

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1377 Expressway Authorities

SPONSOR(S): Nuñez and others

TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|--------|---------|--|
| 1) Transportation & Ports Subcommittee | | 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. The bill makes the following changes to the Florida Expressway Authority Act, which apply to MDX:

- Defines the terms “local commuter rail service,” tax increment revenues,” and “transportation reinvestment zone.”
- Requires candidates for MDX’s board to be vetted through a nominating council process and provides for membership on the nominating councils.
- Contains ethics provisions that persons may not serve on MDX’s board who have had certain interactions with MDX in the previous four years.
- Requires MDX to seek an expression of support from the municipality or county where a project is located before moving forward with a project that requires new tolling points or toll rate adjustments.
- Authorizes MDX to be recreated as a transportation authority.
- Authorizes the transportation authority, through interlocal agreement, to establish transportation reinvestment zones and provides minimum requirements for the agreement.
- Requires the transportation authority to establish a separate trust fund for tax increment revenues from transportation reinvestment zones.
- Provides a formula for the ad valorem tax increment.
- Exempts certain public bodies, including school districts, from the ad valorem tax increment.
- Requires Miami-Dade County to establish urban center districts with transportation reinvestment zones and provides requirements for the districts.
- Provides that the Department of Transportation (DOT) may allocate to MDX:
 - From Fiscal Year 2016-2017 through Fiscal Year 2046-2047, \$30 million from the Rail Enterprise for commuter rail service.
 - An amount not to exceed \$10 million annually for the net operating cost of commuter rail for up to seven years from the open-to-service date.

The bill authorizes DOT to allocate \$30 million annually, through the Florida Rail Enterprise, for 30 fiscal years for the development of passenger rail service in Miami-Dade County. The bill also authorizes DOT to allocate an amount not to exceed \$10 million annually for the net operating costs of commuter rail service in Miami-Dade County for up to seven years, beginning on the open to service date. The bill creates a tax increment financing mechanism, which takes the additional taxes due to an increase in property values and sets 95 percent of the additional revenues aside to finance certain transportation projects.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Miami-Dade County

Section 125.011(1), F.S., defines “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 MDX was created in 1994, when the Miami-Dade County Commission adopted ordinance 94-215.⁷ The Miami-Dade County Expressway Authority (MDX) is the only expressway authority created under the Act.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

In 2014, CS/CS/CS/SB 846¹⁰ 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;

¹ FLA. CONST. art. VIII, s. 6, n. 2.

² FLA. CONST. art. VIII, s. 6, n. 3.

³ FLA. CONST. art. VIII, s. 6, n. 4.

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. is comprised of ss. 348.0001 through 348.0012, F.S.

⁶ S. 348.0003(1), F.S.

⁷ A copy of the ordinance is available at http://miamidade.fl.elaws.us/code/coor/coor_ptiii_ch2_artxviii/ (Last visited November 09, 2015).

⁸ 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.

⁹ S. 348.0003(2)(d), F.S.

¹⁰ Ch. 2014-183, L.O.F.

- 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 lobbyist¹¹ 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 MDX's code of ethics.¹²

Tolling

Section 348.0004(2)(e), F.S., authorizes MDX to fix, alter, charge, establish, and collect tolls, rates, fees, rentals, and other charges for the services and facilities system, which tolls, rates, fees, rentals, and other charges must always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to the Florida Expressway Authority Act. However, such right and power may be assigned or delegated by the authority to DOT. Notwithstanding s. 338.165, F.S.,¹³ or any other provision of law to the contrary, in Miami-Dade County, to the extent surplus revenues exist, surplus revenues may be used for purposes enumerated in s. 348.0004(7), F.S., provided the expenditures are consistent with the metropolitan planning organization's adopted long-range plan.¹⁴

MDX's toll policy provides that MDX does not receive any revenue from the state, or from the Miami-Dade County half cent sales tax, or from state or federal gas taxes. All toll revenue collected is used to operate, maintain and improve the MDX Expressway System in order to improve mobility and offer transportation alternatives within Miami-Dade County. The policy continues that starting on July 1, 2019, a Consumer Price Index (CPI) adjustment will be applied to system-wide toll rates. CPI may be

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.)

¹³ Section 338.165, F.S., relates to the continuation of tolls.

