Quorum, effect of weighted voting

Number: INFORMAL

Date: September 08, 2009

Mr. Nelson Hill
Chair, Board of Trustees
Southwood Shared Resource Center
2585 Shumard Oak Boulevard
Tallahassee, Florida 32399-0950

Dear Mr. Hill:

You have asked for assistance in determining whether the weighted voting rights of the current board of trustees of the Southwood Shared Resource Center (SSRC) affect the quorum requirements for meetings of the board.

Section 282.201, Florida Statutes, creates a state data center system comprised of all primary data centers, other nonprimary data centers, and computing facilities. The Legislature's stated intent in creating the system was that "the most efficient and effective means of providing quality utility data processing services to state agencies requires that computing resources be concentrated in quality facilities that provide the proper security, infrastructure, and staff resources to ensure that the state's data is maintained reliably and safely, and is recoverable in the event of a disaster."[1]

A "primary data center" is defined as "a state or nonstate agency data center that is a recipient entity for consolidation of nonprimary data centers and computing facilities. A primary data center may be authorized in law or designated by the Agency for Enterprise Information Technology (AEIT) pursuant to s. 282.201."[2] Each primary data center is headed by a board of trustees, as defined in section 20.03, Florida Statutes.[3] The board members are appointed by the agency head or chief executive officer of the representative customer entities of the primary data center and serve at the pleasure of the appointing customer entity.[4]

Subparagraph 1. of section 282.203(2)(a), Florida Statutes provides:

"For each of the first 2 fiscal years that a center is in operation, membership shall be as provided in subparagraph 3. based on projected customer entity usage rates for the fiscal operating year of the primary data center. However, at a minimum:

a. During the Southwood Shared Resource Center's first 2 operating years, the Department of Transportation, the Department of Highway Safety and Motor Vehicles, the Department of Health, and the Department of Revenue must each have at least one trustee."[5]

After the second full year of operation, membership is to be as provided in subparagraph 3. of section 282.203(2)(a), Florida Statutes, based on the most recent estimate of customer entity usage rates for the prior year and a projection of usage rates for the first 9 months of the next

fiscal year.[6] Subparagraph 3. states that "[e]ach customer entity that has a projected usage rate of 4 percent or greater during the fiscal operating year of the primary data center shall have one trustee on the board."[7]

Subparagraph 4. of the section provides:

"The total number of votes for each trustee shall be apportioned as follows:

a. Customer entities of a primary data center whose usage rate represents 4 but less than 15 percent of total usage shall have one vote.
b. Customer entities of a primary data center whose usage rate represents 15 but less than 30 percent of total usage shall have two votes.
c. Customer entities of a primary data center whose usage rate represents 30 but less than 50 percent of total usage shall have three votes.
d. A customer entity of a primary data center whose usage rate represents 50 percent or more of total usage shall have four votes.
e. A single trustee having one vote shall represent those customer entities that represent less than 4 percent of the total usage. The trustee shall be selected by a process determined by the board."[8]

The board takes action by majority vote and, in the event of a tie, the vote of the chair determines the prevailing side.[9] As originally created, usage rates of customer entities determined the number of trustees representing each customer entity on the board and each trustee had a single vote; the greater a customer entity's usage rate was percentage-wise to the total usage rate, the greater the number of trustees representing the entity.[10]

The SSRC was created by section 282.205, Florida Statutes, as an agency within the Department of Management Services for administrative purposes.[11] The SSRC is designated as a "primary data center" and a separate budget entity not subject to the control, supervision, or direction of the department in any manner.[12] It is headed by a board of trustees as provided in section 282.203, Florida Statutes, which must comply with all requirements of that section relating to the operation of the center and with the rules of the AEIT.[13]

You state that under the new legislation the SSRC has eight members with eleven votes; one trustee has three votes, another trustee has two votes, and six other trustees each have one vote.[14] This results in three trustees having a majority of the votes need to pass on a matter by simple majority, while at the same time not constituting a majority of the number of members on the board. The question arises whether the weighted voting rights of an individual member of the board should be used to calculate a quorum.

