

**TAMPA-HILLSBOROUGH COUNTY  
EXPRESSWAY AUTHORITY**

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**Follow-up on Operational Audit  
Report No. 2007-074**



## AUTHORITY BOARD MEMBERS AND EXECUTIVE DIRECTOR

Tampa-Hillsborough County Expressway Authority Board Members and the Executive Director who served during the period January 2007 through August 2008 are listed below:

Senator James T. Hargrett, Jr., Member to 1-8-07, Chairman from 1-8-07  
Donald Phillips, Member from 6-4-07 to 6-23-08, Vice-Chairman from 6-23-08  
Alba Lopez-Isa, Member to 1-8-07, Secretary from 1-8-07 to 7-10-07 (1)  
Greg Traux, Member from 2-19-08 to 6-23-08, Secretary from 6-23-08  
Stephen Diaco, Member from 6-4-07  
Gwen Miller, Ex-Officio from 4-3-08  
Rev. Dr. Thomas Scott, Ex-Officio from 4-3-08  
Don Skelton, Ex-Officio to 1-8-07, Vice Chairman from 1-8-07 to 6-23-08, Ex-Officio from 6-23-08  
Kevin White, Ex-Officio

Joseph C. Waggoner, Executive Director from 8-27-07  
Stephen Reich, Interim Executive Director from 1-8-07 to 8-27-07 (2)

Notes:

- (1) Secretary position was vacant from 7-10-07 to 6-23-08
- (2) Executive Director position was vacant to 1-8-07

The project team leader was Denis Jessen, CPA, and the project was supervised by Michael J. Gomez, CPA. Please address inquiries regarding this report to Marilyn D. Rosetti, CPA, Audit Manager, by e-mail at [marilynrosetti@aud.state.fl.us](mailto:marilynrosetti@aud.state.fl.us) or by telephone at (850) 487-9031.

This report and other audit reports prepared by the Auditor General can be obtained on our Web site ([www.myflorida.com/audgen](http://www.myflorida.com/audgen)); by telephone (850 487-9024); or by mail (G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450).

# TAMPA-HILLSBOROUGH COUNTY EXPRESSWAY AUTHORITY

## Follow-up on Operational Audit Report No. 2007-074

### SUMMARY

This report provides the results of our follow-up procedures for each of the findings included in our report No. 2007-074, and the Tampa-Hillsborough County Expressway Authority's (Authority's) responses thereto. Our follow-up procedures to determine the Authority's progress in addressing the 13 findings and recommendations contained in report No. 2007-074 disclosed that, as of the completion of our follow-up procedures in August 2008, the Authority's actions corrected 10 findings, partially corrected 2 findings, and did not correct 1 finding.

### BACKGROUND

The Auditor General is authorized by State law to perform audits of governmental entities in Florida. As directed by the Legislative Auditing Committee, we conducted an operational audit of the Tampa-Hillsborough County Expressway Authority for the period July 1, 2005, through September 30, 2006, and selected actions taken prior and subsequent thereto. Pursuant to Section 11.45(2)(l), Florida Statutes, the Auditor General, no later than 18 months after the release of report No. 2007-074, must perform such appropriate follow-up procedures as deemed necessary to determine the Tampa-Hillsborough County Expressway Authority's progress in addressing the findings and recommendations contained within that report.

### STATUS OF REPORT NO. 2007-074

#### Financial Management

#### Finding No. 1: Administrative Expenses

##### Previously reported

We disclosed several matters in our report No. 2007-074 in which we questioned the public purpose served by incurring certain operating expenses or providing specific benefits to certain Authority employees. We noted that the Authority has no funding source for operating purposes, other than expressway system user tolls. Accordingly, the decision to provide these expenses affects the tolls charged to the expressway system users.

We recommended that since administrative expenses are financed from expressway system user tolls, the Authority should carefully evaluate management practices and public purposes served and, as appropriate, document the level and nature of expenses necessary to operate the Authority.

