

# Legal Analysis of Proposed By-Law Amendments

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# Legal Analysis of Proposed By-Law Amendments

Proposed By-Law Change - Section 2.04 Consultants and Counsel

## **(a) General Consultant of Record**

The General Consultant of Record reports to the ~~Executive Director~~ **Board of Directors**.

Chapter 2004-468, Laws of Florida.

Section 8. Airport manager.—The authority shall employ an aviation-experienced airport manager to administer all airport operations and to supervise all airport projects. The decision to employ or terminate the employment of the airport manager shall require the four-fifths vote of the members of the authority.

*Therefore, according to the Special Act, supervising airport projects including The General Consultant of Record is the Airport Manager's responsibility.*

*Recommendation: No Change.*



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# Legal Analysis of Proposed By-Law Amendments

Section 2.04 Consultants and Counsel

## **(b) Airport Legal Counsel**

The Board of Directors is the client of the Airport Legal Counsel ~~who shall work with the Executive Director to serve the interests of the Board.~~ and reports directly to the Chair of the Board of Directors.

The clean copy would read:

The Board of Directors is the client...and reports directly to the Chair...

*Recommendation: No change.*



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## ***Section 2.05      Hearing Officer***

There is hereby created, for the purpose of conducting administrative hearings, as may be provided for by the Bylaws, Minimum Standards, Airport Regulations, Procurement Code and Sign Standards, the position of hearing officer. The hearing officer shall be selected randomly by the Executive Director from a list of candidates approved by the Board of Members. The hearing officer shall be a member in good standing with the Florida Bar engaged in the practice of law in Palm Beach, Broward or Miami-Dade County. In addition to powers specifically conferred, the hearing officer has the power to assess and order the payment of civil fines and administrative costs. **(The Boca Raton City Attorney)**

- ▶ It is unclear whether the intent is for the Boca Raton City Attorney to serve as the hearing officer. If so, the reference to the City Attorney conflicts with the earlier provisions governing the selection process. Picking only the City Attorney to serve as the Hearing Officer makes it more difficult to choose someone with special expertise in a particular matter and to resolve conflicts of interest that may arise.

*Recommendation: No change.*



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# Legal Analysis of Proposed By-Law Amendments

## **Section 3.02**      **Conduct and Additional Duties**

Members **The Board of Directors** owe a fiduciary ~~duty~~ **responsibility** and duty of loyalty to the Authority. **Board** Members ~~may~~ **will** closely scrutinize, by questions and personal observation, all aspects of Airport Management so as to obtain independent information to assist the **Board** Members in the performance of their duties. ~~It is the express intent of this section, however, that such inquiry not interfere with the operations of the Airport or Authority and that recommendations for change or improvement in Airport or Authority operations be made to and through the Executive Director.~~

- ▶ The change from fiduciary duty to fiduciary responsibility does not change the substantive obligation of the Board members.
- ▶ The change from “may closely scrutinize” to “will closely scrutinize” creates an affirmative obligation on the part of the Board members, which may be subject to a malfeasance, misfeasance, or nonfeasance analysis. Leaving the language permissive is protective of the Board members.
- ▶ The purpose in removing the statement that the intent is not to “interfere with the operations of the Airport or Authority” or that “recommendations for change or improvement in Airport of Authority operations” is unclear.

*Recommendation: No change.*



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## ~~(b)~~ Non-interference    (b) Oversight

~~Board Members are prohibited from~~ will not interfering with the Executive Director's administration of the Airport and Authority and its day-to-day operations. The Board of Directors will approve the application and enforcement of contract terms and conditions, procurement, enforcement of regulations governing Airport and airside/landside operations, communication with the FDOT and FAA, and personnel decisions. ~~Except for the purpose of enactment of resolutions or inquiries and investigations before the Board, the Board and its Members shall deal with the employees who are subject to the direction or supervision of the Executive Director solely through the Executive Director, and neither the Board nor its Members shall give any commands, directions, or instructions to, or make any demands or requests of, any such employees, either publicly or privately.~~ Board Members may will make requests for information to the Executive Director consistent with the Board Members' right to closely scrutinize, by question and personal observation, all aspects of Airport Management. ~~where such inquiry does not interfere with the operations of the Airport.~~