¹⁴ The requirements for a metropolitan planning organization's long-range plan are contained in s. 339.175(7), F.S.

deferred up to three years, with a two-thirds MDX Board votes not to implement CPI on annual basis but no later than July 1, 2022.¹⁵

Tax Increment Financing

Tax increment financing, (TIF) is a method to use future gains in taxes to subsidize current improvements, which are projected to create the conditions for said gains. The completion of a public or private project often results in an increase in the value of surrounding real estate, which generates additional tax revenue. Sales-tax revenue may also increase, and jobs may be added, although these factors and their multipliers usually do not influence the structure of TIF.

When an increase in site value and private investment generates an increase in tax revenues, it is the "tax increment." Tax Increment Financing dedicates tax increments within a certain defined district to finance the debt that is issued to pay for the project. TIF was designed to channel funding toward improvements in distressed, underdeveloped, or underutilized parts of a jurisdiction where development might otherwise not occur. TIF creates funding for public or private projects by borrowing against the future increase in these property-tax revenues.¹⁶

In Florida, tax increment financing is currently authorized for community redevelopment¹⁷ and conservation lands.¹⁸

Proposed Changes

Definitions (Section 1)

The bill amends s. 348.0002, F.S., creating the following definitions:

Local commuter rail service-passenger rail operated through public or private sector concessions or existing commuter rail service providers which transports county residents from middle or outer suburbs to the county's main employment centers or employers directly or by connecting to an existing fixed-rail passenger system.

Tax increment revenues- the amount calculated pursuant to s. 348.0004(7)(c)3., F.S.

Transportation reinvestment zone-a special district or region associated with an expressway or rail corridor. Property tax revenues in such zones increase due to the expressway or rail project's positive effect on economic development along the corridor and higher density zoning along the corridor resulting in increased property values along the corridor. The additional revenue generated by the increase in property tax revenues is reinvested by the authority in construction, maintenance, or operation of transportation infrastructure.

Expressway Authority Formation and Membership (Section 2)

The bill amends s. 348.0003(2)(d), F.S., providing that candidates for service on MDX's governing board are required to be screened and vetted through a nominating council process. MDX is required to notify the chairperson of the Miami-Dade County Legislative Delegation of any impending Governor-appointed board vacancies 90 days before the expiration of the board member's term or the Miami-Dade County Mayor of any impending county-appointed board vacancy 90 days before the expiration of the board member's term. MDX is also required to publish, on the home page of its website, a notice of any future state or county board member vacancies 90 days before the expiration of the board member's term and. On three consecutive Sundays, advertise in the newspaper with the greatest general circulation in the county. The newspaper advertisement must be a minimum of one-quarter page.

¹⁵ Miami-Dade County Expressway Authority Toll Policy. Available at: <http://mdxway.com/about/policies> (Last visited January 25, 2016).

¹⁶ <http://encyclopedia.thefreedictionary.com/tax+increment+financing> (Last visited January 25, 2016).

¹⁷ Part III of Ch. 163, F.S.

¹⁸ Section 259.042, F.S.

The nominating council for Governor-appointed board members is comprised of the following voting members:

- The chairperson on the Miami-Dade County Legislative Delegation.
- A member of the Senate who represents the state legislative delegation for the county.
- A member of the House of Representatives who represents the state legislative delegation for the county.

MDX's executive director serves as a nonvoting member of the nominating council. The nominating council is required to examine the qualifications of the top candidates, screen and interview each candidate, and recommend no fewer than three and no more than five candidates for each vacancy to the Governor for appointment.

The nominating council for county-appointed board members shall be comprised of the following three voting members:

- The county mayor or his or her designee.
- The chairperson of the county commission.
- The county commissioner who chairs the committee with jurisdiction over transportation policy issues.

MDX's executive director serves as a nonvoting member of the nominating council. The nominating council is required to examine the qualifications of the top candidates, screen and interview each candidate, and recommends no fewer than three and no more than five such candidates for each vacancy to the full board of county commissioners for appointment.

The bill creates s. 348.0003(5)(a)2., F.S., providing that a person may not serve as a member of MDX's governing body if that person has, in the previous four years, represented a client for compensation before MDX.

The bill amends s. 348.0003(5)(a)3., F.S., providing that a person may not serve as a member of MDX's governing body if that person has, in the previous four years, done business with or represented any person or entity doing business with, MDX

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.,¹⁹ or failure to comply within 90 days after receiving a notice of failure to comply with financial disclosure requirements,²⁰ results in immediate termination from MDX's governing body.