##### Results of follow-up procedures

*The Authority's actions have adequately corrected this finding.* Our review disclosed that the Authority formally adopted and implemented several personnel, organizational, and procurement policies and procedures designed to evaluate the efficiency of management practices, expenses, and public purposes served. The policies and procedures adopted address processes for identifying expenses that require up front analysis, determining and documenting cost efficiency and public purpose of proposed expenses, and assigning staff responsibility. The Authority's administrative expenses, other than salary expenses, showed a net reduction of \$1,717,670 (68.45 percent) from the fiscal year ended June 30, 2007, to the fiscal year ended June 30, 2008.

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**Finding No. 2: Interim Financial Reports**

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**Previously reported**

Although revenue reports were provided to the Board, Authority staff had not provided periodic expenditure information, including budgetary status, to the Board since March 2004.

We recommended that to ensure the Board is properly kept abreast of the Authority's fiscal condition and to establish proper accountability and assist in decision-making, Authority staff should present, on a periodic basis (e.g., monthly), expenditure reports, including budget-to-actual expenditures, to the Board.

**Results of follow-up procedures**

*The Authority's actions have adequately corrected this finding.* Our review disclosed that Authority staff began presenting monthly interim financial reports, including budget-to-actual expenditure comparisons, to the Board in January 2007.

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**Finding No. 3: Internal Controls**

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**Previously reported**

The Authority had not provided for an adequate separation of duties, restriction of access to its computerized accounting system, or compensating controls, in certain areas of operations.

We recommended that the Authority separate duties such that no one employee has control over all critical stages of a process. We also recommended that the Authority restrict access to the accounting system functions based on assigned job responsibilities and strengthen controls regarding job assignments within day-to-day operations to more effectively promote a proper segregation of duties. Additionally, we recommended that System Administrator capabilities be assigned to one primary employee, such as the Information Technology Manager, and one back-up employee. We also recommended that the back-up employee not have responsibilities relating to critical accounting or payroll functions, and this employee's activity be monitored. Finally, we recommended that the Authority deactivate the System Administrator user ID that was included with the software package.

**Results of follow-up procedures**

*The Authority's actions have adequately corrected this finding.* Our review disclosed that the Authority adequately separated duties to the extent possible given the small size of its staff, and implemented adequate compensating controls associated with payroll and personnel processing, disbursement processing activities, and accounting functions, inclusive of limited access to accounting operations in the information technology system. Additionally, while the Authority did not deactivate the System Administrator user ID, it changed the password that came with the software package and limited the access to this password to the Information Technology Manager and one other individual that did not have incompatible responsibilities.

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**Finding No. 4: Written Policies and Procedures**

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**Previously reported**

The Authority's written policies and procedures, necessary to assure the efficient and consistent conduct of accounting and other business-related functions, and the proper safeguarding of assets, had not been updated to incorporate policy and procedure changes.

We recommended that the Authority revise and update its written policies and procedures to ensure that they are consistent with current practices, applicable laws, and other guidelines. We also recommended that in doing so, the Authority ensure that the written policies and procedures address the instances of noncompliance and control deficiencies discussed in our report No. 2007-074.

**Results of follow-up procedures**

*The Authority's actions have partially corrected this finding.* Our review disclosed that the Authority revised and updated several of its written policies and procedures that address the instances of noncompliance and control deficiencies noted in our report No. 2007-074. The Authority is continuing to revise and update additional policies and procedures to ensure consistency with current practices, applicable laws, and other guidelines, with an estimated completion date of January 2009.

**Organizational Structure and Staffing**

**Finding No. 5: Employment Practices**

**Previously reported**

The Authority had not officially adopted position descriptions, minimum requirements, pay grades, or pay ranges for its staff, and did not adequately document, verify, or maintain information about applicants and other significant personnel actions.

We recommended that the Authority adopt position descriptions and minimum requirements for all positions and set a standard pay grade or range for each position. Additionally, we recommended that the Authority implement procedures to ensure that all prospective employees submit an employment application, develop a form to document employee appointment, and properly verify and document employee qualifications for the position. Also, we recommended that the Authority review all employment contracts to ensure consistency with each employee's current position and ensure that all other appropriate documentation evidencing authorized personnel actions are included in the Authority's records.

