THE BOND BUYER

Florida train project gets $1.15 billion private activity bond allocation

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BRADENTON, Fla. – Private activity bonds remain in the mix for the second, more complicated phase of the All Aboard Florida passenger rail project.

Brightline, a subsidiary of All Aboard Florida, said that the U.S. Department of Transportation on Friday approved a $1.15 billion private activity bond allocation for Phase 2 of the project from West Palm Beach to Orlando.

The company also said "all financing options" for Phase 2 are being analyzed, including a low-interest federal Railroad Rehabilitation and Improvement Financing loan. The amount of the loan request was not disclosed.

"We are pleased to have this financing option available," Brightline Chief Executive Officer Dave Howard said in a statement announcing the PAB allocation. "We appreciate the leadership of USDOT as they work to move major infrastructure projects forward, creating thousands of jobs and stimulating hundreds of millions of dollars in economic development."

The company closed last week on the sale of $600 million of PABs to finance a portion of Phase 1 between Miami and West Palm Beach, it said. The bonds were sold by the Florida Development Finance Corp., a statewide conduit issuer.

Howard called the additional allocation from USDOT "another major step forward for Brightline's Phase 2 extension to Orlando," now that all federal approvals are in hand, an apparent reference to the recent conclusion of environmental reviews for the Phase 2 segment.

Regardless of financing option the company choses for the extension of service to Orlando, project opponents said they are considering a legal challenge.

Attorneys for Citizens Against Rail Expansion in Florida, along with Martin and Indian River counties – who previously sued the USDOT over the project's Phase 2 financing – accused USDOT of causing confusion and maneuvering the release of information to skirt requirements of the National Environmental Policy Act, or NEPA.

In a Dec. 19 letter to USDOT Secretary Elaine Chao, they demanded to know if the agency had approved PABs and a Railroad Rehabilitation and Improvement Financing loan. They also asked about the status of the applications.

The attorneys pointed to information on USDOT's website suggesting that a RRIF loan was being sought. The loan application, the website said, is what prompted the Dec. 15 release of a "record of decision," a signed document granting final federal approval of Phase 2 of the passenger train project under the NEPA process.

The same week the record of decision was released, they said the Florida Development Finance Corp. scheduled an emergency meeting for Dec. 18 to approve a $1.15 billion PAB issuance on behalf of the All Aboard Florida/Brightline project. That meeting was canceled after Congress enacted a final tax bill that allows continued issuance of PABs, unlike the initial House bill.

"For the DOT to create ambiguity that sows public confusion about the specific public financing program is extremely troubling for those negatively impacted by the project," they told Chao.

"Holiday season" maneuvering, the attorneys wrote, also occurred on Dec. 22, 2014 when the USDOT issued an approval letter that allowed AAF to sell $1.75 billion of PABs to finance Phase 1 and Phase 2 – an approval that came prior to the release of a record of decision for Phase 2.

That led Indian River and Martin counties to file separate federal lawsuits challenging the bond financing. Both counties are in Phase 2 of the project but no train stops are planned.

The counties cited numerous concerns in their suits about public safety and historical sites, among others, charging that those issues had not been addressed to their satisfaction in the environmental review process.

As the suits proceeded, U.S. District Judge Christopher Cooper ruled that the counties proved that the USDOT's approval of the $1.75 billion of PABs should have been considered in the NEPA process – a decision that would have been precedent-setting.

Their cases became moot when All Aboard Florida withdrew its application for $1.75 billion of bonds and received a $600 million allocation to finance only Phase 1, which had already received NEPA approval.

Unlike the first phase, which upgraded an existing rail right of way, the second phase will require 40 miles of new right of way to reach Orlando.

“AAF and DOT have not yet revealed which type of public subsidy it is providing – a RRIF loan, PABs, or a combination of the forms of subsidy,” attorneys for the counties and CARE FL wrote, adding that taxpayers have been “left in the dark” in a critical review process that could result in new litigation.

Company officials did not say what prompted Friday’s announcement about the new bond allocation and the federal loan application.

USDOT did not release any information about the financings. Its website listing PAB allocations has not been updated since January, and still lists the $600 million allocation as unissued.

Brent Hanlon, chairman of CARE FL, said the organization has always known that the railroad would only be built using government subsidies. CARE has long cited its belief that tax-exempt PAB financing is a subsidy because the federal government foregoes taxation on the bond interest.

“We intend to go back to court and address the illegalities of AAF’s proposal,” Hanlon said Friday, after the company announced the new PAB allocation. “The fight is far from over.”

The Florida Development Finance Corp. has not rescheduled its meeting to authorize issuance of the new bonds. On Dec. 18, FDFC Director Bill Spivey said in an interview that the financing does not pertain to Indian River, Martin and St. Lucie counties.

“No bond proceeds are being spent in the three counties that are in opposition to this,” Spivey said. “I think that’s the point people don’t understand.”

Opponents of the intercity passenger train project have not said whether they are considering litigation involving the bond financing or the recent release of the record of decision.

A notice of the record of decision will soon appear in the Federal Register, beginning a 150-day period during which legal challenges can be filed, according to the USDOT’s website.

Bills proposing to regulate passenger rail projects, targeting All Aboard Florida, are pending before the Legislature.

State Sen. Debbie Mayfield, R-Melbourne, filed SB 572, known as the Florida High-Speed Passenger Rail Safety Act, which has passed one of three committees. Mayfield’s district includes portions of the counties opposing All Aboard Florida.

Mayfield’s bill would impose new regulations on trains operating at speeds of 80 mph or more, including making their owners responsible for installing safety measures and covering the cost of rail crossing maintenance. It would also require additional safety features for pedestrian crossings.

“There is no doubt that we are going to have high speed rail coming through the state,” Mayfield said at the Senate’s Committee on Transportation meeting Nov. 14. “The idea is to set this in place and in motion so we aren’t coming back trying to fix a situation that we have.”

Brightline officials oppose the bill. May filed a similar bill this year but it did not pass.

State Reps. Erin Grall, R-Vero Beach, and MaryLynn Magar, R-Tequesta, have also co-sponsored House Bill 525 addressing responsibility for certain high-speed rail costs.

HB 525, which has not been scheduled for a committee hearing, would make a high-speed rail system operator solely responsible for all maintenance costs associated with the safety equipment installed at public railroad highway-grade and pedestrian crossings.

The measure also states that no government would be responsible for costs associated with the maintenance necessary to operate a high-speed passenger rail system unless the governmental entity “expressly consents in writing.”

All Aboard Florida plans to run 32 Brightline-branded trains daily on the 235-mile-long route at completion.

The passenger train service will travel along existing tracks owned by Florida East Coast Railway from Miami to Cocoa on the east coast. From Cocoa, new tracks will be laid to Orlando International Airport. Speeds will range from 79 mph to 125 mph.

The company had planned to start introductory service between West Palm Beach and Fort Lauderdale in December, but officials said Friday they are still “working toward operational readiness” with the Federal Railroad Administration.