

FILE 2788 – April 22, 2022

POST-EMPLOYMENT RESTRICTIONS

FORMER JACKSONVILLE TRANSPORTATION AUTHORITY EMPLOYEE

To: *(Name withheld at the person's request.)*

SUMMARY:

The post-employment restrictions provided in Section 112.313(9)(a)4., Florida Statutes, and Sections 112.3185(3) and (4), Florida Statutes, do not apply to former employees of the Jacksonville Transportation Authority. Referenced are CEO 01-6, CEO 02-17, CEO 03-8, CEO 05-9, CEO 07-16, CEO 08-17, and CEO 08-19.

QUESTION 1:

Does the post-public-employment restriction of Section 112.313(9)(a)4., Florida Statutes, apply to a former employee of the Jacksonville Transportation Authority?

This question is answered in the negative.

In your letter of inquiry, you state that you were employed with the Jacksonville Transportation Authority (JTA) as the Assistant Vice-President – Construction and Engineering, for over eleven (11) years until December 12, 2021. You state that, as a JTA employee, your responsibilities included directing, approving, overseeing, and participating in construction, design management, and invoice approvals for JTA's capital projects. You state that, after leaving your position with the JTA, you joined WSP USA, Inc. (WSP) – a private firm that provides engineering and professional services.

In your letter, you state that as a vendor of the JTA, WSP currently has an active contract¹ with the JTA, and that as a JTA employee, you directly participated in the management of this contract. You further state that WSP completed a Commuter Rail Feasibility study for the JTA in 2017, and that you, as a JTA employee, were involved in the oversight of this study and were one of the several JTA invoice approvers. You further state that WSP has additional contracts for transit-oriented development services with which you were not involved during your time at the JTA.

Based on these facts, you inquire as to the applicability of the post-employment restrictions within the Code of Ethics for Public Officers and Employees (Code of Ethics) and whether you may represent your employer, WSP, before your former agency, the JTA.

Section 112.313(9)(a)4., Florida Statutes, applies to an agency employee, and in relevant part, states:

[a]n agency employee . . . may not personally represent another person or entity for compensation before the agency with which he or she was employed for a period of 2 years following vacation of position, unless employed by another agency of state government.

Section 112.313(9)(a)4., Florida Statutes, places a two-year prohibition on a former agency employee representing persons or entities before his or her former agency. Section 112.313(9)(a)2.a., Florida Statutes, defines an "employee" subject to the aforementioned two-year prohibition, and provides:

(I) Any person employed in *the executive or legislative branch* of government holding a position in the Senior Management Service as defined in s. 110.402 or any person holding a position in the Selected Exempt Service as defined in s. 110.602 or any person having authority over policy or procurement employed by the Department of the Lottery.

¹ Your letter of inquiry refers to this contract as the Collins Road project. You relate that this project is designed to improve access to and from I-295 and Collins Road in Jacksonville.

(II) The Auditor General, the director of the Office of Program Policy Analysis and Government Accountability, the Sergeant at Arms and Secretary of the Senate, and the Sergeant at Arms and Clerk of the House of Representatives.

(III) The executive director and deputy executive director of the Commission on Ethics.

(IV) An executive director, staff director, or deputy staff director of each joint committee, standing committee, or select committee of the Legislature; an executive director, staff director, executive assistant, analyst, or attorney of the Office of the President of the Senate, the Office of the Speaker of the House of Representatives, the Senate Majority Party Office, Senate Minority Party Office, House Majority Party Office, or House Minority Party Office; or any person, hired on a contractual basis, having the power normally conferred upon such persons, by whatever title.

(V) The Chancellor and Vice Chancellors of the State University System; the general counsel to the Board of Governors of the State University System; and the president, provost, vice presidents, and deans of each state university.

(VI) Any person, including an other-personal-services employee, having the power normally conferred upon the positions referenced in this sub-subparagraph. [emphasis added].

Pursuant to this definition, it must first be determined whether you, as a result of your employment with the JTA, were an "employee" within an executive or legislative branch agency as stated in Section 112.313(9)(a)2.a.(I), Florida Statutes.