**Results of follow-up procedures**

*The Authority's actions have adequately corrected this finding.* Our review disclosed that the Authority replaced all existing employment contracts with adopted job descriptions including minimum qualifications and pay ranges for each position. We further noted that the Authority implemented procedures to ensure that all prospective employees submit an employment application or detailed resume, verified and documented employee qualifications for positions filled, and developed a form to document employee appointments.

**Finding No. 6: Severance Pay**

**Previously reported**

The Authority's employment agreements with its former Executive Director and several current employees contained provisions for severance pay without documenting in its public records the public purpose served. In addition, employment agreements did not provide for finite employment terms; therefore, the Authority was bound to pay severance unless the employee was terminated "with cause."

We recommended that the Authority review the provisions of current and future employment agreements regarding the benefit to the Authority, and the public purpose served, of providing severance pay to employees. If the Authority

decides to continue the use of severance pay, and can document the public purpose served, we recommended that the Authority consider the use of employment terms and provisions that require a cost savings to the Authority as a prerequisite to paying severance upon early termination.

#### **Results of follow-up procedures**

*The Authority's actions have partially corrected this finding.* Our review disclosed that the Authority replaced all existing employment contracts with adopted position descriptions (as discussed in finding No. 5) and adopted Personnel Policy and Procedure 210.19 entitled Severance Pay. Although the policy enumerates the public purpose served by those provisions as they relate to the Authority's ongoing operations, the Authority's policy continues to provide for severance pay of salary and benefits to eleven employees for periods ranging from three months to one year should the employees be terminated by the Board "without cause." These potential severance payments total approximately \$817,107. Additionally, the use of employment terms and provisions that require a cost savings to the Authority as a prerequisite to paying severance upon early termination was not provided for in the policy.

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### **Finding No. 7: Educational Leave with Pay**

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#### **Previously reported**

The Authority granted educational leave to an employee that enabled the employee to qualify for a different profession without documenting in its public records the public purpose served.

We recommended that, in granting educational leave with pay, the Authority demonstrate in its public records the public purpose served by the arrangement.

#### **Results of follow-up procedures**

*The Authority's actions have adequately corrected this finding.* Effective June 25, 2007, the Authority rescinded its policy on educational leave with pay.

<b>Contractual Services</b>
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### **Finding No. 8: Acquisition of General Counsel Services**

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#### **Previously reported**

The Authority contracted with a law firm to provide general counsel services and employed a Legal Affairs Director without conducting a cost/benefit analysis, and Authority records were not sufficient to ensure there was no duplication of effort between the law firm providing general counsel services and the Legal Affairs Director. Further, although the Authority initiated a Request for Proposal for general counsel services, it had not analyzed or competitively selected these services since 1997.

We recommended that the Authority analyze its current needs for general counsel services. In doing so, we recommended that the Authority conduct a cost/benefit analysis to determine the potential cost savings of an in-house general counsel position and outsource special counsel services on an as-needed basis. Also, we recommended that if the Authority determines that it needs both a Legal Affairs Director and outside legal counsel, the Authority ensure that there is no duplication of effort. Finally, we recommended that contracts for services contain finite terms, and be analyzed for necessity, cost effectiveness, and competitively selected on a periodic basis.

**Results of follow-up procedures**

*The Authority's actions have adequately corrected this finding.* Our review disclosed that the Authority conducted a cost/benefit analysis to determine the potential cost savings of an in-house general counsel position as compared to outsourcing special counsel services on an as-needed basis. Based on the cost/benefit analysis, the Authority initiated a competitive recruitment process for an in-house general counsel. The Authority approved and filled an in-house general counsel position, reclassified the former Legal Affairs Director as Chief Administrative Officer on June 1, 2007, and no longer utilizes the services of an outside law firm. The adopted job descriptions for the General Counsel and Chief Administrative Officer positions do not contain duplicative efforts.