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## ~~(b)~~ Non-interference      (b) Oversight

~~Board Members are prohibited from~~ will not interfering with the Executive Director's administration of the Airport and Authority and its day-to-day operations. The Board of Directors will approve the application and enforcement of contract terms and conditions, procurement, enforcement of regulations governing Airport and airside/landside operations, communication with the FDOT and FAA, and personnel decisions. ~~Except for the purpose of enactment of~~

- ▶ The change in the first sentence is fine.
- ▶ The change in the second sentence, that the Board "will approve" means that the Board would have an affirmative obligation to authorize or ratify virtually every decision made as part of the operation. This both violates the basic tenet of Section 8 of the Enabling Act, but also would be unworkable with a once-monthly schedule.

*Recommendation: No change.*



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and FAA, and personnel decisions. ~~Except for the purpose of enactment of resolutions or inquiries and investigations before the Board, the Board and its Members shall deal with the employees who are subject to the direction or supervision of the Executive Director solely through the Executive Director, and neither the Board nor its Members shall give any commands, directions, or instructions to, or make any demands or requests of, any such employees, either publicly or privately. Board Members may will make requests for information to the Executive Director consistent with the Board Members' right to closely scrutinize, by question and personal observation, all aspects of Airport Management. where such inquiry does not interfere with the operations of the Airport.~~

- ▶ Non-interference clauses protect not only the staff but also the Board members from claims, such as 42 U.S.C. §1983 claims, that can only be made against the final decision-maker. This change strips the Board of that protection.
- ▶ Again, in the last sentence change “may” to “will” creates an affirmative obligation on the part of the Board to make requests for information.

*Recommendation: No change.*



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## Section 3.03

### (d) Election and Term

Officers shall be elected by the Board of Directors for a one-year term at the regular June meeting each year; provided, however, such term may extend until the next duly qualified officer shall be elected by the Board of Directors. The Board of Directors may fill officer vacancies at any regular meeting or special meeting called for that purpose. ~~The Chairman, Vice-Chairman and Secretary/Treasurer may not serve more than two (2) consecutive terms in one position.~~

- ▶ The removed language is taken directly from Section 4(4) of the Enabling Act. The By-Laws cannot vary from the Special Act.

*Recommendation: No change.*



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## Section 3.03

### **(f) Preparation of Agenda**

The agenda for each Board of Directors meeting will be prepared by the Executive Director prior to each meeting. The Executive Director will include on the agenda items of pending business and any item requested by any Board Member. ~~and/or Airport Legal Counsel.~~

- ▶ The public Board meeting is the only time counsel has the opportunity to address the Authority as a client. The unaltered language in this provision ensures that counsel has adequate access to the client.

*Recommendation: No change.*



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# Legal Analysis of Proposed By-Law Amendments

## ***Section 4.03***      ***Agenda***

There shall be an official agenda for every meeting of the Board of Directors, which shall determine the order of business conducted at the meeting. The Agenda shall be in the format set forth in Exhibit C to these Bylaws. The Board of Directors shall not may take action upon any matter, proposal, or item of business which is not listed upon the official agenda or included as an amendment to the agenda. The Board of Directors may take agenda items out of order upon motion approved by the Board.

### **(h)**      **Emergency Items**

In the event of an unforeseen/emergency situation (defined as strongly relevant to the safety and/or operation of the Boca Raton Airport), where an agenda item must be presented to the Board of Directors without undergoing the normal submittal and review process, the item may be added to the agenda upon approval of the ~~Executive Director or the~~ Board of Directors. The Board of Directors should be apprised of the issue with as much advance notice as possible preceding a scheduled Board of Directors meeting.



