

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1403

Sarasota-Manatee Airport Authority

SPONSOR(S): Holder

TIED BILLS:

IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF
DIRECTOR				
1)	Military & Local Affairs Policy Committee		Nelson	Hoagland
2)	Economic Development & Community Affairs Policy Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

The Sarasota-Manatee Airport Authority is a bi-county independent special district that was created by the Florida Legislature for the purpose of “acquiring, constructing, improving, financing, operating, and maintaining airport facilities.”

HB 1403 amends the special act relating to the Sarasota-Manatee Airport Authority. The bill authorizes attendance and participation via teleconferencing equipment at emergency meetings of the authority by a member who is unable to attend due to his or her own medical treatment or physical infirmity or due to his or her physical absence from the district. Teleconferencing members will be deemed in attendance for purposes of establishing a quorum and entitled to cast a vote at the meeting. The bill provides for compliance with specified public meetings requirements.

According to the Economic Impact Statement, the bill will have no fiscal impact.

This bill provides an effective date of upon becoming law.

As drafted, the bill may not comply with a constitutional provision prohibiting certain special laws. See, Section III A, “Constitutional Issues,” of this analysis.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Sarasota-Manatee Airport Authority

The Sarasota-Manatee Airport Authority is a bi-county governmental agency created by special act of the Florida Legislature¹ for the purpose of "acquiring, constructing, improving, financing, operating, and maintaining airport facilities." The authority is an independent special district as defined by s. 189.403, F.S.

The governing board of the authority is appointed by the Governor, and consists of six members, three of whom must be residents of Manatee County and three of whom must be residents of Sarasota County. A majority of the members of the authority constitutes a quorum, and the affirmative vote of a majority of a quorum of the members is necessary for any action taken by the authority.

There are no provisions in the authority's charter regarding its meetings except for a reference to "a regular monthly meeting" in Section 4(3).

The Administrative Procedures Act

Section 120.54(5)(b)2., F.S., of the Administrative Procedure Act, provides that the rules adopted by the Administration Commission must include "uniform rules for use by each state agency that provide procedures for conducting public meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such public meetings, hearings, and workshops, in person and by means of communications media technology. . . ." A notice is required to state if a public meeting, hearing or workshop is to be conducted by means of communications media technology, or if attendance may be provided by such means. The notice for public meetings, hearings and workshops utilizing communications media technology must state how persons interested in attending may do so and name locations, if any, where communications media technology facilities will be available. Limiting points of access to public meetings, hearings and workshops subject to the provisions of s. 286.011, F.S., to places not normally open to the public is presumed to violate the right of access of the public, and any official action taken under such circumstances is void and of no effect. This section provides

¹ Chapter 2003-309, L.O.F., codified all special laws relating to the authority.

that other laws relating to public meetings, hearings and workshops, including penal and remedial provisions, apply to public meetings, hearings and workshops conducted by means of communications media technology, and will be liberally construed in their application. As used in this subparagraph, "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video and digital video by any method available.

Notices of Meetings and Hearings; Record Required to Appeal

Section 286.0105, F.S., provides that each board, commission or agency of this state or of any political subdivision must include in the notice of any meeting or hearing the information that, if a person decides to appeal any decision made by the board, agency or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Florida's Government in the Sunshine Law

Section 286.011, F.S., provides, in relevant part, that:

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, 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.

Florida's Voting Requirement Law

Section 286.012, F.S., provides:

No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases, said member shall comply with the disclosure requirements of s. 112.3143.

Effect of Proposed Changes

HB 1403 amends ch. 2003-309, L.O.F., to authorize attendance and participation at bona fide emergency meetings of the Sarasota-Manatee Airport Authority via teleconferencing equipment by any member who is unable to attend due to his or her own medical treatment or physical infirmity, or due to his or her physical absence from the district on the day of such meeting.

The need for a special district emergency meeting is recognized in s. 189.417., F.S., requiring that "reasonable" notice be given for such meetings instead of the customary seven-day notice. The authority has indicated that the provisions of the bill would allow them to conduct business in emergency circumstances. Beyond their part-time service on the authority governing board, commissioners are engaged full-time in businesses, professions or vocations. Thus, it can be difficult to assemble a quorum on extremely short notice to address urgent public health, safety and welfare matters. Even when work calendars don't interfere, a personal illness may preclude a commissioner's attendance. Earlier this year, the authority

had an opportunity to qualify for \$4.6 million in American Recovery and Reinvestment Act of 2009 stimulus funds to overlay and rehabilitate a runway. That funding was only available if the authority could advertize the project, tabulate the bids, award a contract, and accept the grant within 21 days. Because the next regular meeting of the board was not scheduled until the following month, an emergency meeting became necessary. Commissioners had to go to extraordinary lengths to assemble a quorum. Two of the commissioners also serve on state agency boards for which they routinely participate in telephonic meetings. Consequently, they and their fellow commissioners would like the same ability for authority meetings on a limited basis, namely, when medical issues or out-of-district travel preclude their physical presence at an emergency meeting.²

The bill also provides that the member participating via teleconferencing equipment will be deemed in attendance for purposes of establishing a quorum and entitled to cast a vote at the meeting.

