



# Oversight Hearing on Implementation of MAP-21's TIFIA Program Enhancements

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Testimony before the Senate  
Environment and Public Works  
Committee

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406 Dirksen Senate Office Building

## Summary

- MAP-21 is the most significant positive change in federal surface transportation policy in the last 20 years;
- TIFIA is a powerful financing device but it is not a substitute for long-term stable transportation funding;
- Texas has leveraged over \$11 billion in infrastructure with the TIFIA program; and
- MAP-21 TIFIA assistance is taking longer to obtain than either Congress or project applicants anticipated. The current process can be improved.

## I. Introduction

The Texas Department of Transportation (TxDOT) appreciates the opportunity to provide written testimony to the Senate Environment and Public Works Committee (EPW) outlining our experience with, and thoughts about, the Transportation Infrastructure Finance and Innovation Act (TIFIA) program.

While I have the opportunity, TxDOT would like to thank the Committee for the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21). We consider it to be the most significant surface transportation legislation passed over the last 20 years. Since its passage, Texas has worked diligently to implement all the positive changes the legislation provides to the states. Of note, the Texas Legislature recently passed legislation permitting Texas to participate in the Surface Transportation Project Delivery Program (Section 1313 of MAP-21) which would allow TxDOT to assume some environmental reviews for transportation projects. We looked closely at the success California has had with the program since 2007 and sought to replicate that same success in Texas.

We will continue to implement elements of MAP-21 in the second year of the bill and look forward to updating the Committee on those efforts. Texas intends to take full advantage of the new opportunities generated by the new law.

Today I am before you to discuss one MAP-21 provision in particular: the TIFIA program. A point that is generally missed in descriptions of MAP-21 is that the reinvigorated TIFIA program has the practical effect of adding at least an extra year of projects to the two year bill. According to the Federal Highway Administration (FHWA), each dollar of federal TIFIA funds can provide up to \$10 in TIFIA credit assistance and leverage up to \$30 in transportation infrastructure investment. If the entire \$1.75 billion of TIFIA funds allocated in MAP-21 is leveraged at this 30x multiple, over \$52 billion in much-needed infrastructure would be possible. Given this clear benefit, TIFIA is a valuable tool in the financing toolbox but it should continue to be a supplement, not a complete substitute for conventional federal-aid highway, highway safety and transit grant programs.

MAP-21 solved key challenges, at least on paper, that have held back the TIFIA program. We were very encouraged by the substantial increase in funding for the program, the increased share of project costs that TIFIA can finance, and the Congressional desire to make the TIFIA program more efficient. These changes to the program were not only welcomed by Texas, but by other states and national transportation stakeholder groups. The American Association of State Highway and Transportation Officials has praised the ability of states to leverage private sector resources through the expanded TIFIA program. While AASHTO believes it isn't the complete funding solution the nation requires, it is a significant financial tool nonetheless.

However, if MAP-21 TIFIA funds are not deployed to projects that are ready, the program will lose momentum and Congress' objectives will not have been achieved.

## II. TIFIA in Texas

Since TIFIA's inception in 1998 as part of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), Texas has been an early user of the program. We view TIFIA as a critical component in the delivery of our larger scale projects. Within the last 10 years, the Texas Legislature has enacted several innovative financing initiatives that may be used in conjunction with TIFIA to deliver projects sooner and more efficiently. Some examples are:

- Long-term Debt: TxDOT was provided the authority to issue long-term bonds paid back by state motor fuels tax revenue, state general revenue and other dedicated revenue streams.
- Toll Revenue Bonds: TxDOT has the ability to issue bonds for specific tolled projects and use toll revenue to repay the bonds.
- Comprehensive Development Agreements: Texas' version of public-private partnerships allows the state to partner with the private sector to finance and develop new, state-owned mobility projects.
- Private Activity Bonds: The Legislature passed legislation in 2005 to allow the state to issue PABs in order to keep a private developer's borrowing costs as low as possible.

Multiple entities in Texas, including TxDOT, transit providers and regional mobility authorities have submitted 34 Letters of Interest (LOI) since the start of the program. To date seven of those applications have been approved and projects are moving ahead with TIFIA funds as part of their financing structure.

To date, Texas has received \$3.4 billion in TIFIA assistance which, combined with state, local, and private investment, yielded over \$11 billion in total project funding. Because TIFIA loans are scored at about 10 percent of the amount of the loan, the federal budget impact for these projects is estimated at only \$343 million. Compared to the 80 percent that the

federal program contributes to projects under the traditional formula funding system, the TIFIA program saved the federal government \$8.7 billion to deliver the same projects. TIFIA is a great example of states doing more with less federal dollars.

