Citizens AGAINST RAIL Expansion in Florida

Holiday 2017 Update

Citizens Against Rail Expansion in Florida (CARE FL) continues to actively pursue targeted legal, political and public communication channels to stop the ill-conceived All Aboard Florida (AAF)/Brightline rail project that threatens the public safety and current way of life of communities throughout the Treasure Coast.

<u>AAF Financing Update</u>

After more than three years we know one thing will never change about AAF—it has an insatiable need for government subsidies. Here is what you need to know about the recent renewal of one of AAF's government subsidy handouts.

New information has been made public regarding AAF's plans to use a tax-exempt Private Activity Bond (PAB) allocation from the U.S. Department of Transportation (DOT). While this funding is reportedly only for Phase I of the AAF project (Miami to West Palm Beach), not Phase II from West Palm Beach to Orlando that will affect our communities, it is nonetheless important to unpack this latest development.

After DOT granted AAF a $1.75 billion PAB allocation in in December 2014 for Phases I and II, AAF attempted to sell the bonds four times beginning in August 2015 and was never able to do so. In November 2016, AAF was forced to abandon this $1.75 billion allocation, following an adverse U.S. District Court ruling in August 2016 that found the PABs were subject to the National Environmental Policy Act (NEPA). To avoid compliance with safety, health and environmental requirements, AAF terminated the bonds.

On November 22, 2016, DOT substituted a "new" $600 million PAB allocation for Phase I only. This was a transparent attempt to give AAF approximately one-third of the original $1.75 billion PAB allocation but, by tying it to Phase I only, escape safety, health and environmental requirements on Phase II.

Nearly one year later, on October 27, 2017, the Florida Development Finance Corporation (FDFC) renewed its agreement to serve as the conduit issuer of the bonds on behalf AAF.

The August 2016 District Court ruling found that the $1.75 billion PAB allocation would cost the U.S. Treasury up to $600 million in foregone tax revenue over 10 years. Extrapolating from that conclusion, we can assume that the foregone tax revenue would equal up to approximately one-third of the new $600 million PAB allocation—approximately $200 million over 10 years.

Use of the PABs

Based on the documents that were part of the FDFC's meeting packet, AAF will use the $600 million to retire its current high price debt, replacing it with lower price debt. Specifically, documents indicate that AAF intends to use almost all of the money from the new tax exempt bonds to pay off the only prior funds it had raised from the market—originally $405 million at 12% but now ballooning above $500 million with interest owed.

In addition, documents indicate AAF intends to pay off $98 million of the Siemen's manufacturer financing of the five trains sets it purchased. The $98 million is only a portion of the cost of the five train sets, and leaves AAF with a debt of approximately $160 million. The trains were financed by Siemens to accommodate the AAF buyer.

In short, nearly 100 percent of the new $600 million in financing would go to refinance debt already incurred in Phase 1. All AAF has accomplished is to get the right to issue tax exempt bonds to replace expiring or expensive existing debt that was either coming due (the trainsets) or was very expensive (the "toggle" bonds).

Renewal Made Amid Same Questionable FDFC Practices

Public notice of the FDFC's October 27 meeting, during which it approved a bond resolution and related financing documents for the $600 million PAB allocation, was publicly posted 72 hours before the meeting took place. We have now reviewed FDFC's documents and recent exchanges with AAF. These records reveal that AAF officials were in touch with the FDFC staff by email and phone regularly before the public posting, and had agreed early in October on the public hearing week. It shows a contempt for opponents to provide so little notice of the proceeding when AAF and FDFC staff were long aware of the hearing.

Additionally, there was no public hearing required under the Tax Equity and Fiscal Responsibility Act (TEFRA) for the $600 million PAB allocation. In 2015, a TEFRA hearing was held for the issuance of the $1.75 billion PAB request. In 2017, the October 27 FDFC meeting packet indicates that TEFRA approval occurred on August 1, 2017, without a hearing.

Upon review of the August 1 TEFRA approval letter, an obvious concern is that the 2017 letter describes the maximum bond amount as $1.75 billion, not the current $600 million. In addition, the current $600 million PAB allocation is specifically for Phase I of the project, yet the TEFRA letter of August 1 lists two Counties located in Phase II—Brevard County and Orange County. Was this letter was written in error, or does AAF intends to exploit this ambiguity to use some of the new $600 million allocation for Phase II of the project?