Chapter 349, Florida Statutes, established and defines your former agency, the JTA. Section 349.03(1), Florida Statutes, provides:

There is hereby created and established a *body politic* and corporate and an agency of the state to be known as the Jacksonville Expressway Authority, redesignated as the Jacksonville Transportation Authority, and hereinafter referred to as the "authority." [emphasis added].

Further, Section 349.02(1)(a), Florida Statutes, defines "Authority," in relation to the JTA, to mean "the body politic and corporate, an agency of the state created by [] chapter [349]." Section 349.02(1)(i), Florida Statutes, defines "agency of the state" to mean and include "the state and any

department of the state, the authority, or any corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the state." The term "body politic" has been defined in Section 1.01(8), Florida Statutes, and it provides:

The words 'public body,' 'body politic,' or 'political subdivision' include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.

Based upon this statutory scheme, we conclude that the JTA is an independent state agency. Chapter 349, Florida Statutes, delineates the JTA as an agency of the state, but also specifies that the JTA is a distinct body politic. For this reason, we find that the JTA, as an independent state agency, is not a part of either the executive or the legislative branch of state government.²

Because the JTA is not part of the executive or legislative branch, we find you do not meet the definition of an "employee" as set forth in Section 112.313(9)(a)2.a.(I), Florida Statutes, and, therefore, are not subject to the two-year revolving door prohibition found in Section 112.313(9)(a)4., Florida Statutes.

Question 1 is answered accordingly.

QUESTION 2:

Do the post-public-employment restrictions in Section 112.3185(3) and (4), Florida

² We note that our conclusion comports with information provided about the JTA by the Florida Department of Transportation on its website. "The Jacksonville Transportation Authority, an independent state agency serving Duval County, has multi-modal responsibilities. JTA designs and constructs bridges and highways and provides various mass transit services." See <https://teo.fdot.gov/architecture/architectures/d2/html/stakeholders/sh41.html>. [emphasis added]. This also comports with our finding in CEO 08-19 that similar agencies, like Expressway and bridge authorities described in Chapter 348, Florida Statutes, and regional transportation or transit authorities authorized by Chapter 343, Florida Statutes, are not executive branch agencies.

Statutes, apply to a former employee of the Jacksonville Transportation Authority?

This question is answered in the negative.

The post-employment restrictions provided in Section 112.3185(3), Florida Statutes, and Section 112.3185(4), Florida Statutes, respectively, state that:

(3) An agency employee may not, after retirement or termination, have or hold any employment or contractual relationship with any business entity other than an agency in connection with any contract in which the agency employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, or investigation while an officer or employee. When the agency employee's position is eliminated and his or her duties are performed by the business entity, this subsection does not prohibit him or her from employment or contractual relationship with the business entity if the employee's participation in the contract was limited to recommendation, rendering of advice, or investigation and if the agency head determines that the best interests of the state will be served thereby and provides prior written approval for the particular employee.

(4) An agency employee may not, within 2 years after retirement or termination, have or hold any employment or contractual relationship with any business entity other than an agency in connection with any contract for contractual services which was within his or her responsibility while an employee. If the agency employee's position is eliminated and his or her duties are performed by the business entity, this subsection may be waived by the agency head through prior written approval for a particular employee if the agency head determines that the best interests of the state will be served thereby.

Section 112.3185(3), Florida Statutes, prohibits a former agency employee from going to work for a private business entity in connection with a contract where the former agency employee was personally and substantially involved in the procurement of the contract. *See* CEO 02-17, CEO 03-8, CEO 05-9, and CEO 08-17. Section 112.3185(4), Florida Statutes, further prohibits a former agency employee, for two years after the date of their departure from their former agency,

from going to work for any business entity in connection with a contract for contractual services that was within their responsibility or that of their agency subordinates, while employed at the former agency. See CEO 07-16 and CEO 01-6.

The post-employment restrictions in Sections 112.3185(3) and (4), Florida Statutes, only apply to "agency" employees. Section 112.3185(1)(b), Florida Statutes, defines the term "agency" and states that:

"Agency" means any state officer, department, board, commission, or council of the *executive or judicial branch* of state government and includes the Public Service Commission. [emphasis added].

