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Dulles Toll Road Faces Lawsuit

Critics Say Backing For Bonds Illegal

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By Audrey Dutton

WASHINGTON - An advocacy group in Virginia is suing federal and state transportation officials over the Dulles Toll Road, arguing that drivers are being illegally charged tolls used to back bonds issued for a Dulles Metrorail project.

The 130-page lawsuit was filed last month in the U.S. District Courts for the District of Columbia and Eastern District of Virginia by the Dulles Corridor Users Group against James Bennett, president and chief executive officer of the Metropolitan Washington Airports Authority, as well as federal transportation officials and the Virginia Transportation Secretary. It asks for a refund of \$200 million of tolls already collected and for the road to be made a free highway.

The complaint was filed three days after the MWAA sold more than \$900 million of bonds to fund construction of the new Metrorail line that will transport riders to the Dulles International Airport.

"We don't see at the moment the authority behind the taxing power for the toll road that is the basis for payment on the bonds," said Christopher W. Walker, who founded the civic group. "They've cut corners; they don't have an elected group of people."

The complaint comes in anticipation of a 25-cent toll increase on the road, and as lawmakers in Congress are pushing to ban tolls on federally funded highways, arguing that those tolls amount to double taxation because taxpayers already paid for them.

The Virginia civic group charges that tolling drivers on the Dulles Toll Road is illegal based on state law.

According to the complaint, state law requires that when payments have been made, or set aside, for bonds issued for a project, tolls can no longer be charged - except to pay for maintenance, repairs, operations, improvements, and reconstruction on the projects, or if they are pledged to the transportation trust fund.

In addition, the toll revenues could only be diverted to another project aside from the toll road if approved by the state General Assembly, and that body has taken no action, the lawsuit says. "This pork-fest has gone on too long by parties who have ignored the law in favor of interested parties who want to receive fees," it says.

The group claims that the Dulles corridor is "in danger of being taxed to death," in part "to subsidize the money-losing rail venture" that will add a new Dulles Metrorail line to the Washington Metropolitan Area Transit Authority transit rail network.

In addition, the group alleges that 75% of the money for the first phase of the Dulles Metrorail project will unfairly benefit private landowners in Tysons Corner, a suburban area in Fairfax County, Va., that



ASSURED GUARANTY ACQUIRES FSA



contains a major shopping mall and upscale shopping centers.

The Dulles Toll Road, part of a Virginia state highway, was built in 1984 and was operated until 2006 by the Virginia Department of Transportation. The 16-mile stretch of highway is now operated and financed by the MWAA, and part of its revenues are dedicated to financing the planned Metrorail line.

The MWAA and Virginia DOT have diverted \$133 million of surplus toll road funds to pay for rail operations already, the group said. The complaint says that a 2008 Virginia Supreme Court ruling set a precedent that taxes cannot be levied by non-elected officials, and decided that the appropriate remedy is to repay taxpayers.

The lawsuit - which points to a YouTube.com rap music video about Arlington, Va., as a parody of smart growth in the corridor area - also claims that the Metrorail line is a poor investment driven by political interests.

The MWAA declined to say when it would file any court action in relation to the lawsuit. The deadline is Oct. 15, according to Walker.

"We are in the process of reviewing the complaint, and the airports authority will respond appropriately in court," said MWAA spokesman Rob Yingling.

The legal battle against the Dulles Toll Road comes as lawmakers are mulling whether to ban states, private parties, and others from adding tolls on existing untolled federal highways, bridges, or tunnels that have been constructed with federal funding.

A bill introduced by Sen. Kay Bailey Hutchison, R-Tex., in May would prohibit such tolls nationally. Hutchison already successfully banned the tolling of existing federally funded highways in Texas by adding a provision to a fiscal 2008 appropriations bill that was enacted. That prohibition expires at the end of this month.

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