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## Florida Counties File New Challenges Against Train Bonds

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BRADENTON, Fla. — Two south Florida counties launched new legal challenges against a private passenger train project within days of a scheduled \$1.75 billion bond offering.

The private activity bonds were initially scheduled to price Aug. 25 to finance a portion of the \$3.5 billion, 235-mile All Aboard Florida express train system linking Miami and Orlando.

The pricing was delayed, though the reasons are not clear.

However, the issuance was scheduled amid allegations that officials in Martin and Indian River counties attempted to derail the financing as attorneys prepared new legal strategies to challenge the project, according to documents obtained by *The Bond Buyer*.

In a court filing Monday, AAF said it is currently marketing the PABs with an expectation of closing in the near future. The bonds are being privately placed, and sold to accredited investors.

Last week, Martin and Indian River counties filed separate legal actions challenging conduit issuer Florida Development Finance Corp.'s Aug. 5 final approval of the bond issuance.

The counties filed the legal actions — one requesting an administrative hearing and the other seeking a court review of the Aug. 5 vote — against the FDFC, a legislatively created nonprofit corporation authorized to issue private activity bonds.

The new challenges were not expected to affect the FDFC's board decision authorizing the bonds or to prevent the bonds from being issued, the FDFC told *The Bond Buyer* through a public relations firm on Wednesday.

The filings, however, did affect attorneys for all parties.

In the days before the new legal cases were filed, AAF attorney Eugene Stearns accused Indian River attorney Dylan Reingold and Martin attorney Michael Durham of conspiring to improperly influence the sale of the bonds.

In an Aug. 24 letter, Stearns, with Stearns Weaver Miller Weissler Alhadeff & Sitterson PA, said that two anti-train individuals accessed the Internet roadshow presentation for the bond issuance and obtained the confidential Aug. 25 pricing date under "false pretenses."

Stearns said the pricing date apparently was given to the county attorneys, who then made comments to their respective commissions about the train project and the timing necessary to take their next legal actions.

Any knowledge about the pricing date was coincidental, attorney Stephen Ryan with McDermott Will & Emery LLP said in a letter to Stearns on Aug. 25.

Ryan, who represents Martin County, said that Stearns was making "serious threats based on completely inaccurate information and absurd assumptions."

Both counties proceeded with their latest legal actions.

On Aug. 26, Martin County filed a petition with FDFC requesting a formal administrative hearing to challenge the corporation's decision to issue the bonds.

Such proceedings are heard by an administrative law judge and are authorized by Florida statutes to give aggrieved parties a mechanism to challenge a decision or rule made by a state agency.

Martin County's petition charged in part that the FDFC board focused on how the project would promote and advance economic development, and failed to consider adverse impacts that the train would create.

"The FDFC failed to impose any conditions on the issuance of the tax-exempt bonds to avoid, minimize or mitigate any adverse effects of the proposed AAF project on the Martin County economy, the environment, or otherwise," the petition said.

FDFC executive director Bill Spivey denied Martin County's request to forward the county's petition to the Division of Administrative Hearings.

The corporation is not an agency subject to the administrative hearing process, Spivey wrote Tuesday in a letter to the county's outside law firm, Oertel, Fernandez, Bryant & Atkinson PA.

In addition, the letter cited a number of reasons why the FDFC could not consider issues raised by Martin County's petition, including the fact that Martin is not one of the counties that will benefit from bond proceeds.

"Martin County's alleged injuries are remote and speculative in relation to FDFC's decision to adopt a resolution approving the revenue bonds," Spivey said. "FDFC will continue to work with All Aboard Florida on any issues relating to the bonds, with pricing and closing expected in the near future."

On Friday, Indian River County filed a petition in Leon County Circuit Court seeking a writ of certiorari in an effort to have a judge review and void what the county called the FDFC's "quasi-judicial" decision on Aug. 5.

Indian River alleges that the FDFC board members failed to disclose ex parte communications that they had with a representative for All Aboard Florida, which may have had a prejudicial influence on the Aug. 5 vote, the county's petition said.

The filing also charges that the FDFC did not follow the law when the board voted on the bond resolution on Aug. 5 because the required quorum was not present.

In a motion to intervene in the Indian River County case, filed on Monday, All Aboard Florida

said it is prepared to demonstrate that the county's claims are frivolous because they are predicated on inapplicable statutes or legal standards.

The motion said that the private activity bonds represent the most efficient means of financing for AAF because their tax-exempt status will lower financing costs.

Bond proceeds will be spent in Miami-Dade, Broward, Palm Beach, Brevard, and Orange counties, which have entered agreements with the FDFC approving the use of the financing.

All Aboard will use "other means" to pay for modernizing and upgrading the existing rail corridor in Indian River, Martin, and St. Lucie counties.

Under the FDFC's enabling statute, and the act creating the corporation, once the bonds are issued in accordance with the act they will be considered free from any suit, action, or proceeding that challenges the validity or enforceability of the bonds, the AAF motion said.

The motion also suggested that Indian River County may not have standing to bring suit because bond proceeds will not be used to pay for AAF's project in the county.

Martin and Indian River counties filed federal lawsuits earlier this year contesting the U.S. Department of Transportation's \$1.75 billion private activity bond allocation for the project, the AAF document said.

The suits are still pending but U.S. District Judge Christopher Cooper denied the counties' requests for a preliminary injunction in June.

At that time, Cooper said the counties failed to establish that they had standing to seek the injunction because they could not prove that AAF would abandon the project without the private activity bond allocation.

The AAF passenger train will use existing Florida East Coast Railway right of way, plus a new 40-mile spur to Orlando.

Both companies are owned by Fortress Investment Group LLC.

Martin and Indian River counties, which are on the train route but where no stops are planned, have raised a number of concerns about the planned 32 daily express trains.

Those concerns include potential public safety problems, damages to archeological resources, and additional vehicular and marine congestion.

"We're building one of the most transformational mobility projects in the country, and we'll vigorously defend it from ill-advised lawsuits," said AAF president Michael Reininger. "We're dismayed that some on the Treasure Coast of Florida continue to spend taxpayer money on legal action without merit, instead of working toward common sense solutions."

On Wednesday, an AAF support group calling itself the "I'm All Aboard Neighborhood Coalition" issued a press release calling on Martin, Indian River, and St. Lucie counties to stop spending tax dollars and end their legal challenges of the project.

Other counties are working closely with All Aboard Florida to build quiet zones around the train crossings in their communities, said the coalition.

"Martin, Indian River, and St. Lucie counties can also benefit from quiet zones but county commissions must act and not miss this opportunity," the group said.

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