As noted above in Question 1, the JTA is an independent agency and is not part of any of the branches of state government. Because it is not a part of the executive or judicial branch, you, as a former JTA employee, do not meet the definition of an agency employee. Therefore, you are not subject to the post-employment restrictions of Sections 112.3185(3) and (4), Florida Statutes.

Question 2 is answered accordingly.³

JG/sc/ks

³ Please note that Section 112.313(8), Florida Statutes, does remain applicable to you as a former public employee because, unlike Section 112.313(9)(a)4., Florida Statutes, and Sections 112.3185(3) and (4), Florida Statutes, its application to you is not dependent on being a former employee of a particular branch of state government. Section 112.313(8), Florida Statutes, states:

A current or former public officer, employee of an agency, or local government attorney may not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.

Andrew C. Rodgers, P.E.
WSP USA, Inc.
9428 Baymeadows Rd.
Suite 400
Jacksonville, FL 32256

February 4, 2022

Mr. Steven Zuilkowski
State of Florida
Commission on Ethics
PO Drawer 15709
Tallahassee, FL 32317-5709

Dear Mr. Zuilkowski,

I am requesting confirmation and clarification of post-employment restrictions related to my previous public position. At this time, I have left the public sector for a position within the private sector.

I began work with WSP in December 2021. Prior to this position, I was employed by the Jacksonville Transportation Authority (JTA) for more than 11 years. My last day of employment with JTA was December 13, 2021. My most recent position with JTA was Assistant Vice President – Construction and Engineering. My responsibilities included directing and overseeing management of design and construction for the Authority's capital projects. Design and construction work was often contracted to engineering consultants and general contractors. As a part of these duties, I often participated in contract selections and was one of several people in the workflow for approving invoices from contracted firms.

My understanding is that I am not allowed to lead or be directly involved in marketing activities (e.g. attending meetings to market services, participating in proposal interviews, etc.) with JTA management or staff through the two year period from the day I ended employment with the Authority.

It is also my understanding that I am able to work on projects WSP is contracted to provide services for with JTA; I may be listed in and included on org charts in proposals submitted by others within WSP; and I am able to participate in project meetings and Authority-hosted events as long as I do not perform marketing functions while I am in attendance at the meetings and events.

Please confirm my understanding stated above and listed below is correct or if there are any additional restrictions, I need to adhere to relative to these activities.

- To my knowledge WSP currently has one active contract, Collins Road, for which I actively participated in the management of during my time at JTA. The Collins Road project was initiated by the City of Jacksonville as part of the Better Jacksonville Plan. As such, I did not participate in the original contract selection, but did oversee completion of the design WSP (originally Parsons Brinckerhoff) performed under the contract and was one of the approvers for invoices submitted by WSP. I understand I am not able to participate in meetings with JTA on this project or perform any billable work on the project.

- WSP (then Parsons Brinckerhoff) completed a Commuter Rail feasibility study for JTA in 2017. I was involved in the day-to-day oversight and coordination of the study and was one of several invoice approvers. I was not on the contract selection committee and was not involved in the beginning of the project. My involvement began after the original project manager departed JTA. The contract was closed following completion of the work. My understanding is that my involvement in the original study does not preclude me from working on any future Commuter Rail studies, planning, engineering, or subsequent activities that WSP may be awarded contracts to perform aside from the overall two-year marketing restrictions.
- Finally, WSP has additional active contracts for transit-oriented development services that I was not involved in during my time at JTA. My understanding is that I could work on these projects without any additional restrictions or conflicts.

Sincerely,

A handwritten signature in black ink that reads "Andrew Rodgers". The signature is written in a cursive, slightly slanted style.

Andrew C. Rodgers, P.E.

Steverson, Kathryn

From: Stillman, Kerrie
Sent: Friday, February 4, 2022 3:10 PM
To: Steverson, Kathryn
Cc: Klancke, Caroline; Zuilkowski, Steven
Subject: FW: Post-Employment Restrictions
Attachments: Request for Clarification on Post-Employment Restrictions 2022-02-04.pdf

Kathy,

Please log in the informals. Thanks!

