HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 989 Expressway Authorities
SPONSOR(S): Nuñez
TIED BILLS: **IDEN./SIM. BILLS:** SB 1276

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Ports Subcommittee	11 Y, 1 N	Johnson	Vickers
2) Transportation & Economic Development Appropriations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The Miami-Dade County Expressway Authority (MDX) is an agency of the state created pursuant to the Florida Expressway Authority Act. Its board currently consists of 13 members, seven of whom are appointed by the Miami-Dade County Commission, five of whom are appointed by the Governor, and a Department of Transportation (DOT) district secretary, who is an ex officio voting member.

Current law prohibits lobbyists from being appointed to and serving on MDX's board.

The bill changes the makeup of MDX's board to nine members, with four appointed by the Miami-Dade County Commission, four appointed by the Governor, and a DOT district secretary as an ex officio voting member.

The bill prohibits a person from being appointed to or serving on MDX's board if that person currently represents or has in the previous 10 years represented a client for compensation before any state or municipal governmental body.

The bill prohibits a person from being appointed to or serving on MDX's board if that person currently represents or has in the previous 10 years represented any person or entity that is doing business with or has previously 10 years has done business with any state or municipal governmental body or agency.

The bill provides that a finding of a violation of the MDX ethics or laws relating to public officers or employees, or failure to comply with financial disclosure requirements results in the immediate termination from the board.

The bill does not appear to have a fiscal impact on state or local governments.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Miami-Dade County
Section 125.011(1), F.S. defines a county as:

> [A]ny 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,[1] Dade County,[2] and Hillsborough County.[3] Of these, only Miami-Dade County operates under a home-rule charter, which was adopted on May 21, 1957, under this constitutional provision.[4] Therefore, Miami-Dade County is the only county that meets the definition in s. 125.011(1), F.S.

Miami-Dade County Expressway Authority
The Florida Expressway Authority Act (Act), codified in part I of Ch. 348, F.S., [5] authorizes any county or two or more contiguous counties within a single Department of Transportation (DOT) district to, by resolution adopted by the board of county commissioners, form an expressway authority which shall be an agency of the state.[6] The Miami-Dade County Expressway Authority (MDX) is the only expressway authority created under the Act. [7]

MDX is an agency of the state created pursuant to the Act. It was created by the Miami-Dade County Commission, in 1994, pursuant to Chapter 2 Article XVIII of the Miami-Dade County Code of Ordinances.[8]

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

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

MDX's board consists of 13 members, seven of whom are appointed by the Miami-Dade County Commission and five of whom are appointed by the Governor. The 13th member is DOT's district six secretary, who is an ex-officio voting member.[9]

---

[1] Art. VIII, s. 6, n. 2, Fla. Const.
[2] Art. VIII, s. 6, n. 3, Fla. Const.
[3] Art. VIII, s. 6, n. 4, Fla. Const.
[4] Florida Association of Counties, *Charter County Information,* http://www.fl-counties.com/about-floridas-counties/charter-county-information (last visited May 2, 2014).
[5] Part I of ch. 348, F.S., consists of ss. 348.0001 through 348.0012, F.S.
[6] S. 348.0003(1), F.S.
[7] 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.
[8] A copy of the ordinance is available at http://mdxway.com/about/history (Last visited December 2, 2013).
[9] S. 348.0003(2)(d), F.S.

In 2014, CS/CS/CS/SB 846,[10] applied several ethics provisions to MDX in addition to those currently required by the Code of Ethics. Specifically the bill:

- Required MDX's general counsel to serve as its ethics officer;
- Required the code of ethics policy to be reviewed and updated by the ethics officer and presented for board approval at least once every two years;
- Required that employees be adequately informed and trained on the code of ethics and continually participate in ongoing ethics education;
- Prohibited a lobbyist[11] from being appointed to or serving as a member of the authority;
- Prohibited a member or the executive director of the authority from personally representing another person or entity for compensation before the authority for a period of two years after vacation of his or her position;
- Prohibited a member or the executive director, after retirement or termination, from having an employment or contractual relationship with a business entity other than an agency, in connection with a contract in which the member or executive director personally and substantially participated through decision, approval, disapproval, recommendation, rendering of advice, or investigation while he or she was a member or employee of the authority;
- Prohibited board members, employees, and consultants who hold positions that may influence authority decisions from engaging in any relationship that may adversely affect their judgment in carrying out authority business;
- Required the general counsel to review an annual conflict of interest disclosure that includes any relationship that a board member, employee, or consultant has which affords a current or future financial benefit to such board member, employee, or consultant or to a relative, or business associate of such board member, employee, or consultant, and which a reasonable person would conclude has the potential to create a prohibited conflict of interest, and whether a relative is a registered lobbyist, and, if so, the names of such lobbyist's clients; interests in real property the board member, employee, or consultant has, or that an immediate family member has, if such real property is located in, or within ½-mile radius of, any actual or prospective authority roadway project; and
- Required the conflict of interest process to be outlined in the authority's code of ethics.[12]

Proposed Changes

The bill amends s. 348.0003(2)(d), F.S., revising the membership of MDX. The number of board members is reduced from 13 to nine. Four members are appointed by the governing body of the county. Four members are appointed by the Governor. The ninth member is DOT's district six secretary.

The bill creates s. 348.0003(5)(a)2., F.S., providing that a person may not be appointed to or serve as a member of MDX's governing body if that person currently represents or in the previous 10 years represented any client for compensation before any municipal or state governmental body. This includes any agency, quasi-governmental entity, or body staffed by public employees, or entity that has its operations paid for by public dollars.

[10] Ch. 2014-183, L.O.F.

[11] Section 112.3215, F.S., defines "lobbyist" as "a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. "Lobbyist" does not include a person who is:
1. An attorney, or any person, who represents a client in a judicial proceeding or in a formal administrative proceeding conducted pursuant to chapter 120 or any other formal hearing before an agency, board, commission, or authority of this state.
2. An employee of an agency or of a legislative or judicial branch entity acting in the normal course of his or her duties.
3. A confidential informant who is providing, or wishes to provide, confidential information to be used for law enforcement purposes.
4. A person who lobbies to procure a contract pursuant to chapter 287 which contract is less than the threshold for CATEGORY ONE as provided in s. 287.017."

[12] Similar provisions were passed for the Central Florida Expressway Authority in CS/CS/SB 230 (Ch. 2014-195, L.O.F.)

The bill creates s. 348.0003(5)(a)3., F.S., providing that a person may not be appointed to serve as a member of the governing body of MDX if that person currently represents or has in the previous 10 years represented any person or entity that is doing business, or within the previous 10 years, has done business with any state or municipal governmental agency.

The bill creates s. 348.0003(5)(l), F.S., providing that a finding of violation of s. 348.0003(5), F.S. or Ch. 112, F.S.[13] or failure to comply within 90 days after receiving a notice of failure to comply with financial disclosure requirements[14] results in immediate termination from MDX's governing body.

The bill is effective upon becoming a law.

B. SECTION DIRECTORY:

Section 1 Amends s. 348.0003, F.S., relating to expressway authority; formation; membership.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

[13] Chapter 112, F.S., relates to public officers and employees.

[14] Section 348.0003(4)(c), F.S., requires members of expressway authorities to file the detailed Form 6 financial disclosure form with the Commission on Ethics.

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The title of the bill may need to be amended to reflect that the bill revises the membership of MDX.

Lines 41 through 48 of the bill contains language in s. 348.0003(2)(d), F.S., which appears to be an obsolete provision transitioning some nonvoting members of MDX to members being appointed by the Governor. This language may no longer be needed and could possibly be repealed.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.