

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Transportation

BILL: SB 772

INTRODUCER: Senator Garcia

SUBJECT: Expressway Authorities

DATE: March 31, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Pre-meeting
2.			CA	
3.			AP	

I. Summary:

SB 772 revises several provisions of law relating to the Miami-Dade County Expressway Authority (MDX). More specifically, the bill:

- Reduces the MDX governing board from thirteen to nine members, providing that four members each be appointed by the Governor and the Miami-Dade County Commission (County Commission), and retaining the Florida Department of Transportation (FDOT) district six secretary as an ex-officio voting member.
- Prohibits any appointed member of the MDX from serving as a member of any other transportation-related board, commission, or organization while serving as a member of the authority.
- Authorizes the MDX to increase tolls to adjust for inflation under certain conditions only if approved by resolution adopted by a supermajority vote of the County Commission.
- Revises the authorized use of any surplus revenues realized from tolls collected on the MDX expressway system.
- Eliminates the MDX's authority to borrow money and issue notes, bonds, and other forms of indebtedness on July 1, 2014, except for refunding bonds.
- Requires the MDX to provide a complete financial audit to the County Commission every two years.

II. Present Situation:

Miami-Dade County Expressway Authority

The Florida Expressway Authority Act (Act), codified in part I of Ch. 348, F.S.,¹ authorizes any county or two or more contiguous counties within a single district of the Florida Department of Transportation (FDOT) to form an expressway authority by resolution adopted by the board of

¹Part I of ch. 348, F.S., consists of ss. 348.0001 through 348.0012, F.S.

county commissioners. The Miami-Dade County Expressway Authority (MDX), an agency of the state,² is the only expressway authority created under the Act.³

The MDX was created by the Miami-Dade County Commission in 1994, pursuant to Chapter 2 Article XVIII of the Miami-Dade County Code of Ordinances.⁴

MDX's system consists of the following roadways in Miami-Dade County:

- Airport Expressway (State Road 112);
- Dolphin Expressway (State Road 836);
- Don Shula Expressway (State Road 874);
- Snapper Creek Expressway (State Road 878); and
- Gratigny Parkway (State Road 924).

The MDX Governing Board

Section 348.0003(2)(d), F.S., provides the MDX board consists of up to 13 members, seven of whom are appointed by the County Commission and five of whom are appointed by the Governor. The 13th member is the FDOT's district six secretary, who is an ex-officio voting member.⁵

Toll Rate Indexing and Use of Excess Revenues

The FDOT and its Florida Turnpike Enterprise are currently required by s. 338.165(3), F.S., to index toll rates on existing toll facilities to the annual Consumer Price Index or similar inflation indicators. Toll rate adjustments for inflation may occur no more often than once a year, and must occur no less than once every five years as necessary to accommodate cash toll rate schedules. Increases in toll rates beyond these limits are authorized, as directed by bond documents, covenants, or governing body authorization or pursuant to administrative rule of the FDOT. The subsection does not by its terms apply to the MDX. However, the MDX board on March 29, 2013, adopted a Toll Rate Policy providing as follows:

Toll Rates Subject to Annual Indexed Price Adjustment

A CPI adjustment will be applied to System-wide toll rates on *July 1, 2017*. The CPI applied will be that published by the Bureau of Labor Statistics of the United States Department of Labor for the Miami/Ft. Lauderdale area which is the annual average for all expenditure items for all urban consumers. Thereafter, the CPI will be applied annually unless two-thirds (2/3) of the MDX Board votes not to implement the CPI for the current fiscal year and determines to defer application of the CPI to the subsequent fiscal year. However, toll rate adjustments for inflation under this subsection will be made effective no less frequently than once every 3 years, and when implemented, shall reflect the cumulative annual changes

² Section 348.0003(1), F.S.

³ While MDX is the only authority created pursuant to the Act, Part V of ch. 348, F.S., creating the Osceola County Expressway Authority contains numerous references to the Act.

⁴ A copy of the ordinance is available at <http://mdxway.com/about/history> (Last visited March 29, 2014).