**Finding No. 9: Legal Services Contract****Previously reported**

The Authority's contract with a law firm did not provide for a maximum contract amount. In addition, Board approval of hourly increases for specified law firm personnel was not always documented in the Authority's records. The law firm hired subcontractors to perform lobbying services contrary to the terms of the contract and the Authority's procurement policies, and without written contracts between the Authority and the subcontractors.

We recommended that the Authority require that future contracts for general counsel or other services include a maximum contract amount, require reports to be provided to evaluate contract performance and provide a basis for payment, and provide for monitoring of contract performance to ensure that services and resulting costs are being obtained in accordance with Board intentions. We also recommend that Authority procedures be strengthened to ensure that any hourly rate adjustments to contracts are authorized by the Board prior to payment. Additionally, we recommended that the Authority discontinue allowing contracted parties, other than construction contractors, to obligate the Authority by hiring subcontractors that are not contracted directly with the Authority. Finally, we recommended that the Authority follow its procurement policies and procedures when acquiring contractual services.

**Results of follow-up procedures**

*The Authority's actions have adequately corrected this finding.* The Authority no longer utilizes the services of an outside law firm. Additionally, our review disclosed that the Authority implemented controls to ensure compliance with their adopted contractual service procurement policies and procedures.

**Finding No. 10: Requests for Proposal****Previously reported**

Although the Authority's Request for Proposal (RFP) procedures allowed the Board to re-rank the selection committee's recommended short list, the basis and justification for re-ranking the selection committee's recommendation and selection of the contractor was not required or adequately documented in Authority records.

We recommended that if the Board determines that an RFP selection committee's rankings are not acceptable to the Board, the reasons therefor should be documented in the Board minutes, as well as justifications for any re-rankings.

**Results of follow-up procedures**

*The Authority's actions have adequately corrected this finding.* Our review disclosed that the Authority did not award any RFP's with changes to the selection committee's rankings. We further noted that the Authority revised Purchasing Policy No. 500.03(2), requiring the Board to state with specificity the justifications for any re-rankings and that the justifications be reflected in Authority minutes.



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**Finding No. 11: Lobbying Services**


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**Previously reported**

The Authority expended \$1.5 million from July 1, 2001, through September 30, 2006, for lobbying services, without express and specific statutory authority permitting such expenditures. Although the Authority's Interim General Counsel cited several sections of Chapter 348, Florida Statutes, and concluded that those sections authorize the Authority to hire a lobbyist, the sections cited do not provide specific and express statutory authority for the expenditure of Authority funds for the hiring of a lobbyist. The Authority is a statutory entity and the Attorney General has interpreted Florida law, in numerous opinions, as prohibiting public funds from being expended by statutory entities for lobbying purposes unless expressly and specifically stated. However, according to Attorney General Opinion No. 2000-09, the Authority could instead authorize an employee to perform "statutorily prescribed activities, such as seeking funding and acting as an advocate."

We recommended that the Authority immediately discontinue its relationship with contracted lobbyists and assign applicable statutorily prescribed activities to an employee of the Authority.

**Results of follow-up procedures**

*The Authority's actions have not corrected this finding.* On January 8, 2007, the Authority discontinued its relationship with the previously contracted lobbyist. Additionally, although the Authority established a Government Relations Manager position, the position was not filled. On November 19, 2007, the Authority contracted with a different firm to provide lobbying services. The term of the lobbying contract was for six months, with a renewal clause for up to three additional months. As noted in our report No. 2007-074, the Authority has not cited express and specific statutory authority for hiring a lobbyist.

