THE BOND BUYER

Court to decide if Florida law ordering toll cuts impaired bondholders' rights

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A new lawsuit says Florida state lawmakers impaired a contract with bondholders when they passed laws ordering a state-created road agency to reduce its tolls.

The Miami-Dade County Expressway Authority said in a seven-count lawsuitagainst the state that the laws will prevent it from accessing the bond market.

Florida Gov. Rick Scott signed House Bill 141 into law April 6, ordering the Miami-Dade County Expressway Authority to reduce tolls regardless of bond covenants. Bloomberg

The authority, also known as MDX, said the laws unfairly target it and are unconstitutional.

House Bill 1049 enacted in 2017 and HB 141 passed earlier this year have already created uncertainty in the bond market, the MDX said in its complaint filed Thursday in the Leon County Circuit Court.

“Bond counsel can no longer provide an unqualified opinion certifying to the financial markets that MDX solely controls its finances, effectively ending MDX’s ability to continue to issue A-rated municipal bonds to finance construction to improve and expand the [expressway] system,” the 266-page suit said.

The 2017 legislation amended the statute governing the authority and required - “subject to compliance with any covenants made with the holders of any bonds” – that tolls be reduced by at least 5% but not more than 10%. It also ordered the authority to dedicate between 20% and 50% of its surplus revenues to transportation- and transit-related projects chosen by the local metropolitan planning organization.

The authority didn’t lower tolls, according to the lawsuit, because it believed that a statutory exemption permitted it to comply with covenants in financing documents.

Earlier this year, the Legislature passed HB 141 removing the language about bond covenants and requiring the authority to submit a report to the governor showing that it reduced tolls a minimum of 5%. The bill would have required the removal of the authority's board members if they had failed to comply. Gov. Rick Scott signed the bill April 6.

To comply with the state mandate, the authority’s board rolled back rates by an average of 6% on its five expressways starting July 1.

The legislation led Fitch Ratings to revise the authority’s outlook to negative from stable in August, while affirming its A rating on $1.5 billion of outstanding revenue bonds.

“The revision of the outlook to negative reflects the unprecedented intervention taken by the Florida state Legislature usurping local autonomy in order to lower toll rates and divert surplus revenues to other Miami-Dade County project obligations,” said Fitch analyst Stacey Mawson.

Mawson also said the outlook change reflected uncertainty about the long-term impact the state's intervention may have on the authority's ability to allocate funds for future capital expenditures and issue additional debt, as well as uncertainty about future legislative actions that could impact MDX's independent rate making flexibility.

Moody's Investors Service has not acted on the authority's rating since Scott signed the new, more restrictive legislation.

In February, Moody's upgraded MDX’s senior rating to A1 from A2, and changed the outlook to stable from positive citing the authority’s stabilizing traffic and revenue performance, strong financial metrics and liquidity.

Analyst Maria Matesanz said then that Moody’s expected that the 2017 bill “directed at MDX will not have a significant negative credit impact based on the statuary prohibition against contract impairment in Florida.”

Scott, who is term-limited out of office this year, is running against incumbent U.S. Senator Bill Nelson, a Democrat who has held the seat since 2000.

S&P Global Ratings assigns its A-plus rating to MDX’s toll revenue bonds.

Rising toll rates and the imposition of new tolls in densely populated south Florida set the stage for complaints that led lawmakers to impose toll rate reductions.

In meetings this year, MDX board members said many drivers are confused about to whom they pay tolls. The MDX collects about 48% of the tolls in Miami-Dade County, they said. The Florida Department of Transportation and the Turnpike Enterprise collect the remaining tolls, such as those on area express lanes and the state turnpike.

The Miami-Dade Expressway Authority was created as a state agency in 1994. It operates five expressways, covering 33.6 miles: 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.

In 1996, the MDX purchased the rights, including the full jurisdiction and control of the operation, maintenance and finances of all five expressways in Miami-Dade County from the FDOT through a transfer agreement.

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.

MDX General Counsel Carlos Zaldivar told his board in June that a legal analysis of the bills passed in 2017 and 2018 raised concerns about the ability of the authority to continue issuing debt under its existing bond indenture.

Miami-Dade Expressway Authority officials say a state law ordering a toll rollback violates its contract with bondholders.

“The amendments enacted in 2017 create uncertainty as to the extent of MDX’s control of the operation, maintenance and finances of the system,” Zaldivar said. “In broad terms, the modified statutes can be construed to be a usurpation by the Legislature of rights granted to MDX under the transfer agreement."

Because of this usurpation and conflicting language between MDX's amended statute and its 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.

"Our financial advisor has informed us that such a qualification included in the 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 said.

The full authority to regulate rolls is the "most fundamental right" held by MDX, he said, adding that the operation of the system as well as the payment of debt service depend on the authority of MDX to regulate its toll schedule.

"If the power to regulate tolls on the MDX system is subject to legislative fiat, then the ability of MDX to operate, maintain and expand the system is also subject to legislative review and oversight, as is the payment of debt service on MDX bonds," said Zaldivar.

He 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. Any new legislation probably wouldn't go into effect until July 1, 2019, he said.

The authority's complaint seeks several counts for declaratory relief because it says the 2017 and 2018 bills amending the MDX statute violate the constitutional prohibition against contract impairment, and the transfer agreement in which FDOT gave MDX full authority over the expressway system.

In another request for relief, the authority contends that the state violated the statute governing the Miami-Dade Expressway Authority in which the state “promises to any person acquiring MDX’s bonds that the state will not alter the rights vested in the authority until all the bonds are fully paid and discharged.”

The authority is also seeking an injunction against the enforcement of the amendments.

The actions of the Legislature in changing MDX’s rate-setting process signify a fundamental policy shift that causes uncertainty regarding the agency’s future independent rate-setting ability, said Fitch’s Mawson.

“While management stated MDX is exempt from the legislation relating to the operational and financial control given it is superseded by bond document compliance and transfer agreement, it remains to be seen if the legislature will challenge MDX's rate-setting independence again in the future,” Mawson said.