⁵ Section 348.0003(2)(d), F.S.

resulting from the annual application of the index, rounded up to the nearest nickel (.05).⁶ (Emphasis added.)

Notwithstanding s. 338.165, F.S., or any other law, to the extent that tolls collected generate surplus revenues,⁷ the MDX is authorized to use the surplus⁸ to “finance or refinance the planning, design, acquisition, construction, extension, rehabilitation, equipping, preservation, maintenance, or improvement of a public transportation facility⁹ or transportation facilities owned or operated by [Miami-Dade County,] an intermodal facility or facilities, multimodal corridor or corridors, including, but not limited to, bicycle facilities or greenways that will improve transportation services within the county, or any programs or projects that will improve the levels of service on an expressway system, subject to approval of the [County Commission] after public hearing.”¹⁰

Powers of the MDX

Among its current powers, the MDX is authorized to borrow money, and issue negotiable notes, bonds, refund bonds and other evidence of indebtedness, pursuant to the State Bond Act or to the provisions of s. 348.0005(2), F.S.¹¹, to finance the expressway system in Miami-Dade County, and to provide for the security of the bonds and the rights and remedies of the bondholders.¹²

III. Effect of Proposed Changes:

The MDX Governing Board

Section 348.0003(2)(d), F.S., is amended to reduce the MDX board to nine members, with four each appointed by the Miami-Dade County Commission and the Governor. The FDOT’s district six secretary remains as an ex-officio voting member.

This bill also prohibits any appointed member of the MDX from serving as a member of any other transportation-related board, commission, or organization, such as the Florida Transportation Commission or a metropolitan planning organization, while serving as a member of the authority.

⁶ A copy of the MDX Toll Policy is available at <http://mdxway.com/about/policies> (Last visited March 28, 2014.)

⁷ Defined in s. 348.0002(12) to mean revenues “derived from rates, fees, rentals, tolls, and other charges for the services and facilities of an expressway system as may exist at the end of a fiscal year after payment of all annually required operating and maintenance expenses...and debt service payable in the fiscal year....”

⁸ The expenditures must be consistent with the metropolitan planning organization’s adopted long-range plan.

⁹ Defined in s. 348.0002(11), F.S., to mean “real and personal property, structures, improvements, buildings, personnel, equipment, plant, vehicle parking or other facilities, rights-of way, or any combination thereof used or useful for the purposes of transporting passengers by means of a street railway, elevated railway or guideway, subway, motor vehicle, motor bus, or any bus or other means of conveyance operating as a common carrier by Miami-Dade County.”

¹⁰ Section 348.0004(7), F.S.

¹¹ The bond issuance must be authorized by resolution of the MDX, after approval of the issuance at a public hearing.

¹² Section 348.0004(2)(f), F.S.

Toll Rate Indexing and Use of Excess Revenues

Section 348.0004(2)(e), F.S., is amended, notwithstanding any other provision of law but subject to any contractual requirements in documents securing any indebtedness outstanding on July 1, 2014, and payable from tolls, to authorize the MDX to increase tolls only to adjust for inflation pursuant to the index toll adjustments provided under s. 338.165, F.S.

Notwithstanding s. 338.165, F.S., or any other provision of law:

- Any such toll increase must first be approved by resolution adopted by a supermajority vote¹³ of the County Commission.
- Toll rates may not be increased beyond the specified index toll adjustments unless required for compliance with contractual requirements contained in documents in existence on July 1, 2014, securing any outstanding indebtedness payable from tolls.
- To the extent that surplus revenues exist, the bill eliminates the current use and limits use only to that provided in s. 338.165(2), F.S.; *i.e.*, for the construction, maintenance, or improvement of any road on the State Highway System within Miami-Dade County, or to pay debt obligations outstanding on July 1, 2014.

The bill further rescinds any toll increase after January 1, 2014, which does not comply with the above requirements, and any such rescinded increase must, by August 1, 2014, be reduced to the rate that existed as of January 1, 2014.