While the bill does not provide parameters for permissible teleconferencing equipment, it states that such equipment must allow members of the public to hear the comments made by all participating members. The bill specifically provides that meetings held via teleconferencing equipment must comply with the provisions of s. 286.0101, F.S., (notices of meetings and hearings; record required to appeal), s. 286.011, F.S., (Florida's Government in the Sunshine Law), and s. 286.012, F.S. (Florida's Voting Requirement Law).

Theoretically, this bill could allow the entire county board to conduct a meeting and public business via telephone. See, Section III A, "Constitutional Issues," of this analysis.

The bill provides an effective date of upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends ss. (2) of s. 4 of s. 3 of ch. 2003-309, L.O.F., relating to the Sarasota-Manatee Airport Authority.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 19, 2010

WHERE? The *Sarasota Herald-Tribune*, a daily newspaper published in Sarasota County.

The *Bradenton Herald*, a daily newspaper published in Manatee County.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

² November 25, 2009, letter from authority attorney Dan Bailey to the Sarasota Legislative Delegation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Prohibited Special Laws

Pursuant to s. 11(a)(21), Art. III of the State Constitution, s. 189.404(2)(d), F.S., prohibits special laws or general laws of local application which exempt an independent special district from the public meetings requirements of s. 189.417, F.S.

Section 189.417, F.S., requires that the governing body of each special district file a schedule of its regular meetings with the local governing authority or authorities, and publish the schedule in a newspaper of general circulation. This section also provides parameters for the advertisement and notice of emergency and other special meetings. All meetings of the governing body of the district are required to be open to the public and governed by the provisions of ch. 286, F.S. Meetings of the governing body of the special district are required to be held in a public building when available within the district, in a county courthouse of a county in which the district is located, or in a building in the county accessible to the public.

Access to Public Records and Meetings

Section 24 (b) of Art. 1 of the State Constitution, provides, in relevant part:

All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public....

The Office of the Attorney General (OAG) has issued numerous opinions regarding the participation of local governmental board members in public meetings through use of telecommunications media and the compliance of such meetings with Florida's public meetings laws. In AGO 92-44, the OAG concluded that a county commissioner who was physically unable to attend a commission meeting because of medical treatment could participate in the meeting by using an interactive video and telephone system that allowed her to see the other members of the board and the audience at the meeting and that allowed the board and audience to see her. The opinion recognized that s. 125.001, F.S., requires that meetings of the county commission be held in a public place in the county but noted that a quorum of the members of the county commission would be present. A similar conclusion was reached in AGO 98-28, which advised that a district school board could use electronic media technology in order to allow a physically absent member to attend a public meeting if a quorum of the members of the board was physically present at the meeting site. However, in general, the OAG has displayed a reluctance to allow local board members to use telecommunications media:

Allowing state agencies and their boards and commissions to conduct meetings via communications media technology under specific guidelines recognizes the practicality of members from throughout the state participating in meetings of the board or commission. While the convenience and cost savings of allowing members from diverse geographical areas to meet electronically might be attractive to a local board or commission..., the representation...is local and such factors would not by themselves appear to justify or allow the use of electronic media technology in order to assemble the members for a meeting.

In general, the OAG has opined that the public policy consideration of meaningful interaction by the public with their local representatives as required by the Government in the Sunshine Law ordinarily

is not well served by allowing local governmental entities to conduct business through the use of communications media technology.

For meetings where a quorum is required, the Florida Attorney General has stated that concerns about the validity of official actions taken by a public body when less than a quorum is present suggest a very conservative reading of the statute. The office has concluded that, in the absence of a statute to the contrary, the requisite number of members must be physically present at a meeting in order to constitute a quorum. Because the term "quorum" is defined as "the number of members of a group or organization required to be present to transact business legally, usually a majority," a quorum requirement, in and of itself, contemplates the physical presence of the members of a board or commission at any meeting subject to the requirement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The bill prefaces the allowance of teleconferencing equipment on the exclusion of the provisions of s. 120.54(5)(b)2., F.S. While there is no question that a county commission is an "agency"³ for purposes of application of ch.120, F.S., the language of s.120.54(5)(b)2., F.S., limits its terms to uniform rules for state agencies. Accordingly, the Sponsor may want to consider an amendment which deletes the language on Lines 21 and 22 that states "Notwithstanding section 120.54(5)(b)2., Florida Statutes..." as this provision does not apply to local governments.

It is recommended that the bill be amended to provide that all meetings conducted via the teleconferencing provisions of the bill comply with s. 189.417(3), F.S., in order to clarify compliance with s. 189.404(2)(d), F.S.

Other Comments

In 2006, the Legislature passed a special act authorized teleconferencing attendance by Monroe County Commissioners to qualify for a quorum at special meetings.⁴ Because of the unique geography of Monroe County (a 140-mile chain of islands connected by bridges and a single road), the ability to gather five commissioners for a special meeting was said to present significant challenges. This law was enacted on a one-year basis and has since expired.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

³ See, s. 120.52(1)(c), F.S., defining "agency" for purposes of Ch. 120 to include "each other unit of government in the state, including counties and municipalities, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions...."

⁴ Chapter 2006-350, L.O.F.