

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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SENATOR DEBBIE MAYFIELD

17th District

April 25, 2018

The Honorable Rick Scott
Governor of the State of Florida
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Re: All Aboard Florida Private Activity Bonds

Dear Governor Scott,

I am writing to express that I have significant concerns about the legality of All Aboard Florida's intended funding source to finance its Brightline high-speed passenger rail project ("Brightline"). AAF's allocation of private activity bonds ("PABs") is now being questioned by members of Congress. I am respectfully requesting you to take immediate action and direct the Florida Development Finance Corporation ("FDFC") to not act as a conduit for AAF, or any of its affiliates, for the next ninety (90) days while this issue is being discussed and analyzed by Congress. Your action will not only protect the credibility of the FDFC but also the reputation of the State of Florida.

Last week, on April 19, 2018, the U.S. House Subcommittee on Government Operations ("Subcommittee") held a hearing titled "Examining Tax-Exempt Private Activity Bonds for All Aboard Florida's Brightline Passenger Rail System." In the past, AAF has received two allocations of PABs, including \$600 million for Phase I of the Brightline project on November 22, 2016, and \$1.15 billion for Phase II on December 20, 2017. The purpose of the congressional hearing was to discuss whether AAF was actually eligible to receive these allocations under the PAB program.

Knowing how important this issue is to my constituents, I traveled to Washington, D.C., along with several of my Florida House colleagues and local leaders, to attend the hearing in person and wanted to share with you what I heard.

REPLY TO:

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- 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

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JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The hearing included testimony from Mr. Robert Crandall, a Treasure Coast resident, member of the Steering Committee of Citizens Against Rail Expansion in Florida (CARE FL), and former Chairman of American Airlines, who explained in detail the federal guidelines for the PAB program, which can be found at 26 U.S.C. §142.

26 U.S.C. §142 clearly defines 15 categories of projects that could be eligible for PABs. Although one of the categories is high-speed intercity rail facilities, Brightline does not meet the definition of this category because it is not capable of attaining a maximum speed in excess of 150 miles per hour between scheduled stops. Because Brightline did not meet the definition of a high-speed intercity rail facility, the United States Department of Transportation (“USDOT”) approved the allocation of PABs to AAF as a qualified highway or surface freight transfer facility under 26 U.S.C. §142(m). However, there is a fatal flaw in this decision. To be eligible for PABs as a qualified highway or surface freight transfer facility, Brightline must be a surface transportation project that received federal assistance under Section 130 of U.S. Code Title 23 (“Title 23 funds”). To date, neither AAF nor Brightline has ever received Title 23 funds. Rather it is Florida East Coast Railway—a separately owned company—that received the Title 23 funds to improve specific public highway-railroad grade crossings along the rail corridor.

Needless to say, this peculiar set of facts raised more questions than answers. It was even suggested by the Chairman of the Subcommittee that USDOT may be ignoring the intent of Congress with its broad interpretation of the PAB program guidelines. The Subcommittee tasked USDOT with providing additional information within 30 days to answer some outstanding questions and to shed more light on the recent \$1.15 billion allocation of PABs to AAF. I anticipate the Subcommittee will reconvene to discuss this issue again in greater detail once it has received the referenced information from USDOT.

In addition to the Subcommittee’s inquiry, yesterday U.S. Senator Marco Rubio sent the enclosed letter to USDOT Secretary Elaine Chao. In the letter, Senator Rubio has courageously asked for the USDOT to answer a set of questions about its interpretation of the PAB program to provide clarity as to the standards it applies to determine tax-exempt funding mechanisms. I applaud Senator Rubio and his effort to add some transparency to this complicated funding process.

Governor Scott, as the Chair of the Joint Legislative Auditing Committee and the Vice Chair of the Senate Government Oversight Committee, I am both astounded by the significant and serious questions that surround the legitimacy of AAF’s allocation of PABs and deeply concerned that AAF’s funding issues may further impact the credibility of the Florida Development Finance Corporation (FDFC).

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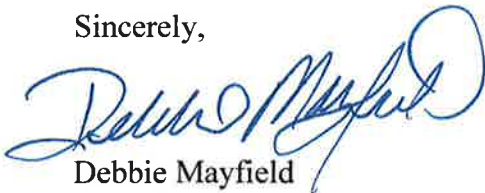
As you are aware, the FDFC is a statewide development financing authority that acts as a conduit for funding mechanisms including PABs. While the FDFC was created by the Florida Legislature, you as Governor appoint the board members that make the decisions.

Recently, the FDFC has faced significant scrutiny with regard to its lack of openness and transparency. Specifically, the Office of Program Policy Analysis and Government Accountability (OPPAGA) found in the enclosed supplemental report dated February 28, 2018, the FDFC has had a number of public access and governance issues that inhibit its capacity to operate in an effective and accountable manner. This finding by OPPAGA, along with the fact the FDFC has had 11 projects default in the last four fiscal years, casts significant doubt among me and my peers in the ability of FDFC and its leadership to fulfill its responsibilities.

In light of the cloud of uncertainty that has been placed on the legitimacy of the allocation of PABs to AAF, there must be an effort to protect the FDFC from a potentially embarrassing situation that could also jeopardize the State of Florida's reputation. As I previously indicated, I respectfully request that you take action and direct the FDFC to not act as a conduit for AAF, its affiliate Brightline North Segment Borrower LLC, or any other affiliate of AAF, to sell \$1.15 billion in PABs while there is an active discussion and analysis taking place at the federal level for the next 90 days.

Thank you for your attention to this matter and I look forward to your prompt response.

Sincerely,



Debbie Mayfield
State Senator, District 17

DJM/MM