*In his response, the General Counsel indicated that the Authority takes issue with the last sentence under Previously reported above in that it states that we recommended that the Authority assign applicable statutory activities to an employee of the Authority whereas our report No. 2007-074 indicated that we recommended the Authority consider assigning duties to an employee of the Authority. However, our report No. 2007-074 clearly recommended that the Authority immediately discontinue its relationship with contracted lobbyists and, if the Authority deemed lobbying a necessary service, then to comply with the requirements of law the Authority would need to assign the statutorily prescribed activities to an employee. We concur that the Authority "considered" assigning those duties to a newly established position; however, as also discussed in our report No. 2007-074, because the Authority hired an outside lobbying firm, we believe this is contrary to the requirements of law.*

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**Finding No. 12: Outsourcing**


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**Previously reported**

The Authority expended approximately \$809,500 for outsourced communication services without performing a cost/benefit analysis to determine whether it was more cost effective to outsource rather than use existing staff or hire additional staff.

We recommended that the Authority evaluate outsourced functions that may be more effectively handled by existing or additional staff. For those functions, we recommended that the Authority perform cost/benefit analyses and document its reasons for outsourcing, especially in instances where factors other than cost were used to make the decision.



**Results of follow-up procedures**

*The Authority's actions have adequately corrected this finding.* On March 26, 2007, the Authority approved revisions to Policies and Procedures 500.01 and 500.03 requiring a cost/benefit analysis and public purpose documentation procedures prior to outsourcing functions. Our review disclosed that the Authority complied with the revised policies and procedures.

**Other**

**Finding No. 13: Conflict of Interest**

**Previously reported**

Contrary to Section 112.313, Florida Statutes, the Authority's minutes indicated appointment of a Temporary Interim Executive Director that was also the Vice President of a corporation with which the Authority had an ongoing contract. Although the Authority contended that the appointed individual was merely asked to oversee the daily operations as they relate to the transportation projects already within his purview, the audio tapes of Board meetings demonstrated a clear intention of appointing a person to temporarily perform the functions of the Executive Director.

We recommended that the Board clarify its appointment of the Temporary Interim Executive Director and, in doing so, we recommended that the Authority avoid situations that could result in conflicts of interest.

**Results of follow-up procedures**

*The Authority's actions have adequately corrected this finding.* Our review disclosed that the Authority, at its December 18, 2006, meeting, selected another individual to perform the functions of an Executive Director for an interim period and, effective August 27, 2008, appointed a permanent Executive Director. The individuals employed did not have a conflict of interest with Authority operations.

**SCOPE AND OBJECTIVES**

The scope of his project included selected actions and transactions taken subsequent to December 2006 to determine the extent to which the Authority has corrected, or is in the process of correcting, deficiencies disclosed in our report No. 2007-074.

**METHODOLOGY**

The methodology used to develop the findings in this report included the examination of pertinent Authority records, inquiry of Authority personnel, and observation of procedures in practice. This follow-up review was conducted in accordance with applicable generally accepted government auditing standards. Those standards require that we plan and perform the follow-up review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

**AUTHORITY**

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our follow-up procedures regarding findings and recommendations included in our report No. 2007-074, operational audit of the Tampa-Hillsborough County Expressway Authority for the period July 1, 2005, through September 30, 2006, and selected actions taken prior and subsequent thereto.



David W. Martin, CPA  
Auditor General

**MANAGEMENT'S RESPONSE**

Management's response to our findings is included as Exhibit A.

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EXHIBIT A  
MANAGEMENT'S RESPONSE



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October 16, 2008

Mr. David W. Martin  
Auditor General  
State of Florida  
G74 Claude Pepper Building  
111 West Madison Street  
Tallahassee, FL 32399-1450

BOARD MEMBERS:

SEN. JAMES T. HARGRETT  
CHAIRMAN

DONALD E. PHILLIPS  
VICE-CHAIR

GREG TRUAX  
SECRETARY

DON SKELTON  
FDOT DISTRICT SECRETARY

THOMAS SCOTT  
CITY COUNCIL CHAIR

KEVIN WHITE  
COUNTY COMMISSIONER

STEPHEN C. DIACO, ESQ.  
MEMBER

PATRICK T. MAGUIRE, ESQ.  
GENERAL COUNSEL

Re: Draft Report No. 2007-074 – Operational Audit of the  
Tampa Hillsborough County Expressway Authority for Period  
July 1, 2005 through September 30, 2006

Dear Mr. Martin:

The Authority is in receipt of your cover letter dated September 26, 2008, and the attached preliminary and tentative findings of the Auditor General.