The bill also removes some obsolete language regarding terms of board members.

Expressway Authority Purpose and Powers (Section 3)

Tolling

Currently, s. 348.0004(6), F.S., prohibits MDX from undertaking any construction that is not consistent with both the metropolitan planning organization's transportation improvement program and Miami-Dade County's comprehensive plan.

The bill creates s. 348.0004(6)(b), F.S., F.S., requiring MDX to seek an expression of support from the governing body of the county or municipality where the project is located before moving forward with a project that requires associated new tolling points or toll rates adjustments on the existing system. If the expression of support for new tolling points or toll rate adjustments are not provided, further efforts may not be made to move the project forward to construction.

Project Finance

Currently, s. 348.0004(7), F.S., authorizes MDX to finance or refinance the planning, design, acquisition, construction, extension, rehabilitation, equipping, preservation, maintenance, or improvement of a public transportation facility or transportation facilities owned or operated by such

¹⁹ Chapter 112, F.S., relates to public officers and employees.

²⁰ 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.

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.

The bill provides that in recognition of the broad powers MDX is provided with respect to multimodal transportation infrastructure for Miami-Dade, MDX may be redesignated as a transportation authority.

The expressway or transportation authority may establish, through an interlocal agreement with a county or municipality, a transportation reinvestment zone. The transportation authority is required to establish a separate transportation reinvestment zone trust fund into which the tax increment revenues for the county or municipality are required to be deposited.

The interlocal agreement, at a minimum, must:

- Identify the geographic boundaries of the tax increment area.
- Establish a base year for the county or municipal property taxes levied and collected on the property within the transportation reinvestment zone.
- Determine the base value of the property and the county and municipal property taxes levied and collected on the property within the transportation reinvestment zone.
- Identify the new mass transit infrastructure projects whose construction, maintenance, or operation is to be funded through the transportation reinvestment zone.
- Provide for an annual audit of the separate transportation reinvestment zone trust fund.

Beginning in the first fiscal year after creation of the transportation reinvestment zone, the transportation reinvestment zone trust fund is required to be funded by the proceeds from the ad valorem tax increment collected within each transportation reinvestment zone.

The ad valorem tax increment is required to be determined annually as that amount equal to 95 percent of the difference between the amount of ad valorem taxes levied each year by each taxing authority, exclusive of any amount from any debt service millage, on taxable real property contained within the geographic boundaries of the transportation reinvestment zone and the amount of ad valorem taxes which would have been produced by the rate the tax is levied each year by or for each taxing authority, exclusive of any debt service millage, upon the total of the assessed value of the taxable real property in the transportation reinvestment zone as shown on the most recent assessment roll used for the taxation of such property by each taxing authority before the effective date of the interlocal agreement that provides for funding the trust fund.

The public bodies and taxing authorities listed in s. 163.387(2)(c), F.S.,²¹ school districts, and special districts that levy ad valorem taxes within a tax increment area are exempt from the tax increment.

A taxing authority is not prohibited from voluntarily contributing a tax increment or from contributing a tax increment at a higher rate for a period of time as specified by interlocal agreement between the taxing authority and the community redevelopment agency.

Pursuant to s. 163.2511, F.S.,²² the bill requires Miami-Dade County to establish urban center districts within the transportation reinvestment zone. Highest density mixed use designations are required to be

²¹ Section 163.387(2)(c), F.S., lists the following public bodies and taxing authorities:

- A special district that levies ad valorem taxes on taxable real property in more than one county.
- A special district for which the sole available source of revenue the district has the authority to levy is ad valorem taxes at the time an ordinance is adopted under this section. However, revenues or aid that may be dispensed or appropriated to a district as defined in s. 388.011 at the discretion of an entity other than such district shall not be deemed available.
- A library district, except a library district in a jurisdiction where the community redevelopment agency had validated bonds as of April 30, 1984.
- A neighborhood improvement district created under the Safe Neighborhoods Act.
- A metropolitan transportation authority.
- A water management district created under s. 373.069.

