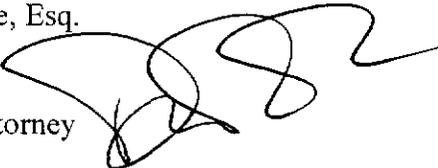


# BOARD OF COUNTY COMMISSIONERS

## INTER-OFFICE MEMORANDUM

TO: Christine Coble, Agenda Coordinator

FROM: Herbert W. A. Thiele, Esq.  
County Attorney  
Daniel J. Rigo, Esq.  
Assistant County Attorney 

DATE: October 19, 2010

SUBJECT: Amendments BCC Policy 98-6;  
Leon County Research and Development Authority (LCRDA);  
Appointment of County Commissioner to LCRDA Board of Governors

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This memorandum responds to your request for legal advice regarding proposed amendments to BCC Policy 98-6, Membership on Boards, Committees, Councils, and Authorities ("Policy 98-6") and the manner in which the Board of County Commissioners (BCC) appoints its County Commissioner member to the LCRDA Board of Governors. As the Agenda Coordinator, according to Policy 98-6, you became responsible in December 2007 for the administration and maintenance of the list of Chairman's appointments. It has recently come to our attention that the manner of the appointment of the County Commissioner member to the LCRDA, as currently provided in Policy 98-6, is inconsistent with the statutory requirements for membership and will need to be revised as provided below.

The LCRDA was established by BCC Ordinance No. 80-68 in accordance with Fla. Stat. §159.703(1)<sup>1</sup> and codified in the Leon County Code of Laws at Chapter 2, Article III, Division 2. The membership the LCRDA is specifically addressed in the Florida Statutes at Section 159.703(3)<sup>2</sup> (the "Membership Statute") and in the Leon County Code at Section 2-57 (the "Membership Code"),<sup>3</sup> each of which requires designation of the membership by duly enacted BCC resolution. The Membership Statute further requires BCC appointment of not less than five persons, each of whom shall serve four year terms. In addition to those five or more members appointed by the BCC, the Membership Statute provides for the membership of the Presidents of FSU and FAMU who, by statute, serve ex officio with no specific term.

The BCC resolution designating the current LCRDA nine-member Board of Governors was adopted on June 14, 2005 (the "LCRDA Membership Resolution").<sup>4</sup> Four of the members, namely the Mayor and the Presidents of FSU, FAMU, and TCC, are appointed by virtue of the office or position they hold. As such, those four members are considered to serve in an ex officio capacity and, by statute, have no specific term of service. The remaining five members must therefore by necessity be considered to be the statutorily required five persons appointed by the full BCC to each serve four-year terms. Based on our reading of Policy 98-6 together with

the Membership Statute, the Membership Code, and the Membership Resolution, those five members must comprise four individuals and a County Commissioner.

According to our review of BCC agenda requests and minutes available on the County's website, the appointment of the County Commissioner member to the LCRDA has historically been for a term of four years and upon a vote of the full BCC.<sup>5</sup> That process changed, however, with the BCC's June 26, 2007 acceptance of a status report on Board-Appointed Committees and Chairman's appointments, which reflected that the LCRDA County Commissioner member would be appointed by only the BCC Chairman and for a term of only one year. That change was later incorporated into an amendment to Policy 98-6 on February 26, 2008. In order to comply with the requirements of the Membership Statute, we advise that Policy 98-6 be revised to reflect the appointment of the LCRDA County Commissioner member by the full BCC and for a term of four years.

If you have any questions or comments regarding this matter, please do not hesitate to contact our office.

HWAT/DJR/dr

cc: Parwez Alam, County Administrator  
Vince Long, Deputy County Administrator  
Kim Dressel, Sr. Assistant to the County Administrator

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<sup>1</sup> **159.703. Creation of research and development authorities**

(1) Subject to the provisions of this part, each county or group of counties may create by ordinance a local governmental body as a public body corporate and politic to be known as "\_\_\_\_\_ Research and Development Authority," hereafter referred to as "authority" or "authorities." Each of the authorities is constituted as a public instrumentality for the purposes of development, operation, management, and financing of a research and development park, and the exercise by an authority of the powers conferred by ss. 159.701-159.7095 shall be deemed and held to be the performance of an essential public purpose and function. . . .

<sup>2</sup> **159.703. Creation of research and development authorities**

(3) The resolution shall designate not less than five persons who are residents and electors of, or have their principal place of employment in, the county as members of the authority created for said county. Of the members first appointed, one shall serve for 1 year, one for 2 years, one for 3 years, and the remainder for 4 years and in each case until his or her successor is appointed and has qualified. *Thereafter, the board shall appoint for terms of 4 years each a member or members to succeed those whose terms expire.* In addition to the other members, the president of each affiliated institution of higher education, or the president's designee, shall be a member of the authority and shall serve ex officio. *Except as to members who serve ex officio, the board shall fill any vacancy for an unexpired term.* A member of the authority shall be eligible for reappointment. Any member of the authority may be removed by the board for misfeasance, malfeasance, or willful neglect of duty. Each member of the authority before entering upon his or her duties shall take and subscribe the oath or affirmation required by the State Constitution. A record of each such oath shall be filed with the Department of State and with the clerk of the circuit court. (emphasis added).