Kerrie

From: Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us>
Sent: Friday, February 04, 2022 2:51 PM
To: Stillman, Kerrie <STILLMAN.KERRIE@leg.state.fl.us>
Cc: Klancke, Caroline <KLANCKE.CAROLINE@leg.state.fl.us>
Subject: FW: Post-Employment Restrictions

Informal request I fielded over the phone today.

From: Rodgers, Andrew <Andrew.Rodgers@wsp.com>
Sent: Friday, February 4, 2022 2:43 PM
To: Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us>
Subject: Post-Employment Restrictions

Mr. Zuilkowski,

Thank you for taking my call today. I have attached a letter requesting confirmation or clarification on my post-employment restrictions with JTA.

Thanks in advance.

Regards,
Andrew



Andrew C. Rodgers, P.E.
Director, Local Business Leader

Direct: (904) 239-7697

WSP USA Inc.
9428 Baymeadows Rd.
Suite 400
Jacksonville, FL 32256

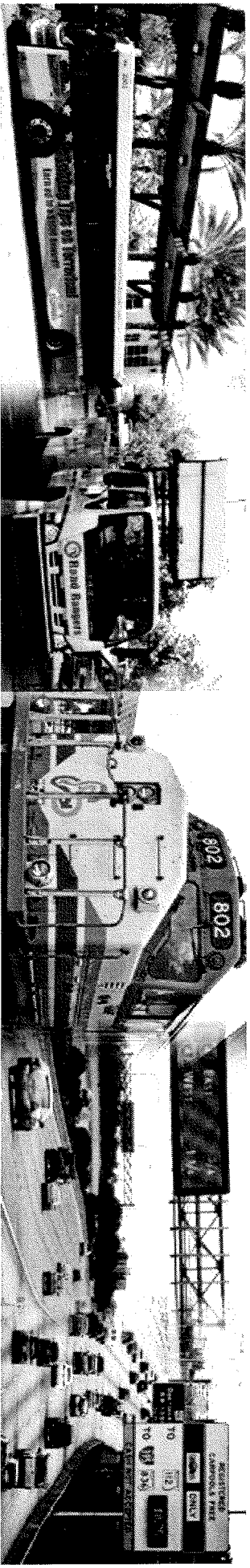
wsp.com

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Florida Statewide and Regional ITS Architectures

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Jacksonville Transportation Authority

Description: The Jacksonville Transportation Authority, an independent state agency serving Duval County, has multi-modal responsibilities. JTA designs and constructs bridges and highways and provides varied mass transit services. These include express and regular bus service, a downtown Skyway Automated People Mover (APM), the Trolley service, the Stadium Shuttle for various sporting events at the football stadium, Bus Rapid Transit (BRT), the St. Johns River Ferry, JTA Connection for the disabled and elderly, and Ride Request and ChoiceRide on-demand services that connect employers and employees to job access through customized transportation options.

Inventory Elements:

- [Jacksonville Paratransit Vehicles](#)
- [Jacksonville RTC](#)
- [Jacksonville Transit Fixed-Route Systems](#)
- [Jacksonville Transit Paratransit Systems](#)
- [Jacksonville Transit Skyway Control Center](#)
- [Jacksonville Transit Vehicles](#)
- [Jacksonville Wayfinding Kiosks](#)
- [JTA Data Archive](#)
- [JTA Engineering Department System](#)
- [JTA Park-and-Ride Lots](#)
- [JTA Skyway Vehicles](#)
- [JTA U2C EAV](#)
- [JTA U2C Management System](#)
- [JTA Web Site](#)
- [North Florida RTMC](#)

Projects:

- [BayJax Public Safety and Surveillance Project](#)
- [BayJax Smart and Connected Signals Project](#)
- [BayJax Wayfinding and Event Management Project](#)
- [jax511.com Real-Time Transit Data](#)

- JTA AVL Probe Data
- JTA Ultimate Urban Circulator (U2C)

Roles and Responsibilities:

Archived Data Management for Northeast Florida Regional ITS Architecture - FDOT District 2

- Collect and archive transit data from transit management systems.

BayJax Public Safety and Surveillance Roles and Responsibilities

- Respond to incidents when notification is received coordinating with public safety agencies.