According to FHWA TIFIA data, Texas is home to the three largest TIFIA loans in the nation. These projects have been critical to relieving congestion and contributing to efficient movement of goods in heavily populated areas of the state. In addition, Texas has a significant TIFIA loan for a light rail project whose purpose is to move people into and out of a major international airport. These projects are detailed below:

### *Central Texas Turnpike System*

TxDOT's Central Texas Turnpike was constructed with a \$900 million TIFIA loan which was a key element in leveraging funds to cover the project's \$3.4 billion price tag. The project consists of three contiguous toll highways serving the Austin metropolitan region and the Austin-San Antonio corridor. The largest part of the system, SH 130, was constructed to allow for an alternative route for IH-35 in one of the most congested parts of the state. The road allows for more efficient movement of people and goods through Central Texas.

- TIFIA loan - \$900 million (used to retire Bond Anticipation Notes [BANs] in 2007 and 2008)
- First tier revenue bonds/notes - \$1.4 billion
- State funding - \$520.1 million
- Local contributions/TxDOT funds for ROW - \$416 million
- Interest earnings/accrued interest - \$185.2 million
- The project was delivered ahead of schedule and under budget.

### *I-635 Managed Lane Project*

I-635 in Dallas, a TxDOT-sponsored project, provides managed lanes to relieve congestion in one of the worst bottlenecks in the state. An \$850 million TIFIA loan was used to complete the \$2.6 billion funding package. The project was designed and constructed as a Comprehensive Development Agreement (CDA), which is the Texas equivalent of a Public-Private Partnership.

- TIFIA loan - \$850 million
- Private Activity Bonds (PABs) - \$606 million
- Equity contribution - \$664 million
- Toll Revenues - \$17 million
- Public Funds - \$490 million

### *North Tarrant Express – Phase One*

The North Tarrant Express project in the Dallas-Fort Worth metro area is a significant project for mobility in the region. The project will add three general purpose lanes in each direction and two managed lanes in each direction for a total of 10 lanes with frontage roads for future traffic volumes. The \$2 billion project is also a CDA between TxDOT and a private consortium of investors. The project was capitalized with a \$650 million direct TIFIA loan.

- TIFIA Loan - \$650 million
- Private Activity Bond Proceeds - \$398 million
- Public Funds - \$573 million
- Equity Contribution - \$426 million

### *Dallas Area Rapid Transit Light Rail Orange Line*

Dallas Area Rapid Transit received a \$120 million TIFIA loan in 2012 to extend its Light Rail Transit Orange Line. The line connects downtown Dallas with the Dallas-Fort Worth International Airport. The TIFIA loan, as well as revenue bond proceeds and Section 5307 funds, make up the funding strategy for this project.

- TIFIA loan - \$120 million
- Revenue bond proceeds and cash (backed by 1.0 percent sales tax and farebox revenue) - \$276.4 million
- Other federal grant funds (Section 5307) - \$600,000

Under MAP-21, Texas has submitted 6 LOIs (4 TxDOT projects, 2 local entity sponsored projects). We continue to have open and forthright discussions with the USDOT about our projects. They have been good partners to work with and we appreciate their willingness to meet with us as we all work through the TIFIA process.

While Texas has played a leadership role in the use of the TIFIA program, we see the rest of the country catching on and catching up. Project sponsors in Virginia, North Carolina, California, Florida, Alaska, New York, Illinois, Georgia, Indiana, Kentucky, Missouri, Louisiana, Ohio, Washington, Pennsylvania, Delaware and the District of Columbia have all looked to participate in the TIFIA program and have either previously obtained loans or have submitted LOIs for TIFIA credit assistance under MAP-21. As Texas and these states show how TIFIA can help advance the implementation of large-scale transportation infrastructure projects, we believe every state in the Union will come to use the TIFIA program.

### **III. TIFIA and MAP-21**

MAP-21 embodies a fundamental shift in the administration of the TIFIA program. Prior to MAP-21, USDOT was allowed discretion to evaluate and choose eligible projects under specific criteria. USDOT also had authority to weigh and compare the relative merits of

eligible projects under these selection criteria, and to choose those that scored highest under a weighted scoring system. Over time, USDOT continued to add criteria, such as liveability, to its list of selection criteria. These criteria, while seen by some as beneficial to help narrow down projects for funding, went beyond what was laid out in law. Too much discretion seemed to be permeating the process and made the program more about meeting subjective criteria, as opposed to finding the best projects to meet mobility demands.

MAP-21 eliminates discretionary selection criteria. It establishes a limited set of objective eligibility criteria that require a “yes” or “no” determination of satisfaction. In the new language, it expressly states:

“a project shall be eligible to receive credit assistance ... if the project meets the criteria described in this subsection.”  
(§602(a)(1).)

“... projects that are eligible to receive credit assistance ... *shall receive credit assistance* on terms acceptable to the Secretary, if adequate funds are available ...” (§602(b)(1)).  
(emphasis added)

TxDOT welcomed this change in MAP-21 because we believe market forces should direct which projects are selected to receive TIFIA funding. Congress can rightly point to this as a decision which created a level playing field designed to send funding exactly where there is demand. It is very close to succeeding.