Recall that questionable FDFC practices are nothing new. During the 2014-2015 FDFC approval process, we repeatedly raised numerous concerns, including, but not limited to: multiple *ex parte* communications between FDFC and AAF (and its affiliates); the improper constitution of the FDFC Board of Directors, and the FDFC's inclusion in its budget an allocation for $1.8 million to be paid by AAF <u>before</u> the 2015 bond approval hearing, indicating prejudgment.

Updated Ridership and Revenue Study Is Extraordinarily More Optimistic Than Previous Studies

On November 15, CARE FL—along with Indian River County and Martin County—sent a comprehensive nine-page letter to the Florida Joint Legislative Auditing Committee (JLAC), detailing the following concerns with AAF's updated ridership and revenue study. The letter (link provided in next section) was delivered to JLAC the day before the committee met to discuss the Office of Program Policy Analysis and Government Accountability (OPPAGA) review of the FDFC that was requested earlier this year by one of CARE FL's champions in Tallahassee, Senator Debbie Mayfield. The data which follows is from that letter.

FDFC's most recent meeting materials included a new Ridership and Revenue Study for Phase I of the project, prepared by Louis Berger US, Inc. (Louis Berger)—a firm that has been debarred by the World Bank and has pled guilty to conspiring to defraud the U.S. Agency for International Development. This 2017 study sets forth the projections as to ridership and revenue that underpin the *pro forma* financials for the bond issue that FDFC approved.

This 2017 study is much more optimistic about the prospects for AAF than the 2013 study that Louis Berger prepared for the senior secured PIK toggle notes that AAF marketed in 2014. Notably, fares in 2020 are projected to be approximately 100% higher (an average fare of $32.70 instead of $15.71), yet even with much higher fares, there is a projection for 2.94 million trips, instead of 1.94 million trips – a 52% increase in the number of trips. As a result, revenue in 2020, as projected in the 2017 Louis Berger study, is expected to be $96 million rather than the $31 million projected in the 2013 Louis Berger study – a <u>300% increase in projected revenues</u>.

The remarkably more optimistic revenue forecasts presented in the 2017 Louis Berger study are essential to the marketing of the 2017 tax-exempt bonds. The 2017 bonds, as structured, could not be marketed using the 2013 Louis Berger revenue projections, because the *pro forma* presented in the draft 2017 preliminary offering memorandum would indicate massive negative cash flows after debt service.

There is no evidence from FDFC's deliberations that: (a) AAF informed FDFC that the changes in Louis Berger's projections for the project form the keystone to the *pro forma* financial analysis presented for the project; or (b) FDFC provided any scrutiny whatsoever to whether Louis Berger had any *bona fide* basis for increasing its revenue projections for the project by 300% between the time it prepared the 2013 study and the 2017 study. Louis Berger's 2017 study does not acknowledge that its AAF forecasts have become far more optimistic since its prior 2013 study.

FDFC Executive Director Grilled by JLAC Chairman Mayfield

On November 16, JLAC—which is co-chaired by Senator Debbie Mayfield and Representative Jennifer Sullivan—heard from OPPAGA regarding its review of the FDFC. Following the OPPAGA presentation, Sen. Mayfield and members of JLAC questioned both OPPAGA and FDFC Executive Director Bill Spivey and publicly expressed concerns about the following:

1) FDFC's public notice policy. Sen. Mayfield pointed specifically to a recent meeting that was not properly noticed to the public. The meeting was held on Oct. 27, but notice was only given on Oct. 24—falling short of the seven day requirement—despite the fact that public records show the FDFC had been communicating with AAF for weeks via email about the meeting and its expectation that groups would be attending to protest the agenda item related to approval of $600 million in Private Activity Bonds to fund Phase I of the AAF/Brightline project.

2) FDFC not responding to legislative inquiries in a timely manner – specifically addressing letters sent to the FDFC by Sen. Pres. Pro Temp Flores and Sen. Mayfield last session that did not get responded to for weeks on end.

3) How the FDFC vets the feasibility and stability of projects before approving millions or billions of dollars in bonds.

4) Why there has been an uptick in activity since Spivey became executive director.

5) The makeup of the FDFC board and a lack of diversity.

Ahead of the meeting, CARE FL, along with Indian River and Martin Counties, sent a letter to Sen. Mayfield and Rep. Sullivan outlining our concerns with FDFC's actions. This letter can be found on pages 52-60 of the JLAC meeting packet.