<sup>3</sup> **Sec. 2-57. Membership; composition.**

There shall be no less than five members of the authority, in addition to one member who is a representative of, and recommended by the president of, Florida A & M University and another member who is a representative of, and recommended by the president of, Florida State University. The membership may also include at least one tenant of Innovation Park, and may include representatives of the private business sector from the following disciplines: Banking/Finance, Land Development/Real Estate, Marketing, and Land Use/Environmental Research. Membership to the authority shall be upon designation of the Board of County Commissioners by a duly enacted resolution of the Board. A nominating committee, composed of the County Administrator or his designee, who shall act as the committee's chairperson, the President of the Tallahassee/Leon County Economic Development Council, the Director of the National High Magnetic Field Laboratory at Innovation Park, the President of the Capital City Chamber of Commerce and the Director of the Florida State University/Florida A & M University College of Engineering, shall make recommendations to the Board of County Commissioners for appointment of members to the Authority.

<sup>4</sup> Resolution R05-15:

**RESOLUTION OF BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY,  
FLORIDA, SETTING FORTH THE MEMBERSHIP OF THE LEON COUNTY  
RESEARCH AND DEVELOPMENT AUTHORITY; PROVIDING FOR BYLAWS;  
PROVIDING AN EFFECTIVE DATE.**

WHEREAS, Florida Statutes Section 159.71, et. seq., sets forth the requirements for the creation, by Ordinance, of a Research and Development Authority by counties of the state; and

WHEREAS, in October of 1978 the Charter of the Leon County Research and Development Authority was executed, creating said authority; and,

WHEREAS, in 1980, the Leon County Board of County Commissioners adopted Ordinance No. 80-68 confirming and creating the existence of the Leon County Research and Development Authority (said Ordinance being codified in Chapter 2 of the Leon County Code of Laws at Section 2-57); and

WHEREAS, the Section 2-57 of the Leon County Code of Laws requires that there shall be no less than five members of the Leon County Research and Development Authority, which is herein proposed to be inclusive of an individual recommended by the President of Florida A & M University, an individual recommended by the President of Florida State University, the Mayor of the City of Tallahassee, or its designee, an individual recommended by the President of Tallahassee Community College, and five other individuals from Leon County as appointed by the Leon County Board of County Commissioners; and,

WHEREAS, the Leon County Board of County Commissioners wishes to memorialize an expansion of the membership of the Leon County Research and Development Authority by the adoption of this resolution setting forth the number of members and the composition of the Leon County Research and Development Authority; and,

WHEREAS, this adopted Resolution will serve to supersede Resolution No. R04-02.

NOW THEREFORE, BE IT RESOLVED, by the Leon County Board of County Commissioners as follows:

**Section 1.** That the Leon County Board of County Commissioners hereby ratifies and confirms the existence of the Leon County Research and Development Authority as set forth in Chapter 2 of the Code of Laws of Leon County and as provided for in Chapter 159, Florida Statutes.

**Section 2.** That the composition of the Leon County Research and Development Authority shall be nine (9) members, to be composed of the following:

- A) The President of Florida A & M University or its designee; and,
- B) The President of Florida State University or its designee; and,

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- C) The Mayor of the City of Tallahassee or its designee; and,
  - D) The President of Tallahassee Community College or its designee; and,
  - E) The Chairman of the Leon County Board of County Commissioners or its designees; and,
  - F) Four other individuals from Leon County as selected by the Leon County Board of County Commissioners.

**Section 3.** That those appointments to the Leon County Research and Development Authority pursuant to Section 2(F) above, shall be by a majority vote of the Board of County Commissioners.

**Section 4.** That the Leon County Research and Development Authority is hereby directed to amend their bylaws to include the new composition and number of members of the Authority as set forth herein.

**Section 5.** That this Resolution shall supersede Resolution No. 04-02 and these changes shall take effect on June 14, 2005, and apply thereafter.

Proposed, presented, and passed this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

<sup>5</sup> See, BCC meeting on November 24, 1998, Agenda Item 30 and associated minutes reflecting a unanimous vote to appoint Commissioner Host to serve on the LCRDA; and BCC meeting on July 11, 2000, Agenda Item 24 and associated minutes reflecting a unanimous vote to appoint Commissioner Sauls to fill the Commissioner vacancy on the LCRDA.