its Brightline project. Sen. Mayfield had expressed her concerns about the way the FDFC was operating and its attempts to hold meetings without providing the public with reasonable notice. On multiple occasions in 2017, Sen. Mayfield had requested information from the FDFC related to high speed rail project, however, the entity and its Executive Director Bill Spivey chose not to be responsive. To that end, as Chairman of the JLAC, Sen. Mayfield directed OPPAGA to review the policies and procedures of the FDFC and to report back to the full committee.

Sen. Mayfield was not satisfied with the report and noted it lacked details which is why she directed OPPAGA to take a deeper look at several operational aspects at the FDFC. Many of the additional issues reviewed by OPPAGA were also highlighted in a CARE FL letter (attached) which was submitted to JLAC in November 2017.

The supplemental OPPAGA report, dated Feb. 28, 2018 is attached and it clearly points to many areas of concern including the **FDFC's board makeup**, its **lack of accountability, transparency** and use of **industry best practices**.

Please call Alia or Kristen for more information at 850-222-4100.

Excerpts

Has the FDFC complied with the meeting notice provision in corporation bylaws?

*Response FDFC has not fully complied with its bylaws for noticing public meetings, as most public meetings have not been noticed timely and are not held proximate to affected citizens. **Page 2 OPPAGA letter***

Has the FDFC operated under a full board of directors and had a quorum at its meetings?

*FDFC has not operated with a full board of directors for four of the last five years, but has had a quorum at recent meetings. **Page 3 OPPAGA report, also see pages 3-4 of JLAC letter***

- However, we have concerns about the eligibility of two of the four FDFC board participants in calendar years 2013 and 2014. Although the FDFC lists both of the individuals below as official board members from 2009 to 2014, neither of these participants were confirmed by the Senate.
- Given that two of the four board members may have been ineligible to serve, decisions made by the FDFC board during calendar years 2013 and 2014 may not have been consistent with the FDFC bylaws. During this period, FDFC reports that they approved 13 bond projects totaling \$479.6 million.

What steps has the FDFC taken to implement the conduit issuance policy?

*Despite its previous reports to the contrary, FDFC only recently adopted a new conduit issuance policy. **Pages 3 and 4 OPPAGA report***

- However, FDFC recently provided evidence that contradicts the earlier report of the policy's adoption. In January 2018, OPPAGA requested that the FDFC provide evidence of its compliance with the revised policy; FDFC replied in writing that, "Due to some procedural issues, the policy adopted on May 3, 2017 is not in effect."
- Our review of minutes for the May 3, 2017 board meeting at which FDFC previously reported that the conduit issuance policy was adopted shows that the board asked everyone at the meeting, to leave the room prior to a vote on the revised policy with the exception of the board, the Division of Bond Finance representative, and the FDFC director.
 - o Florida Statutes specify that such a method of resolving a governance issue may be inconsistent with the Sunshine Law, and so by implication, the FDFC bylaws.⁵ Further, Florida case law suggests that other government entities have been found to be in violation of the Sunshine Law for similar actions, regardless of intent to do so.⁶

OPPAGA also made several recommendations to the FL Legislatures to improve oversight and accountability that include the following:

*The FDFC, along with other conduit bond issuers in Florida, offers businesses access to tax exempt bonding to support business expansion and job creation. However, the FDFC has had a number of public access and governance issues that inhibit its capacity to operate in an effective and accountable manner. Given these concerns, the Legislature could consider several options, including modifying the FDFC's administrative procedures to improve public access, enhancing data and reporting activities, and establishing executive branch oversight mechanisms such as adding state agency staff to the FDFC board or making FDFC a unit within a state agency. **Details bulleted on page 7 with exhibits.***