When the final conference version of MAP-21 was released, we were pleasantly surprised by the 10 percent rural set-aside. We are not certain, however, if it will succeed within the two years as it took considerable time for potential sponsors to fully understand the original program. Although Congress built in an appropriate safeguard this time in the event funds are not utilized, you may want consider an extension beyond two years in order for the rural portion of MAP-21 to be effective.

The South Padre Island Causeway project in Texas, which falls outside the city limits of Brownsville, would appear to qualify for rural consideration. However when encompassing the entire metro area it does not qualify for the rural set-aside.

It might be useful, therefore, to have USDOT target state departments of transportation with an education campaign or workshops to explain in more detail this portion of the MAP-21 program. If no loans are made within the two years, Congress might want to consider a parallel program that’s separate from the existing TIFIA program, but focused on regions

without major metro areas. Issues to consider include a less complex application process, the ability to refinance existing debt and possibly loans that can compete favorably with tax-exempt bonds.

#### IV. Funding Predictability and Delays

As the Committee is well aware, states are struggling with the lack of predictable funding for our transportation projects. The Surface Transportation Program, until very recently, was the most reliable of all federal undertakings. Now, it has joined the list of federal responsibilities that get fixed at the last minute. There are rescissions, earmark claw backs, short term extensions, and a trust fund that can no longer fully replenish itself. This is not the best way to deliver projects because it impacts the planning process for agencies, local communities and our private sector construction and engineering partners. We would, however, like to thank the Committee for its leadership in largely protecting state departments of transportation from sequestration for two years.

While TxDOT would have preferred that MAP-21 extend beyond two years, we felt encouraged by the robust TIFIA funding coupled with a streamlined decision process. The increased investment in the program, as I stated earlier, could be leveraged into a full third year of funding under MAP-21.

TxDOT also was encouraged by the speed at which USDOT issued its Notice of Funding Availability (NOFA). On July 31, 2012, three weeks after MAP-21 was signed into law, USDOT issued the NOFA. TxDOT viewed this as a positive step and immediately began preparing letters of interest. Other states are working to position themselves to use TIFIA funding on a variety of projects. Thirty LOI's have been submitted for the MAP-21 funds.

A year after passage, however, the bulk of the funds have not yet been put to use. Here is where we see the challenges.

A problematic effect of the NOFA approach, whether intended or not, is that it undermines Congress' intent that USDOT improve its timeliness in processing TIFIA credit assistance. The new law requires USDOT to indicate whether an application is complete within 30 days of receipt, and to approve or disapprove an application within 60 days after giving notice that it is complete. The NOFA process has effectively stretched the application process beyond the 30 and 60 day deadlines.

The new law requires USDOT to "implement procedures and measures to economize the time and cost involved in obtaining approval and the issuance of credit assistance ..." (§605(e)). But by requiring much of the information to be submitted at the letter of interest stage that has been previously submitted at the application stage, USDOT has made the 30- and 60-day application deadlines less important and not made the process more streamlined. Indeed, NOFA sets no comparable deadlines for USDOT to act on letters of

interest. The USDOT is requiring that almost every project detail be disclosed at the LOI stage, which puts an undue burden on the project sponsors. A possible remedy would be to require the sponsors to include in their LOI representative financial terms, with some flexibility for future changes built in.

In addition to the timing issues, USDOT has indicated that, except under exceptional circumstances, it will not consider TIFIA credit assistance for more than 33 percent of the total project cost. That is the historical cap for assistance; however language in MAP-21 increased the cap to 49 percent. We understand that restricting funding to 33 percent would, in theory, allow more projects to be funded. To date, however, no project has been funded and therefore available funds remain unutilized. USDOT should adhere to Congress' intent and, at least, consider projects that need between 33 and 49 percent to fund their projects.

## V. Ideas for Improving TIFIA

Given that MAP-21 is only a two year bill, we have a compelling reason to get the TIFIA program back on track. MAP-21 provides critical changes and increased funding, but changes can be made to further enhance the program:

- Reconsider the 33 percent ceiling on eligible project costs;
- Streamline the LOI phase and enforce strict deadlines for review of LOIs;
- Incorporate the TIFIA application process with project procurement schedules so as to maximize the competition sponsoring agencies can stimulate.

## VI. Conclusion

TxDOT would like to conclude by thanking the Committee for the opportunity to submit written testimony regarding the department's past and present interest in, and experience with, the TIFIA program. TxDOT also appreciates the courteous and positive working relationship it enjoys with the USDOT and is committed to working with our federal partners to support the continued success of the TIFIA program. Looking beyond 2014, we look forward to working with the Committee to assist in the development of the successor to MAP-21.