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# Legal Analysis of Proposed By-Law Amendments

## **Section 4.12      *Emergency Meetings***

An emergency meeting of the Board of Directors may be called by four Members of the Board of Directors, the Chair or Vice-Chair or ~~Executive Director~~ whenever an emergency exists which requires immediate action by the Board of Directors. Whenever an emergency meeting is called, the Executive Director, ~~or if the Executive Director is unavailable, the Airport Legal Counsel~~ shall serve either verbal or written notice upon each Board Member stating the date, hour and place of the emergency meeting and the nature of the emergency for which the emergency meeting has been called. At least 24 hours shall elapse between the time notice of the emergency meeting is given and the time the meeting is to be held. If, because of the nature of the emergency, it was impossible to give notice to each Board Member or it was impossible to let 24 hours elapse, reasonable notice under the circumstances must be given. The failure to provide 24 hour notice shall not affect the legality of the meeting if the action taken at an emergency meeting is subsequently ratified by the Board of Directors. Board Members may appear at an emergency meeting via telephone or other similar technology, provided that a quorum of the Board is established in accordance with the requirements of Section 4.05. No approval of the Authority's annual budget shall be granted at an emergency meeting. The Executive Director, or the Executive Director's designee, shall post notice of emergency meetings on the Authority's website as soon as possible after such emergency meeting is scheduled.



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## Fla. Stat. §286.011.

- (1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. **The board or commission must provide reasonable notice of all such meetings.**

## Fla. Stat. 125.001 - County Government. Board meetings; notice.

- (1) Upon the giving of due public notice, regular and special meetings of the board may be held at any appropriate public place in the county.

## Fla. Stat. 166.0213 - Municipalities. Governing body meetings.

- (1) The governing body of a municipality having a population of 500 or fewer residents may hold meetings within 5 miles of the exterior jurisdictional boundary of the municipality at such time and place as may be prescribed by ordinance or resolution.
- (2) The governing body of a municipality may hold joint meetings to receive, discuss, and act upon matters of mutual interest with the governing body of the county within which the municipality is located or the governing body of another municipality at such time and place as shall be prescribed by ordinance or resolution



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*Some of the cases and AGO's stating that the Sunshine Law does not mandate a published agenda or prohibit a board from adding topics to an agenda:*

*Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973)(case dealing with City of North Miami)

*Yarbrough v. Young*, 462 So. 2d 515 (Fla. 1st DCA 1985)(out of the City of Perry, Florida)

*Law and Information Services, Inc. v. City of Riviera Beach*, 670 So. 2d 1014, 1016 (Fla. 4th DCA 1996).

*Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1288 (Fla. 2010).

Fla. AGO 2003-53, Mr. James W. Denhardt (dealing with the City of Treasure Island).



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Government-in-the-Sunshine Manual (2016), Florida Attorney General's Office recommends the following regarding notice:

1. The notice should contain the time and place of the meeting and, if available, an agenda, or if no agenda is available, a statement of the general subject matter to be considered.
2. The notice should be prominently displayed in the area in the agency's offices set aside for that purpose, e.g., for cities, in city hall, and on the agency's website, if there is one.
3. Except in the case of emergency or special meetings, notice should be provided at least 7 days prior to the meeting. Emergency sessions should be afforded the most appropriate and effective notice under the circumstances.
4. Special meetings should have no less than 24 and preferably at least 72 hours reasonable notice to the public. *See Yarbrough v. Young*, 462 So. 2d 515 (Fla. 1st DCA 1985) (three days notice of special meeting deemed adequate) and *Lozman v. City of Riviera Beach*, No. 502008CA027882 (Fla. 15th Cir. Ct. December 8, 2010), *per curiam affirmed*, 79 So. 3d 36 (Fla. 4th DCA 2012) (no violation of Sunshine Law where notice of special meeting held on Monday September 15 was posted at city hall and faxed to the media on Friday September 12, and members of the public [including the media] attended the meeting).
5. The use of press releases, faxes, e-mails, and/or phone calls to the local news media is highly effective in providing notice of upcoming meetings.



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Fla. Stat. §189.069. Special districts; required reporting of information; web-based public access.

(2)(a) A special district shall post the following information, at a minimum, on the district's official website:

...

16. At least 7 days before each meeting or workshop, the agenda of the event, along with any meeting materials available in an electronic format, excluding confidential and exempt information. The information must remain on the website for at least 1 year after the event.

## Two Important Rules of Statutory Construction

- ▶ The Sunshine Law is broadly construed in favor of public access and notice. *Grapski v. City of Alachua*, 31 So.3d 193, 198-99 (Fla. 1<sup>st</sup> DCA 2010).
- ▶ The only exemptions to the Sunshine Law are those expressly created by the Legislature. *Neu v. Miami Herald Pub. Co.*, 462 So. 2d 821 (Fla. 1985)



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Special District Handbook, Florida Department of Economic Opportunity:

**Additional Meeting Notice Requirements for Independent Special Districts - Any Meeting Other Than a Regular Meeting.**

The special district governing body must advertise the day, time, place, and purpose of any meeting, other than a regular meeting or any recessed and reconvened meeting of the governing body, at least seven days before such meeting. The advertisement must be published in the same way as the meeting schedule, unless a bona fide emergency exists.

