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Judge's Ruling Clears Tracks for Florida Train Bonds

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BRADENTON, Fla. — A federal judge denied requests by two Florida counties seeking to block the issuance of $1.75 billion in private activity bonds for a private passenger train project.

The ruling clears the way for All Aboard Florida's owners to sell the debt, according to bond attorney John Whitlock, who is of counsel at Locke Lord LLP. He's not involved in the case.

U.S. District Judge Christopher Cooper late Wednesday ruled that Indian River and Martin counties did not have standing to seek preliminary injunctions in part because they could not demonstrate that the $3.5 billion train project would not be built without tax-exempt financing.

Indian River and Martin filed separate lawsuits in recent months challenging the U.S Department of Transportation's bond allocation claiming that it should not have been granted because a review under the National Environmental Policy Act is not yet complete.

As part of the suits, the counties requested injunctions to stop the bond sale.

Cooper said that the counties cannot challenge the PABs because the purpose of the NEPA review "is to ensure that agencies assess significant environmental consequences stemming from their actions and make the relevant information available to affected constituencies" as opposed to evaluating financing options.

The judge's early determination that the counties do not have standing to bring suit could spell doom for their legal challenges, Whitlock said.

"Unless the order is overturned on appeal, the counties have essentially lost," he said after reading Cooper's Wednesday ruling. "The counties can still contest the final environmental approval, and may find other ways to attempt to block the project."

All Aboard Florida said it was pleased with the judge's ruling.

"We look forward to continuing to advance our investment into Florida's infrastructure and expedite the delivery of an important new transportation option that will generate significant benefits for all residents and visitors to our state," the company said in a statement.

Martin County officials were studying they judge's ruling late Wednesday, said their attorney

Steve Ryan, a partner at McDermott Will & Emery LLP. The judge never reaches the merits of the county's claims, Ryan said.

"The decision not to grant the injunction we sought does not end this case," he said. "It resolves only the first legal skirmish."

In questioning the cases brought by the counties, Cooper cited statements made by All Aboard president Michael Reininger that the project would be built without tax-exempt PABs, and that it could proceed with more costly "conventional financing, such as taxable bonds."

The company also established that it had access to alternative financing in the capital markets when it issued $405 million in corporate bonds in 2014. The proceeds are being held in escrow.

"Given AAF's stated commitment to moving forward with or without the PABs, the substantial investments that AAF has already made in the project and its access to further funding sources, and the counties' failure clearly to demonstrate that having to pay taxable interest would prevent AAF from financing construction of the remainder of the railway, the court concludes that enjoining the issuance of the PABs would not redress the counties' alleged environment injuries," Cooper said.

Martin County has also maintained that AAF does not meet the definition of a rail project for which exempt facility bonds can be used because it will not be a high-speed intercity rail facility that can reach speeds in excess of 150 miles per hour. All Aboard Florida has said its trains will reach speeds up to 125 mph.

Cooper did not address the issue of the train's speed.

The project is being developed by Florida East Coast Industries Inc., which is owned by Fortress Investment Fortress Group.

All Aboard plans to provide passenger service between Miami and Orlando with additional stops in Fort Lauderdale and West Palm Beach. Work is already under way on three of the stations.

The Florida Development Finance Corp. has agreed to be the conduit issuer of the PABs, and has cancelled two meetings to consider the bond resolution citing various conflicts. Approval of the resolution would pave the way for the bonds to be issued.

All Aboard told the FDFC in an application for financing that it planned to privately place the bonds. The company has declined to provide any information about the bond deal.

In granting provisional authority for the $1.75 billion of private activity bonds, the USDOT said the bonds must be issued by July 1. All Aboard said in court that it may seek an extension of that deadline.
