THE BOND BUYER

Moody's issues warning in Florida expressway dispute

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A second rating agency is warning Florida lawmakers about the negative consequences that may befall the Miami-Dade County Expressway Authority if legislation usurping the agency's decision-making power becomes law.

Moody's Investors Service said Thursday that it considers the current political dispute affecting the expressway authority's operations as a negative pressure on the credit.

Moody's and Fitch say pending bills ordering toll reductions imperil the Miami-Dade County Expressway Authority's bond ratings.Bloomberg News

"Any changes that reduce the authority's ability to adjust rates to meet bond debt service, operating expenses, and other liabilities would be negative to the authority's credit profile," said analyst Myra Shankin.

Moody's rates the authority's $1.53 billion of outstanding revenue bonds A1.

House Bill 385, which passed the House by a vote of 80-33 on April 17, would dissolve the authority, create a new agency and require it to consider toll rebates as high as 25%. The measure would also put restrictions on future toll increases and bond issuance.

HB 385 has been sent to the Senate for consideration and while that chamber’s Senate Bill 898 remains in play, both bills have similar language and make some requirements subject to compliance with bond covenants.

Opponents of the bills say they would illegally usurp the authority’s ability to operate freely in accordance with its ownership of five local expressways, which were purchased in 1966 in a transfer agreement with the Florida Department of Transportation.

“The greatest credit risk, if any change of control occurs, would be the impact to the authority’s ability to raise tolls,” Shankin said. “Any restrictions on the facility's ability to raise revenue to meet the authority's commitments would have a negative credit impact and could result in a rating downgrade, potentially greater than one notch.”

On April 17, Fitch Ratings placed its A rating of the authority’s debt on rating watch negative and warned that if one of the bills become law as proposed the successor agency would have “substantially altered” financial flexibility and rate-setting autonomy that could result in up to a two-notch downgrade.

Fitch first put a negative outlook on the authority’s bonds in July 2018, the second year lawmakers passed a bill ordering toll reductions and surplus revenues to be diverted to fund transportation projects unrelated to the expressway authority.

S&P Global Ratings rates the authority A-plus.

The authority, also known as MDX, has already filed a lawsuit against the state challenging the legality of the 2017 and 2018 bills.

Javier Rodriguez, the authority’s executive director, said in a statement to The Bond Buyer Friday that the pending suit was filed because the agency believes the prior bills are an unconstitutional impairment of the authority’s transfer agreement.

“Pursuant to MDX’s amended and restated trust indenture, the contract delineating MDX’s obligations to its bondholders, MDX is contractually required to diligently enforce the terms of the transfer agreement,” Rodriguez said.

He added, “MDX is similarly contractually required to seek judicial review and injunctive relief for any statutes that pass this legislative session that similarly violate the MDX transfer agreement or any other contract to which the authority is obligated in order to be in compliance with its obligations to its bondholders.”

Moody’s also questioned whether the state can take the assets of a locally created authority that purchased them pursuant to a contract, and said the current legislation increases risks for MDX bondholders.

Moody’s said it believes that the dispute with state lawmakers first arose in 2014 when MDX completed its shift to all electronic tolling and increased rates on the Airport Expressway or State Road 112 and the Dolphin Expressway, SR 836, both of which are used by local commuters.

“Prior to that, the locations of cash toll plazas allowed some motorists to strategically travel on segments without paying tolls,” Moody’s said. “Combined with the elimination of free westbound traffic, there was a vocal adverse reaction to MDX’s new tolling plan and several legislative proposals have been made in the years since.”

If the legislation proposed this year doesn’t pass, Moody’s said similar bills are expected to be filed in the future and it’s probable that the courts will have to definitively settle the ownership issue.

The legislative session ends May 3.

Florida lawmakers are poised to dissolve a local road building agency in a bid to reduce tolls in South Florida and to tighten control of future borrowing.

The state House of Representatives has already passed a bill to replace the Miami-Dade County Expressway Authority, or MDX, with an agency that has less rate-setting autonomy, and the Senate is considering a similar bill this week.

Florida lawmakers are poised to pass a bill that would remake South Florida's local expressway authority and reduce tolls. Bloomberg News

The move raises the specter that other local authorities could be the targets of similar legislation in the future.

The Central Florida Expressway Authority in the Orlando area and the Tampa-Hillsborough County Expressway Authority on the west coast are the state's two other local toll road agencies. The Central Florida agency was created when state lawmakers disbanded its predecessor in 2014.

"These are not good days, and it's very distressful for the future of eliminating congestion and increasing mobility. That's what it's really about," said Sonny Holtzman, a Miami attorney and director on the board of TEAMFL, a statewide organization of expressway agencies and transit authorities.

Holtzman, who was chairman of the MDX for the first six years after its creation in 1995, said this week is crunch time for final bills to move toward passage. The legislative session ends May 3.