If a bona fide emergency exists, reasonable notice must be provided. The governing body must subsequently ratify the meeting. A special district may not approve its annual budget at an emergency meeting.



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Fla. Stat. §286.0114:

...

(2) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

(3) The requirements in subsection (2) do not apply to:

(a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;



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Option 1: Ask for a Florida Attorney General opinion.

Option 2: (Alternate Language)

Section 4.03 Agenda

There shall be an official agenda for every meeting of the Board of Directors, which shall determine the order of business conducted at the meeting. The Agenda shall be in the format set forth in Exhibit C to these ByLaws and shall be posted in accordance with Law. The Board of Directors shall not take action upon any matter, proposal, or item of business which is not listed upon the official agenda or included as an amendment to the agenda. The Board of Directors may take agenda items out of order upon motion approved by the Board.

(h) Emergency Items

In the event of an emergency situation affecting public health, welfare, or safety, where compliance with the requirements of the agenda rules provided herein would cause an unreasonable delay in the Board of Director's ability to act, an item may be added to the agenda upon approval of the Executive Director or the Board of Directors. As much advance notice as possible should be given for an item under this section, and posted to the District's website.



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Option 2: (Alternate Language)(continued):

## Section 4.12 Emergency Meetings

An emergency meeting of the Board of Directors may be called by four Members of the Board of Directors, the Chair, Vice Chair, or Executive Director whenever there is an emergency situation affecting the public health, welfare, or safety, where compliance with meeting notice requirements would cause an unreasonable delay in the Board of Director's authority to act. Whenever an emergency meeting is called, the Executive Director shall serve verbal or written notice upon each Board Member stating the date, hour, and place of the emergency meeting and the nature of the emergency for which the emergency meeting has been called. No less than 24 hours and preferably at least 72 hours shall elapse between the time notice of the emergency meeting is given and the time the meeting is to be held. Action taken at an emergency meeting must be subsequently ratified by the Board of Directors.....



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## (f) Interruption/Inquiry

A **Board** Member may request, to or through the Chair, a Point of Information to obtain relevant information. A **Board** Member may make a parliamentary inquiry requesting information. ~~or the Airport Legal Counsel's opinion on the rules. A Member may make a Point of Order asserting a breach of the rules or challenging a ruling of the Airport Legal Counsel. If a Member is speaking when a Point of Order is made, the Member shall cease speaking until the Airport Legal Counsel rules. By motion and second, a decision of the Airport Legal Counsel on a Point of Order may be appealed to the Board with the question, "Shall the decision of the Airport Legal Counsel be overturned?", which question shall be decided by a vote of the Board.~~

*Recommendation: No change.*



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# Legal Analysis of Proposed By-Law Amendments

## Article VII. Ethics

**Board** Members are subject to the requirements of Chapter 112, Part III, Florida Statutes, which is known as the Code of Ethics for Public Officers and Employees, and Chapter 2, Art XIII, Palm Beach County Code of Ordinances, which is known as the Palm Beach County Code of Ethics, as applicable. **Board** Members are responsible for conducting themselves ethically and in accordance with these and other laws applicable to them. ~~Members may request guidance from Airport Legal Counsel with regard to their ethical duties related to their position on the Board. Guidance regarding ethical duties shall be provided by Airport Legal Counsel to Members in the form of a Memorandum, which will be recorded in the Member's file. Members may retain independent counsel, at their own expense, for such guidance.~~

- ▶ For some ethics violations, a wrongful intent is an essential element of the claim. Seeking and acting on the advice of counsel may serve as evidence that there was no wrongful intent.
- ▶ "Public officials are entitled to legal representation at public expense to defend themselves against litigation arising from the performance of their official duties while serving a public purpose." *Thornber v. City of Ft. Walton Beach*, 568 So. 2d 914, 916-17 (Fla. 1990).

*Recommendation: No change.*



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