Powers of the MDX

Section 348.0004(2)(f), F.S., is amended to eliminate the MDX's authority to borrow money and issue notes, bonds, and other forms of indebtedness on July 1, 2014. Effective on that date, bonds may not be issued by the MDX, or by any state agency or county government on behalf of the MDX, except for refunding bonds for prudent administration and discharge of outstanding debt.

The bill also requires the MDX to provide a complete financial audit to the County Commission every two years.

Section 338.165, F.S., is amended to insert a cross-reference; and s. 348.0005, F.S., relating to MDX bonds, is amended to limit references to bonds of the MDX to *refunding* bonds, and to limit approval of specified projects, buildings, or facilities for certain constitutional purposes to bond issuances before July 1, 2014; all to conform to changes made elsewhere in the bill.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹³ One vote greater than a majority.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The MDX would be authorized to increase tolls to adjust for inflation in accordance with the provisions of s. 338.165, F.S., if such an increase is approved by resolution adopted by a supermajority vote of the County Commission. This would produce a positive fiscal impact, as the MDX does not currently index its tolls. To the extent that any such increases cause or contribute to surplus revenues, the MDX would be limited to using such excess revenues for the construction, maintenance, or improvement of any road on the State Highway System within Miami-Dade County, or to pay debt obligations outstanding on July 1, 2014. The MDX would no longer be authorized to use such revenues on county-owned or -operated facilities as currently authorized in s. 348.0004(7), F.S.

Effective July 1, 2014, the MDX, or any state agency or county government on behalf of the MDX, would no longer be authorized to borrow money, or issue negotiable notes, bonds, or other evidence of indebtedness to finance the MDX expressway system. Refunding bonds for prudent administration and discharge of outstanding debt may continue to be issued by or on behalf of the MDX.

VI. Technical Deficiencies:

Section 125.011(1), F.S., defines a county as "...any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word "county" within the above provisions shall include "board of county commissioners" of such county."

The local governments authorized to operate under a home rule charter by the State Constitutions of 1885 and 1968 are the city of Key West and Monroe County,¹⁴ Dade County,¹⁵ and Hillsborough County.¹⁶ Of these, only Miami-Dade County operates under a home-rule charter, which was adopted on May 21, 1957, under this constitutional provision.¹⁷ Miami-Dade County is the only county that comports with the description contained in s. 125.011(1), F.S.

All stricken references to subsection (1) of s. 125.011, F.S., should be restored. All new references to s. 125.011, F.S., should include subsection (1).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 338.165, 348.0003, 348.0004, and 348.0005.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁴ Art. VIII, s. 6, n. 2, Fla. Const.

¹⁵ Art. VIII, s. 6, n. 3, Fla. Const.

¹⁶ Art. VIII, s. 6, n. 4, Fla. Const.

¹⁷ Miami-Dade County Florida, *The Home Rule Amendment and Charter*, available at <http://www.miamidade.gov/charter/library/charter.pdf>; see Hillsborough County Florida, *Home Rule Charter*, <http://www.hillsboroughcounty.org/DocumentCenter/Home/View/376>, Creation: Section 1.01 Chartered County (last visited Feb. 10, 2014) (providing that the county is chartered under Article VIII, Section 1 of the Florida Constitution as opposed to Article VIII, Section 6 of the Florida Constitution); Monroe County Florida, *County Commission*, <http://www.monroecounty-fl.gov/index.aspx?NID=27> (last visited Feb. 10, 2014) (citing Article VIII, Section 1 of the Florida Constitution stating “[e]xcept when otherwise provided by county charter, the governing body of each county shall be a [b]oard of [c]ounty [c]ommissioners composed of five [or seven] members serving staggered terms of four years,” on the page titled “County Commission” and displaying five “Commission Members”; see also Florida Association of Counties, *Charter County Information*, <http://www.fl-counties.com/about-floridas-counties/charter-county-information> (last visited Feb. 10, 2014) (listing the twenty chartered counties in Florida, which does not include Monroe).