BayJax Smart and Connected Signals Project Roles and Responsibilities

- Install and maintain signal priority equipment on transit vehicles.

BayJax Wayfinding and Event Management Roles and Responsibilities

- Provide public transportation information to wayfinding kiosks and smart phone apps.

jax511.com Real-Time Transit Data Roles and Responsibilities

- Provide transit schedule and fare information to regional traveler information systems, including jax511 and the JTA Web site.

jax511.com Transit Schedule Data Roles and Responsibilities

- Provide transit schedule and fare information to regional traveler information systems, including the northeast Florida traveler information system and the JTA Web site.

JTA AVL Probe Data Roles and Responsibilities

- Provide transit vehicle probe data to FDOT District 2.

JTA Fixed-Route CAD/AVL Roles and Responsibilities

- Provide fixed-route transit and paratransit services for the City of Jacksonville.
- Track the location of all JTA transit vehicles.

JTA Ultimate Urban Circulator (U2C) Roles and Responsibilities

- Operate and maintain Ultimate Urban Circulator (U2C).
- Provide traveler information on the Ultimate Urban Circulator (U2C).

Parking Management for Northeast Florida Regional ITS Architecture - FDOT District 2

- Operate park-and-ride lots associated with JTA routes.
- Provide parking lot information to FDOT District 2 and the City of Jacksonville traffic engineering division.
- Provide an electronic payment system for park-and-ride lots.

Transit Management for Northeast Florida Regional ITS Architecture - FDOT District 2

- Provide fixed-route transit and paratransit services for the City of Jacksonville.
- Coordinate transit signal priority for fixed-route transit vehicles with the City of Jacksonville traffic engineering division.
- Provide transit passenger electronic fare payment on JTA fixed-route vehicles.
- Operate the Skyway people-mover system.
- Coordinate with the City of Jacksonville Sheriff's Office for response to transit-related incidents.
- Provide capability for transit traveler trip planning.
- Provide transit schedule and fare information to regional traveler information systems, including the northeast Florida traveler information system and the JTA Web site.
- Coordinate multimodal connections for fixed-route transit vehicles with other regional transit agencies and multimodal service providers.
- Provide transit vehicle security using silent alarms and video surveillance.

Traveler Information for Northeast Florida Regional ITS Architecture - FDOT District 2

- Provide online reservation capability for paratransit services.
- Provide transit information to the public using Web sites.

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The 2021 Florida Statutes

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PUBLIC TRANSPORTATION JACKSONVILLE TRANSPORTATION AUTHORITY

349.01 Title of law.—This law shall be known and may be cited as the “Jacksonville Transportation Authority Law.”

History.—s. 1, ch. 29996, 1955; s. 2, ch. 71-101.

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PUBLIC TRANSPORTATION

JACKSONVILLE TRANSPORTATION AUTHORITY

349.02 Definitions.—

(1) Except in those instances where the context clearly indicates otherwise, whenever used or referred to in this chapter, the following terms shall have the following meanings:

- (a) “Authority” means the body politic and corporate, an agency of the state created by this chapter.
- (b) “Members” means the governing body of the authority, and the term “member” means one of the individuals constituting such governing body.
- (c) “Bonds” means and includes the notes, bonds, refunding bonds, or other evidences of indebtedness or obligations, in either temporary or definitive form, that the authority is authorized to issue pursuant to this chapter.
- (d) “Department” means the Department of Transportation existing under chapters 334-339.
- (e) “Florida State Improvement Commission” or “commission” means the state agency created, organized, and existing under and by virtue of the provisions of former chapter 420, or the successor thereto, chapter 29788, Acts of 1955, now chapter 288.
- (f) “County” means the County of Duval.
- (g) “City” means the City of Jacksonville.
- (h) “State Board of Administration” means the body corporate existing under the provisions of s. 4, Art. IV of the State Constitution or any successor thereto.
- (i) “Agency of the state” means and includes the state and any department of the state, the authority, or any corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the state.
- (j) “Federal agency” means and includes the United States, the President of the United States, and any department of the United States or any corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the United States.
- (k) “Duval County gasoline tax funds” means all the 80-percent surplus gasoline tax funds accruing in each year to the Department of Transportation for use in Duval County under the provisions of s. 9, Art. XII of the State Constitution, after deduction only of any amounts of said gasoline tax funds heretofore pledged by the department or the county for outstanding obligations.