It is obvious from the preliminary and tentative findings that the Tampa Hillsborough County Expressway Authority, through the leadership of Senator James Hargrett, Jr., has made every effort to take corrective action with respect to the findings of the Auditor General's Operational Audit revised in December of 2006.

The Authority wishes to thank the Auditor General's Office staff for the constructive criticism contained in your findings, which have caused THEA to examine itself and become a better Agency.

Attached is our response to the items found to be partially or not correct in the follow up Audit, which was provided to us with your correspondence of September 26, 2008.

Sincerely,

Patrick T. Maguire  
General Counsel

PTM/vawm  
Enclosure

**RESPONSE TO AUDITOR GENERAL'S PRELIMINARY  
AND TENTATIVE FINDINGS FOLLOW-UP REPORT NO. 2007-074**

The Tampa-Hillsborough County Expressway Authority (THEA) will not address those matters found to be adequately corrected in the follow-up Report of the Auditor General. The following are the responses of THEA with respect to the Tentative Findings Number 4, 6 and 11:

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**Finding No. 4. Written Policies & Procedures**

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The Auditor General's statement under *Results of follow-up procedures* contained in the Preliminary and Tentative Findings accurately reflects the current status, and THEA's intent to complete a review and update of its Policy and Procedures.

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**Finding No. 6 Severance Pay**

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THEA does not take issue with the statement contained in the paragraph *Previously reported*. The following matters should be noted in the *Results of follow-up procedures*.

1. Cessation of the existing written contracts with employees would not have terminated their entitlement to severance pay under those contracts. *J.R.D. Management Corporation v. Dulin*, 883 So.2d, 314 (Fla 4<sup>th</sup> DCA 2004).
2. The policy primarily served by the adoption of Section 210.19 was the public purpose of attracting, hiring, and retaining qualified personnel in an "at will" employment environment. *J.R.D., supra*. This is especially relevant to a small agency such as THEA. This is more of a qualitative than quantitative public policy consideration.
3. In light of the expanded recommendation set forth in the *Results of follow-up procedure* THEA's Board will be considering adoption of an amended Section 210.19, Severance Pay, which additionally provides that as a precondition to severance pay a Separation Agreement will be entered into with employee which will incorporate (a) a covenant not to sue; (b) a cooperation clause requiring the employee to act as an independent contractor providing a reasonable amount of time to the agency during the severance period; and (c) a clause that the wages are in lieu of notice.

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**Finding No. 11 Lobbying Services**

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THEA takes issue with the last sentence set forth in the *Previously reported* section of the *Preliminary and Tentative Findings*. The Auditor General states that "...it recommended that the Authority assign applicable statutory activities to an employee of the Authority."

when in fact the initial recommendation was to "...consider assigning duties to an employee of the Authority." Based upon the stated recommendation of the Auditor General under Finding 11 of the initial Operational Audit the Authority undertook the following:

1. Immediately terminated contracted Lobbyist.
2. Considered having in house General Counsel undertake "lobbying" activities.
3. Both Interim and current General Counsel did provide statutory authority supporting their opinion authorizing the hiring of a lobbyist. This has resulted in a difference of legal opinion.
4. Coextensively undertook a cost benefit analysis of hiring full time Government Relations person.
5. Despite cost benefit analysis indication of substantial savings by utilizing contracted lobbyist, THEA Board authorized a full time Government Relations position.
6. THEA engaged in a full recruitment for the Government Relations position.
7. Hired lobbying firm only for the 2008 legislative session based on a reduced scope of service from those customarily provided by lobbying firms. Said lobbying firm is under contract with the Orlando Orange County Expressway Authority.
8. The recruitment was placed on hold by the Executive Director due to budgetary constraints of the recent downturn in revenues. The recruitment is suspended not abandoned.
9. THEA's response was thorough.

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