Florida Senate Transportation Committee Unanimously Approves Rail Safety Bill

On November 14, the Florida Senate Transportation Committee unanimously voted in favor of Senator Debbie Mayfield's Senate Bill 572, which creates the Florida High Speed Passenger Rail Safety Act. The bill, among other things, requires railroad companies operating high speed passenger rail systems in Florida to install specific safety technology and equipment. It also shifts responsibility for certain maintenance, repair, improvement and upgrade costs to the railroad companies. The legislation now moves to the Senate Community Affairs Committee.

Representatives MaryLynn Magar and Erin Grall have also filed legislation in the Florida House, House Bill 525, to address cost concerns related to high speed rail projects. The bill would require any railroad company operating a high speed passenger rail system in Florida to be responsible for certain maintenance, improvement, and upgrade costs. It also specifies that governmental entities are not responsible for such costs unless they consent in writing.

We applaud our champions Senator Mayfield and Representatives Magar and Grall for their continued to commitment to addressing concerns related to high speed rail in our state. There is currently no law or regulation governing high speed rail safety in Florida. We will continue to keep you updated as these good bills move through the legislative process in Tallahassee this session.

In Case You Missed It

Brightline opponents score victory in Tallahassee with High Speed Rail Safety Act by Lisa Broadt, *TC Palm*
http://www.tcpalm.com/story/news/local/shaping-our-future/all-aboard-florida/2017/11/14/brightline-tallahasee-high-speed-rail-safety-act-florida-senate-transportation-all-aboard-mayfield/864032001/

High-speed rail bill opposed by Brightline clears first hurdle by Jennifer Sorentrue, *Palm Beach Post*
http://www.mypalmbeachpost.com/business/high-speed-rail-bill-opposed-brightline-clears-first-hurdle/RSBhFrbK5aMb2A25iXkgVJ/

Bill to tighten All Aboard Florida rules gets approval – but so does train by Scott Powers, *Florida Politics*
http://floridapolitics.com/archives/249649-bill-tighten-aboard-florida-rules-gets-approval-train

Aboard Florida's Brightline could be under FDOT rule under Sen. Debbie Mayfield bill by Ali Schmitz, *TC Palm*
http://www.tcpalm.com/story/news/local/shaping-our-future/all-aboard-florida/2017/10/26/all-aboard-floridas-brightline-could-under-fdot-rule-under-sen-debbie-mayfield-bill/803434001/

Mayfield bill calls for state oversight of Brightline - *Vero News*
http://veronews.com/2017/10/27/mayfield-bill-offers-oversight-brightline-trains/

All Aboard Florida's Brightline faces some regulation under new Florida House bill by Ali Schmitz, *TC Palm*
http://www.tcpalm.com/story/news/politics/2017/11/07/all-aboard-floridas-brightline-faces-some-regulation-under-new-florida-house-bill/840037001/

Require Brightline to pay rail-crossing costs? You betcha! by TC Palm Editorial Board
http://www.tcpalm.com/story/opinion/editorials/2017/11/09/require-brightline-pay-rail-crossing-costs-you-betcha-our-view/844495001/

Are deaths a harbinger of things to come for Brightline? by Rich Campbell, *TC Palm*
http://www.tcpalm.com/story/opinion/columnists/rich-campbell/2017/11/09/deaths-harbinger-things-come-brightline-rich-campbell/839120001/

Deadline pushes All Aboard Florida train financing to the front burner by Shelly Sigo, *Bond Buyer*
https://www.bondbuyer.com/news/all-aboard-florida-moves-passenger-train-financing-to-the-front-burner

All Aboard construction lawsuit focuses on delays by Paul Brinkmann, *Orlando Sentinel*
http://www.orlandosentinel.com/business/brinkmann-on-business/os-all-aboard-construction-lawsuits-20171109-story.html

Interested in Helping?

We ask that you please continue to stand with CARE FL in opposing AAF. Winning this fight is up to us!

To get the latest or to sign up for our monthly updates, please visit our website www.saveourfl.com or you can like our Facebook page. You can also follow us on Twitter.

We would like to hear from you and if you care to make a contribution we've made it easy – just click here.

Please share these updates with your family, neighbors and friends. There will continue to be additional developments to report on in the coming weeks, which we will continue to report to you in these monthly updates and possible calls to action.

Thank you for your continued support. Together We Can Make A Difference.

Brent P. Hanlon
Chairman, CARE FL