(l) “Transportation facilities” means and includes all mobile and fixed assets (real or personal property or rights therein) used in the transportation of persons or property by any means of conveyance whatsoever, and all appurtenances thereto, such as, but not limited to, highways; limited or controlled access lanes and facilities; docks, vessels, vehicles, fixed guideway facilities, and any means of conveyance of persons or property of all types; park-and-ride facilities; transit-related improvements adjacent to transit facilities or stations; bus, train, vessel, or other vehicle storage, cleaning, fueling, control, and maintenance facilities; and administrative and other office space for the exercise by the authority of the powers and obligations herein granted.

(2) Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

History.—s. 2, ch. 29996, 1955; s. 18, ch. 69-216; ss. 23, 35, ch. 69-106; s. 1, ch. 2009-111; s. 24, ch. 2011-64; s. 57, ch. 2013-15.

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The 2021 Florida Statutes

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PUBLIC TRANSPORTATION

JACKSONVILLE TRANSPORTATION AUTHORITY

349.03 Jacksonville Transportation Authority.—

(1) There is hereby created and established a body politic and corporate and an agency of the state to be known as the Jacksonville Expressway Authority, redesignated as the Jacksonville Transportation Authority, and hereinafter referred to as the “authority.”

(2) The governing body of the authority shall consist of seven members. Three members shall be appointed by the Governor and confirmed by the Senate. Three members shall be appointed by the mayor of the City of Jacksonville subject to confirmation by the council of the City of Jacksonville. The seventh member shall be the district secretary of the Department of Transportation serving in the district that contains the City of Jacksonville. Except for the seventh member, members shall be residents and qualified electors of Duval County.

(3)(a) The terms of appointed members shall be for 4 years deemed to have commenced on June 1 of the year in which they are appointed. Each member shall hold office until a successor has been appointed and has qualified. A vacancy during a term shall be filled by the respective appointing authority only for the balance of the unexpired term. Any member appointed to the authority for two consecutive full terms shall not be eligible for appointment to the next succeeding term. One of the members so appointed shall be designated annually by the members as chair of the authority, one member shall be designated annually as the vice chair of the authority, one member shall be designated annually as the secretary of the authority, and one member shall be designated annually as the treasurer of the authority. The members of the authority shall not be entitled to compensation, but shall be reimbursed for travel expenses or other expenses actually incurred in their duties as provided by law. Four voting members of the authority shall constitute a quorum, and no resolution adopted by the authority shall become effective unless with the affirmative vote of at least four members. Members of the authority shall file as their mandatory financial disclosure a statement of financial interest with the Commission on Ethics as provided in s. [112.3145](#).

(b) The authority shall employ an executive director, and the executive director may hire such staff, permanent or temporary, as he or she may determine and may organize the staff of the authority into such departments and units as he or she may determine. The executive director may appoint department directors, deputy directors, division chiefs, and staff assistants to the executive director, as he or she may determine. In so appointing the executive director, the authority may fix the compensation of such appointee, who shall serve at the pleasure of the authority. All employees of the authority shall be exempt from the provisions of part II of chapter 110. The authority may employ such financial advisers and consultants, technical experts, engineers, and agents and employees, permanent or temporary, as it may require and may fix the compensation and qualifications of such persons, firms, or corporations. The authority may delegate to one or more of its agents or employees such of its powers as it shall deem necessary to carry out the purposes of this chapter, subject always to the supervision and control of the governing body of the authority.

History.—s. 3, ch. 29996, 1955; s. 19, ch. 63-400; s. 1, ch. 67-542; ss. 23, 35, ch. 69-106; s. 1, ch. 70-381; s. 2, ch. 71-101; s. 1, ch. 79-409; s. 209, ch. 81-259; s. 1, ch. 85-263; s. 11, ch. 88-215; s. 525, ch. 95-148; s. 50, ch. 2002-1; s. 4, ch. 2007-196; s. 2, ch. 2009-111; s. 71, ch. 2012-174.