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MEMORANDUM

TO: Board of County Commissioners

FROM: Joni Armstrong Coffey, County Attorney

DATE: August 17, 2017

RE: **Expansion of Membership of Broward County Metropolitan Planning Organization**
CAO Files: 17-026 & 17-114

This memorandum responds to the Board's request during discussion of Item Number 74 at its meeting of April 25, 2017. This Office was requested to provide the historical background for the current composition of the Broward County Metropolitan Planning Organization (MPO) and an opinion regarding the legal requirements for expanding the MPO's membership from nineteen (19) to twenty-five (25) voting members.

Historical Background

July 12, 1977: Initial Interlocal Agreement (ILA) for creation of the MPO approved by the Board (1977 ILA)

- Executed by Broward County, cities of Fort Lauderdale, Hallandale, Hollywood, Pompano Beach, and Plantation, and Florida Department of Transportation (FDOT)
- Predated MPO statute
- 14 voting members: 7 County Commissioners
7 municipal representatives

November 20, 1979: Second ILA establishing the MPO approved by the Board (1979 ILA)

- Executed by Broward County, FDOT, and the cities of Deerfield Beach, Fort Lauderdale, Hallandale, Hollywood, Lauderdale, Plantation, and Pompano Beach
- Section 334.215, Florida Statutes (1979), required voting membership of no fewer than five (5) nor more than fifteen (15) apportioned members, with County Commissioners comprising one-third ($\frac{1}{3}$) of the voting membership
- Fifteen (15) voting members: 5 County Commissioners
10 municipal representatives

Broward County Board of County Commissioners

Mark D. Bogen • Beam Furr • Steve Geller • Dale V.C. Holness • Chip LaMarca • Nan H. Rich • Tim Ryan • Barbara Sharief • Michael Udine
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1979-1999: State legislative amendments

- Renumbered the MPO statute from Section 334.215, Florida Statutes, to current Section 339.175, Florida Statutes
- Increased the maximum allowable voting membership from fifteen (15) to nineteen (19) members
- Modified County Commissioner minimum membership requirements to twenty percent (20%), where an official of an agency that operates a major mode of transportation is appointed to the MPO
- Modified the means for "designating" an MPO to require an agreement among the Governor and the units of general-purpose local government representing at least seventy-five percent (75%) of the population of the urbanized area, including the central city(ies) within the MPO jurisdiction, as defined by the U.S. Bureau of Census
- Chapter 99-385, Laws of Florida, amended Section 339.175, Florida Statutes, providing a variation from the MPO voting membership requirements for chartered counties with over 1 million in population, upon certain conditions, including a determination by the charter county within which the MPO exists that the reapportionment plan is needed to fulfill specific goals and policies applicable to the metropolitan planning area and that the reapportionment plan otherwise complies with all federal requirements pertaining to MPO membership (the 1999 Act)

August 31, 1999: ILA for "Creation of the Broward County Metropolitan Planning Organization" approved by the Board (1999 ILA)

- Executed by Broward County, FDOT, Tri-County Commuter Rail Authority (Tri-Rail), School Board, League of Cities, and eighteen (18) of the nineteen (19) municipal members; City of Cooper City did not execute the 1999 ILA
- Nineteen (19) voting members:
 - 3 County Commissioners
 - 1 Member of Tri-Rail who is also a County Commissioner
 - 13 municipal representatives
 - 1 School Board member
 - 1 League of Cities member who is elected official from municipality without voting member on MPO
- The Board adopted Resolution No. 1999-1080, necessary pursuant to the 1999 Act, for variation from statutory membership requirements, making the determination that the MPO reapportionment plan was necessary to fulfill certain County goals and policies and that the reapportionment plan complied with all federal requirements pertaining to MPO membership

- Section 7.02 of the 1999 ILA provided that "Amendments or modifications of this Agreement may only be made by written agreement signed by all parties here to [sic] with the same formalities as the original Agreement. No amendment may alter the apportionment or jurisdictional boundaries of the MPO without approval by the Governor."