established along transit station nodes to encourage development and redevelopment of housing and employment density nodes along the transit corridor. Miami-Dade County is required to provide financial incentives to property owners within the transportation reinvestment zone to promote urban infill and redevelopment. These incentives may include expedited permitting, prioritization of infrastructure spending within the transportation reinvestment zone, waiver of license and permit fees, waiver of delinquent local taxes or fees to promote the return of property to productive use, and local government absorption of developers' concurrency costs. Miami-Dade County is encouraged to amend its comprehensive land use plan under an expedited s. 163.3187, F.S.,²³ process to delineate the boundaries of urban center infill nodes and redevelopment areas within the future land use element of its comprehensive plan pursuant to its adopted urban infill and redevelopment plan. The state land planning agency²⁴ is required review the boundary delineation of the urban infill and redevelopment area in the future land use element under s. 163.3184, F.S.²⁵ An urban infill and redevelopment plan adopted by a local government within a transportation reinvestment zone is not subject to review for compliance as defined by s. 163.3184(1)(b), F.S.,²⁶ and the local government is not required to adopt the plan as a comprehensive plan amendment.

DOT Allocation of Funds

In Miami-Dade County, the Department of Transportation may allocate the following to the transportation authority as authorized in s. 341.303(5), F.S.,²⁷ and pursuant to s. 201.15(4)(a)4., F.S.²⁸:

- For fiscal year 2016-2017 through fiscal year 2046-2047 the sum of \$30 million through the Florida Rail Enterprise²⁹ annually for acquisition of rights-of-way for future local commuter rail service; the planning and development costs related to the provision of a passenger rail system, including, but not limited to, preliminary engineering, revenue studies, environmental impact studies, financial advisory services, engineering design, and other appropriate professional services; and any other eligible local commuter rail service capital improvement project costs.
- An amount not to exceed \$10 million annually of the net operating costs of the local commuter rail service through a public or private sector concession or existing commuter rail service provider for up to seven years, beginning on the open-to-service date as authorized under s. 341.303(4)(a), F.S.³⁰

Effective Date

The bill has an effective date of July 1, 2016.

B. SECTION DIRECTORY:

- | | |
|-----------|--|
| Section 1 | Amends s. 348.0002, F.S., providing definitions. |
| Section 2 | Amends s. 348.0003, F.S., relating to expressway authority; formation; membership. |
| Section 3 | Amends s. 348.0004, F.S., relating to purposes and powers. |
| Section 4 | Provides an effective date. |

²² Section 163.2511, F.S., relates to urban infill and redevelopment.

²³ Section 163.3187, F.S., provides the process for adopting small scale comprehensive plan amendments.

²⁴ The state land planning agency is the Department of Economic Opportunity.

²⁵ Section 163.3184, F.S., provides the process for the adoption of the comprehensive plan or plan amendment.

²⁶ Section 163.3184(1)(b), F.S., defines "in compliance" as consistent with the requirements of ss. 163.3177, 163.3178, 163.3180, 163.3191, 163.3245, and 163.3248, with the appropriate strategic regional policy plan, and with the principles for guiding development in designated areas of critical state concern and with part III of chapter 369, where applicable.

²⁷ Section 341.303(5), F.S., relates to fund participation for the Florida Rail Enterprise.

²⁸ Section 201.15(4)(a)4., F.S., provides that certain allocations of Documentary Stamp Tax revenues are allocated to the Transportation Regional Incentive Program and the first \$60 million in funds allocated pursuant to that subparagraph is allocated to the Florida Rail Enterprise.

²⁹ The Florida Rail Enterprise Act is ss. 341.8201 through 341.842, F.S.

³⁰ Section 341.303(4)(a), F.S., provides for funds for the rail enterprise for certain operating costs of passenger rail.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill authorizes DOT to allocate \$30 million annually, through the Florida Rail Enterprise, for 30 years for the development of passenger rail service in Miami-Dade County.

The bill also authorizes DOT to allocate an amount not to exceed \$10 million annually for the net operating costs of commuter rail service in Miami-Dade County for up to seven years, beginning on the open to service date.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill creates a tax increment financing mechanism, which takes the additional taxes due to an increase in property values and sets them aside to finance certain transportation projects.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector may see increased transportation options and an increase in property values due to tax increment financing.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The bill creates nominating council for Governor-appointed member of MDX's governing board consisting of members of the Miami-Dade County Legislative Delegation. This may violate the Separation of Powers doctrine since members of the Legislature are nominating persons for an executive branch appointment.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill may have a negative impact on MDX's bond covenants due to the requirement that the governing board of the municipality or county being required to approve certain toll increases.

The bill does not specify how an expressway authority may transition to a transportation authority.

The status of special districts relative to tax increments is unclear in the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.