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Congress of the United States
House of Representatives
Washington, DC 20515-0918

May 16, 2018

The Honorable Elaine L. Chao
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Avenue, SE, 9th Floor
Washington, D.C. 20590

Dear Secretary Chao:

I write to you today in my capacity as Chairman of the House Oversight and Government Reform Subcommittee on Government Operations, regarding the \$1.15 billion Private Activity Bond (PAB) allocation the Department of Transportation (DOT) recently granted to All Aboard Florida (AAF) for its passenger rail project. Joining me on this letter are other Members of Congress who share my questions and concerns.

As you likely know, my Subcommittee held a hearing on April 19, 2018, titled “Examining Tax-Exempt Private Activity Bonds for All Aboard Florida’s Brightline Passenger Rail System.” This issue was first brought to my attention by Congressman Brian Mast (R-FL)—a signatory on this letter—who represents a district through which AAF would run.

As I learned more about my colleague’s concerns relating to the theory that DOT used to approve AAF’s PAB allocation, I decided to examine the issue further. I approached this hearing with an open mind, but came away from it deeply troubled about the Department’s position.

DOT’s theory, as you likely know, is that AAF—which everyone agrees does not qualify for PABs under the “high-speed intercity rail facilities” eligibility category—is instead eligible under the “qualified highway or surface freight transfer facilities” PAB category. That category includes “any surface transportation project which receives Federal assistance under title 23”.

During the hearing, your Deputy Assistant Secretary for Policy, Grover Burthey, carefully articulated DOT’s “interpretation” related to this PAB allocation respectfully and appropriately. However, the Department’s theory that one dollar in Title 23 funds spent on highway-rail crossings allows a passenger railroad to be eligible for \$1.15 billion in PABs is deeply concerning.

Moreover, the Title 23 dollars that were allocated to the Florida Department of Transportation (FDOT) that led to DOT’s decision to approve AAF’s most recent \$1.15 billion PAB allocation were not spent on the AAF project itself. Instead, they were spent on the highway-rail crossings on the rail corridor on which AAF would run—a corridor owned by an entirely different company that has granted AAF an easement to run its trains. This creates substantial problems—including AAF’s credibility in making assertions to the Department in its PAB application that the AAF project had been the recipient of Title 23 funds.

This interpretation of the statute not only circumvents the intent of Congress when it added the “qualified highway or surface freight transfer facilities” category to the list of projects eligible for PABs in 2005, but also jeopardizes the credibility of the entire PAB program.

During the Subcommittee hearing, requests were made for additional information from your agency and from AAF, in order to shed more light on the \$1.15 billion PAB allocation and the eligibility theory that yielded more questions than answers during the hearing. Please provide us with this information by June 1, 2018.

Given this ongoing review by the Subcommittee on Government Operations, and given the number of yet-to-be answered questions relating to this issue, we the undersigned Members of Congress respectfully urge you to use your authority to suspend the allocation of the AAF PABs until the hearing record is complete and the Subcommittee has reviewed the additional information it expects to receive. Failing to do so compromises the integrity of the entire PAB program, and we cannot support what amounts to blank-check authority for this program. Please consider carefully the damage to the future of PABs that results from continuing this allocation.

We look forward to your expeditious response to this time-sensitive issue.

Sincerely,



Mark Meadows
Member of Congress



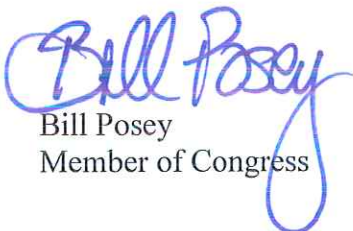
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Member of Congress



Matt Gaetz
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