As noted above, the transaction of business by the board of trustees is by majority vote, with a tie going the way of the executive director's vote. There are numerous statutorily created boards or commissions where the Legislature has prescribed the quorum requirement before official business may be conducted.[15] A review of the statutory provisions creating the AEIT and the SSRC, however, does not indicate that the Legislature has imposed a quorum requirement before transacting business.

Common parliamentary law requires that a quorum be present for business to be legally transacted and, absent a provision specifying the number needed for a quorum, is considered to be a majority of the entire membership of a body.[16] You have not advised this office whether the SSRC has adopted any parliamentary rules, nor have you directed my attention to any legal authority that would alter the common law definition of a quorum being tied to the number of members of a board or commission, rather than the weight of votes that may be attributable to a member.

Due to the confusion that may arise due to the lack of clear direction in this matter, it may be advisable to seek legislative clarification or the guidance of the court through a declaratory action to ensure the integrity of the actions of the board.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] Section 282.201(1), Fla. Stat.

[2] Section 282.0041(19), Fla. Stat., as amended by s. 6, Ch. 2009-80, Laws of Fla.

[3] Section 20.03, Fla. Stat., defines "Board of trustees," as "a board created by specific statutory enactment and appointed to function adjunctively to the department, the Governor, or the Executive Office of the Governor to administer public property or a public program."

[4] Section 282.203(2)(a), Fla. Stat., as amended by s. 9, Ch. 2009-80, Laws of Fla.

[5] As amended by s. 9, Ch. 2009-80, Laws of Fla.

[6] Section 282.203(2)(a)2., Fla. Stat., as amended by s. 9, Ch. 2009-80, Laws of Fla.

[7] As amended by s. 9, Ch. 2009-80, Laws of Fla.

[8] *Id.*

[9] Section 282.203(2)(d), Fla. Stat., as amended by s. 9, Ch. 2009-80, Laws of Fla.

[10] *See* s. 282.203(2), Fla. Stat. (2008), apportioning membership on the board of trustees: customer entities with usage rate representing 4 to 14 percent of total usage – 1 trustee; entities with usage rate representing 15 to 29 percent of total usage – 2 trustees; entities with 30 to 49 percent of total usage – 3 trustees; entities with usage rate representing 50 percent or more – 4 trustees; and 1 trustee representing customer entities representing less than 4 percent of the total usage.

[11] Section 282.205, Fla. Stat., as amended by s. 11, Ch. 2009-80, Laws of Fla.

[12] Section 282.205(1), Fla. Stat., as amended by s. 11, Ch. 2009-80, Laws of Fla.

[13] Section 282.205(2), Fla. Stat., as amended by s. 11, Ch. 2009-80, Laws of Fla.

[14] It is assumed that the executive director is included in your calculation of those members of the board with a single vote pursuant to s. 282.203(2)(a)3.f., Fla. Stat. (2008).

[15] *See, e.g.*, s. 943.2563(3), Fla. Stat., (simple majority of members of advisory board constitutes a quorum); s. 489.107(5), Fla. Stat., (Construction Industry Licensing Board with 18 members, divided into two divisions with a quorum requirement of five members for each division); s. 593.111(d), Fla. Stat., (seven-member cotton growers association board with quorum requirement of a majority of the members of the board for all purposes); s. 298.11(3), Fla. Stat., (owners and proxy holders of district acreage who are present at a duly noticed landowners' meeting to elect board of supervisors constitute a quorum for the purpose of holding such election or any election thereafter).

[16] Robert's Rules of Order (10th Ed.), Ch. II, s. 3, p. 20, and Ch. XI, s. 40, pp. 334, 336. *See also* Black's Law Dictionary (8th Ed. 2004), defining "quorum" as "[t]he minimum number of members (usually a majority of all the members) who must be present for a deliberative assembly to legally transact business." *But see* s. 298.11(3), Fla. Stat., *supra.*