The first step toward dissolving the MDX came April 17 when House Bill 385 sponsored by Rep. Bryan Avila, R-Miami Springs, passed on a vote of 80-33.

Avila told fellow members on the House floor before the vote that the agency and its board of directors had "let the community down" by refusing to reduce toll rates even though MDX had followed previous mandates to do so.

HB 385 would create the new Greater Miami Expressway Authority, with a new board and new executive director. It prohibits current board members and the executive director from serving on the new panel.

The new authority would assume MDX's debt, and would be prohibited from increasing toll rates for the next 10 years. After that a vote of two-thirds of the directors — instead of the current majority vote — would be required before new rate increases could be approved.

The bill would also create a mandatory 25% toll reduction program for drivers using transponders and require the Legislative Budget Commission to approve all bond issues before the new agency can sell debt.

Sen. Manny Diaz Jr., R-Hialeah Gardens, has proposed similar provisions in SB 898. It's waiting for its second and final hearings before the full Senate, which are expected this week.

Gov. Ron DeSantis hasn't indicated if he will support the measure.

In response to the legislation, Fitch Ratings on April 17 placed its A rating on the Miami-Dade County Expressway Authority's $1.53 billion in revenue bonds on rating watch negative.

Analyst Stacey Mawson said the action reflected the "uncertain political environment" for the MDX and its successor agency.

"The new agency's financial flexibility and rate-setting autonomy may be substantially altered from MDX's current form, which, if lessened, could result in a one-to-two notch downgrade," Mawson said.

MDX's bonds are rated A1 by Moody's Investors Service and A-plus by S&P Global Ratings. Neither has commented on the pending legislation.

Miami-Dade County Mayor Carlos A. Gimenez, chairman of the MDX, said at what may be the board's last meeting on April 15 that lawmakers are targeting the wrong agency.

The Florida Turnpike Enterprise also operates in Miami-Dade County and has raised toll rates 40% since 2009 because of an annual "cost of living" adjustment, he said, calling the turnpike a "cash cow." He also said the turnpike has plans to place "tolls on tolls" by adding tolled express lanes within lanes where tolls are already collected.

"This agency is under attack by certain legislators and the state Legislature itself," Gimenez said. "We have no cost of living [provision] at MDX."

Gimenez also said the agency hasn't raised tolls since 2014.

MDX hasn't done enough to talk about the positive things it has done for the community, said treasurer Louis Martinez. Those include spending all toll collections locally, creating 25,000 jobs, and building more than $1 billion worth of infrastructure, he said.

Martinez and board member Luz Weinberg also said the bills before the Legislature were a "personal attack" against the board's eight representatives who were appointed by the governor, state and local elected officials.

In addition to a five-year work program, MDX has planned a $1 billion, bond-financed extension of the State Road 836 expressway that officials have said will not be possible to complete under the 25% toll reduction plan proposed in the pending legislation.

Florida expressway agencies' outstanding debt:

Central Florida Expressway Authority, $2.57B

Miami-Dade Co. Expressway Authority, $1.53B

Tampa-Hillsborough Co. Expressway, $700.7M

Source: 2018 comprehensive annual financial reports

Unless the president of the Senate intervenes to halt the bill approval process this week, Holtzman said approval of the measure "could really impact toll financing in the future."

While such financing is advancing road projects across the country, he said Florida is going in the opposite direction.

"That's very distressful," he said. "My guess is this is going to pop up again [in other areas of the state] and they're going to have a lot of problems."

According to Fitch, even if the MDX isn't dissolved the bills filed this year "already indicate an unprecedented level of political intervention in MDX's ratemaking policies, potentially jeopardizing MDX's future autonomy."

Fitch placed a negative outlook on the authority's debt in July 2018, which was the second year lawmakers passed a bill ordering MDX to lower toll rates and to divert surplus revenues to fund transportation projects in Miami-Dade County unrelated to the expressway authority.

The negative outlook was prompted by Gov. Rick Scott signing a bill ordering MDX to reduce toll rates by a minimum of 5% or the board of directors would be removed.

The MDX board responded by approving a reduction in transponder and toll-by-plate rates of between 5.7% and 8% on the agency's 33.6 miles of toll roads: the Airport Expressway or State Road 112; Dolphin Expressway, SR 836; Don Shula Expressway, SR 874; Snapper Creek Expressway, SR 878; and Gratigny Parkway, SR 924.

Over the following months, however, questions were raised about the implications of the 2017 and 2018 amendments on the authority's ability to continue issuing debt under its existing bond indenture.

MDX General Counsel Carlos Zaldivar told his board in June that a legal analysis of the bills amending the agency's statute created uncertainty about the extent of MDX's control of the operation, maintenance and financing of the system, which he said could be construed to be a usurpation by the Legislature of rights granted to the agency under a 1996 transfer agreement with the Florida Department of Transportation.