May 22, 2001: First Amendment to the 1999 ILA approved by the Board (First Amendment)

- Executed by Broward County, FDOT, Tri-Rail, School Board, and eighteen (18) of the nineteen (19) municipal members
- City of Deerfield Beach and Broward League of Cities did not execute the First Amendment
- Removed City of Cooper City and added Town of Southwest Ranches as alternate municipal voting members
- Reversed membership of cities of Deerfield Beach and Margate so that the City of Deerfield Beach became a voting member and the City of Margate became an alternate member

September 13, 2005: Addendum to the 1999 ILA recorded at Official Records Book 40489, page 711, of the public records of Broward County (Addendum)

- Executed by the cities of Coconut Creek, Cooper City, Dania Beach, Hillsboro Beach, Lauderdale-by-the-Sea, Lazy Lake, Lighthouse Point, Pembroke Park, Sea Ranch Lakes, Weston, and Wilton Manors
- Added above cities as parties to the 1999 ILA
- Removed League of Cities as a member of the MPO
- Reapportioned membership of the now fourteen (14) municipal members

September 12, 2006: Second Amendment to the 1999 ILA approved by the Board (Second Amendment)

- Executed by Broward County, FDOT, South Florida Regional Transportation Authority (SFRTA) and twenty-eight (28) of the thirty-one (31) municipal members; towns of Hillsboro Beach and Pembroke Park and Village of Lazy Lake did not execute the Second Amendment
- Added City of Parkland and Town of West Park as alternate municipal members
- Modified the name of Tri-Rail to SFRTA
- Confirmed removal of League of Cities as a member of the MPO

2014: Chapter 2014-223, Laws of Florida

- Increased maximum allowable voting membership on an MPO from nineteen (19) to twenty-five (25) voting members

February 10, 2016: Third Amendment to the 1999 ILA recorded at Instrument #113506887, of the public records of Broward County (Third Amendment)

- Executed by FDOT, School Board, and twenty-nine (29) of the thirty-one (31) municipal members; Broward County, SFRTA, Village of Lazy Lake, and Town of Pembroke Park did not execute the Third Amendment
- Would increase voting membership on the MPO from nineteen (19) to twenty-five (25) members
- Although Table 1 referenced in the Third Amendment was not included in the recorded copy, it purportedly modified voting membership as follows:
 - 4 County Commissioners
 - 1 Member of SFRTA who is also a County Commissioner
 - 19 municipal representatives
 - 1 School Board member

Analysis

Despite numerous statutory amendments, including amendments that increased the maximum allowable voting membership on an MPO to nineteen (19) members, the County Commission representation on the MPO remained at one-third ($\frac{1}{3}$) of the fifteen (15) voting member board until 1999. At the time of execution and recording of the 1999 ILA and all Amendments and the Addendum thereto, Section 339.175(3), Florida Statutes, "Voting Membership," required County Commissioners to comprise one-third ($\frac{1}{3}$) of the voting membership of the MPO governing board, unless an official of an agency that operates or administers a major mode of transportation has been appointed to the MPO. In such cases, County Commissioners are required to comprise no fewer than twenty percent (20%) of the MPO voting membership. The 1999 ILA added an SFRTA member to the MPO and provided for three (3) County Commissioners and one (1) member of the SFRTA who is also a County Commissioner as voting members of the nineteen (19) member MPO.

