Big Changes Proposed for Federal Transportation Credit Assistance Program

December 1, 2011 By Larry Ehl 1 Comment

TIFIA assisted in financing the construction of three ferry boats & redevelopment of two ferry terminals for the NYC DOT and NYC EDC.

The Senate EPW Committee is proposing big changes to the Transportation Infrastructure Finance and Innovation Act (TIFIA) program in the draft surface transportation bill, Moving Ahead for Progress in the 21st Century (MAP-21). The House is likely to include changes to the program when it acts on a draft bill in December. (See 8 Things Revealed – or Not – About House Transportation Bill Last Thursday for more background.)

TIFIA was enacted in 1998 and is designed to help advance qualified, large-scale projects that otherwise might be delayed or deferred because of size, complexity, or uncertainty over the timing of revenues. The program provides Federal credit assistance in the form of direct loans, loan guarantees, and standby lines of credit to finance surface transportation projects of national and regional significance. Each dollar of Federal funds can provide up to $10 in TIFIA credit assistance – and leverage $30 in transportation infrastructure investment. TIFIA credit assistance provides improved access to capital markets, flexible repayment terms, and potentially more favorable interest rates than can be found in private capital markets for similar instruments.

TIFIA has provided assistance to 24 projects, including highway, bridge, tunnel, transit, rail and ferry projects. Five projects have fully repaid that assistance. USDOT provides more information about the program.

Fred Kessler, an attorney with Nossaman LLP, explains the proposed changes and possible concerns in the following story published at Infra Insight, a blog about "infrastructure news, policy & industry development" sponsored by Nossaman. The firm is nationally known for its representation of state departments of transportation, regional transportation authorities and other public entities in procuring innovative public-private partnerships and design-build contracts for large transportation projects. Thanks to Fred and Nossaman for allowing me to cross-post the story for Transportation Issues Daily readers. The views expressed are not necessarily those of Transportation Issues Daily.

Big Changes Proposed for TIFIA

Posted on November 14, 2011 by Fred Kessler

Moving Ahead for Progress in the 21st Century (MAP-21), the draft reauthorization bill unanimously voted out of the Senate Environment and Public Works Committee, contains major improvements to the TIFIA program that many, including those of us at Nossaman, have been advocating. These changes, if enacted, will greatly expand availability and eliminate much of the uncertainty over whether a project will be selected.

- The bill eliminates virtually ALL of the selection criteria, converting availability from a discretionary competitive selection process to a simple objective determination of project eligibility.
- It adopts a rolling basis for applications and availability. No more waiting for annual notices of funding availability; it is up to the project sponsor to decide when to apply.

- The bill gives applicants the right to pay the subsidy from other sources, included federal grant funds, if budget authority runs out.
- Alternatively, if budget authority runs out, the bill allows an applicant to enter into a master credit agreement to obtain budget authority in a later year when available.
- The bill increases the size of the TIFIA credit assistance from a maximum of 33 percent to a maximum of 49 percent of eligible project costs.
- The Senate EPW Committee recommends an annual TIFIA budget authority of $1 billion.

Other features of the bill's amendments include:

- Beefed up credit standards, including "an investment grade rating from at least two rating agencies on debt senior to the Federal credit instrument; and a rating from at least 2 rating agencies on the Federal credit instrument." For small projects (up to $75 million, rural projects, and ITS), only one rating agency rating is required.
- As a requirement for project eligibility, the applicant must first submit a letter of interest (LOI), followed by an application. Presumably, the LOI and application requirements will get a lot simpler and quicker with fewer eligibility criteria.
- The bankruptcy springing lien has an exception for senior debt that is for an agency's program and is secured by tax revenues or system revenues.
- 50 percent of unused annual budget authority (if any) can be carried forward; the balance is returned to the states via federal share.
- Administrative fees for the program are set at 1 percent of the annual budget authority. At $1 billion of annual budget authority, annual administrative fees will be $10 million, a large increase from the $2.2 million under existing law.

There are a few issues that cause us concern.

- Project readiness is not a prerequisite for TIFIA eligibility. Such a requirement seems especially needed given the new first-come, first-served approach to budget authority allocation.
- Improved and expedited procedures are needed to overcome the inordinate processing delays that characterize the TIFIA program. We are quite concerned that applications, credit processing and loan documentation will get bogged down, and bureaucracy rather than budget authority will be the new constraint on TIFIA expansion.
- The exponential increase in TIFIA demand that will occur if this bill comes to fruition has real potential to overwhelm the TIFIA JPO, particularly because applicants can pay in subsidies on top of the $1 billion budget authority. The bill's increase in the annual administrative budget to $10 million may not be enough. Consideration should be given to increasing the administrative budget so that the TIFIA JPO can staff up to handle in a timely manner the growth in demand.
- There is no provision calling on the TIFIA JPO to process LOIs, applications, term sheets and loan documentation during the period it will be rolling out regulations for carrying out the amended program. It would be quite detrimental to the states if things grind to a halt while USDOT goes through a long procedure to adopt regulations.

There is reason to believe that the House reauthorization bill will contain comparable improvements to this vital federal credit assistance program.

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