That agreement enabled the MDX to purchase the rights to control, operate, maintain and finance all five expressways in Miami-Dade County.

MDX paid FDOT $80 million to defease debt the state secured with system revenues and assumed liability for another $11 million to purchase the expressways. To pay for the transfer price, MDX issued bonds and secured the payment with rights obtained under the transfer agreement.

Because of the 2017 and 2018 bills amending MDX’s statute, and conflicting language between the statute and the bond indenture, Zaldivar said bond counsel informed the agency that the conflict must be included in a bond counsel opinion for any debt issuance.

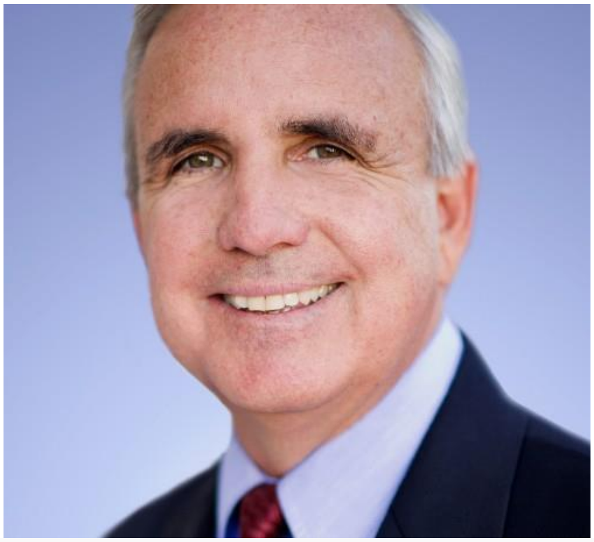
The conflict also needed to be disclosed to potential bond investors about “the risk of future usurpations by the Legislature of the financial and operational powers of the MDX board,” he said, adding that a qualified legal opinion could result in MDX being unable to obtain senior debt financing to fund its projects on the same terms as it has been able to do so in the past.

Zaldivar recommended a dual course of action: that the authority seek a declaratory judgment in circuit court in an attempt to invalidate the Legislature’s amendments, and to request that lawmakers reverse the statutory changes.

MDX filed a lawsuit in October 2018 against the state and Florida Attorney General Ashley Moody challenging the constitutionality of the laws in Leon County Circuit Court.

On March 27, Moody filed a motion seeking to dismiss the complaint on the grounds that she and the state of Florida are not the proper parties that would enforce provisions of the 2017 and 2018 amendments.

Circuit Judge Ronald Flury hasn’t ruled on the attorney general’s motion.



MDX Chairman Carlos Gimenez says his agency is being unfairly targeted by Florida lawmakers.

While south Florida lawmakers have focused on toll reductions, Senate President Bill Galvano, R-Bradenton, is pushing legislation that would do the opposite in rural areas of the state.

Galvano has proposed creating the “Multi-use Corridors of Regional Economic Significance Program” to expedite the creation of three new toll roads.

“I am confident these new infrastructure corridors will help achieve Florida’s goal of strategically planning for future population growth, while at the same time revitalizing rural communities and enhancing public safety,” Galvano said when the legislation was introduced.

He said recent population migration estimates indicate that Florida is gaining more than 850 people a day, a rate that will continue for the next several years.

“That means we are seeing our population increase by the size of the city of Orlando every year,” Galvano said. “Florida needs to be ready, and our rural communities are a key to our success.”

SB 7068 and HB 7113 identify three corridors for the new roads: the Southwest-Central Florida Connector from Collier County to Polk County; the Suncoast Connector from Citrus County to Jefferson County; and the Northern Turnpike Connector from northern end of the Florida Turnpike to the Suncoast Parkway near the state’s west coast.

The bills require FDOT to create a task force for each corridor to analyze routes, environmental and land use impacts. Each task force must issue a written report by Oct. 1, 2020, but the bills would require the projects to be under construction by Dec. 31, 2022 and to be open to traffic by Dec. 31, 2030.

Each corridor would be funded with a combination of state funding and toll revenue bonds. The borrowing has raised questions from some members of the GOP-led Legislature.

On Monday, 56 environmental organizations and the League of Women Voters of Florida penned a letter urging lawmakers to oppose the legislation saying the three toll roads through rural Florida would not reduce traffic or provide safety for evacuees during a hurricane.

“Sprawl is not progress,” the letter said. “These toll roads will cost Florida hundreds of thousands of acres of farms and rural lands and fragment landscape and wildlife habitat.”

The groups, which called the toll roads the “worst” environmental legislation to be proposed in two decades, said road building is not a sustainable economic development strategy for rural communities.

The Senate was expected to hold its final reading of SB 7068 on Wednesday, then send it to the House for consideration.