Presumably because the SFRTA member was not counted as a County Commissioner voting member for purposes of calculating the required minimum membership requirements, the parties to the MPO sought to avail themselves of the 1999 amendments to Section 339.175(3), Florida Statutes, to vary from the statutory requirement that a minimum of twenty percent (20%) of the voting membership of the MPO consist of County Commissioners. On July 8, 1999, the MPO approved the reapportionment plan and on August 31, 1999, the Board adopted Resolution No. 1999-1080, making the requisite determinations that the MPO reapportionment plan was necessary to fulfill specific goals of Broward County and that the plan complied with all federal requirements pertaining to MPO membership. Although not properly approved by unanimous agreement, this action attempted to effect a change in

membership on the MPO that would provide for three (3) County Commissioners, one (1) member of Tri-Rail who is also a County Commissioner, thirteen (13) municipal representatives, one (1) School Board member, and one (1) League of Cities member who is an elected official from a municipality without a voting member on the MPO.

No similar findings were made by the Board regarding the reapportionments contained in the First Amendment, Addendum, Second Amendment, and Third Amendment. As such, the First Amendment, Addendum, Second Amendment, and Third Amendment are legally ineffective because they are inconsistent with the reapportionment requirements of Section 339.175(3), Florida Statutes.

Significantly, Section 7.02 of the 1999 ILA reflects the statutory requirements, expressly mandating that amendments to the 1999 ILA be made only "by written agreement signed by all parties" to the 1999 ILA, with the same formalities as the 1999 ILA. Pursuant to Section 7.02, the First Amendment, Addendum, Second Amendment, and Third Amendment to the 1999 ILA are ineffective because there were parties to the 1999 ILA that did not execute the First Amendment, Second Amendment, and Third Amendment.

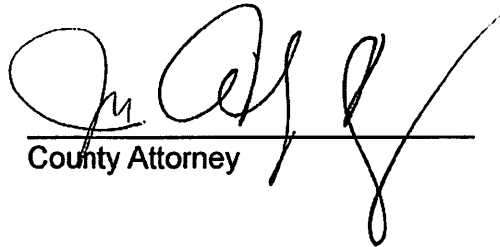
With respect to the Addendum, even though it purports to solely add parties as signatories to the 1999 ILA, it removed the League of Cities as a voting member and added one (1) voting municipal member. Additionally, the Addendum states that it reapportions membership "in accordance with Section 339.175(2)(c) [now Section 339.175(3)(c), Florida Statutes] and the Governor has been duly notified of [the] reapportionment." The removal of a voting member and reapportionment exceed a mere Addendum and constitute amendments to the 1999 ILA that required execution by all parties to the 1999 ILA. None of the parties to the 1999 ILA executed the Addendum.

Other MPO parties may argue that Broward County's inaction on prior purported Amendments was tantamount to acquiescence as to the effectiveness of the Amendments and Addendum without the execution of all parties to the 1999 ILA. That argument is legally flawed because it is directly contrary to express provision of the Agreement and state law. Further, none of the prior purported Amendments affected Broward County's representation on the MPO. The prior amending documents only modified municipal representation, while retaining the total membership of the MPO constant.

Conclusion

It would appear that some members of the MPO may be under the misunderstanding that the "Apportionment" provisions of Section 339.175(4), Florida Statutes, would allow the amendment of the 1999 ILA by only a majority of the MPO membership. Specifically, Section 339.175(4) provides for reapportionment of existing voting membership after each decennial census through the execution of an amendment to the MPO agreement by a majority of the existing members of the MPO in order to comply with the voting membership requirements of Section 339.175(3), Florida Statutes. The Amendments and Addendum to the 1999 ILA modified the total voting membership of the MPO, rather than merely reapportioning the existing members subsequent to the decennial census. As such, Section 339.175(4), Florida Statutes, is inapplicable.

In order to validly expand the membership of the MPO from nineteen (19) to twenty-five (25) members, an amendment to the 1999 ILA is required to be executed by all of the parties to the 1999 ILA. Additionally, if the amendment provides for fewer than five (5) County Commissioners as voting members, the Board would be required to make the requisite findings pursuant to Section 339.175(3)(c), Florida Statutes. Said amendment would also need to be executed by the Governor, consistent with Section 339.175(3)(a), Florida Statutes.


County Attorney

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c: Bertha Henry, County Administrator
Bob Melton, County Auditor