



FIRST THINGS FIRST

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To: Regional Coordinators and Managers

CC: John Ordini
Sandy Foreman

From: Michelle Katona 

Re: Votes needed to pass a motion

Date: August 7, 2009

We have been operating under an interpretation from the Office of the Attorney General that at least 6 votes are necessary to approve an action before a Regional Council. After further discussions with representatives of the Attorney General, it has been determined that voting can be conducted and action approved when a quorum of the Regional Council is present and eligible to vote, and a majority of those present and eligible vote to approve the proposed action. This means that if 7 members are present and all are eligible to vote, a matter before the Regional Council may be approved by as little as a 4 to 3 vote. Actions approved receiving fewer than 6 votes, however, reduce the immunity protections afforded by FTF statutes.

Under the Open Meeting Law, the number of votes required for legal action is a simple majority of a quorum of the Regional Council. In the case of an eleven member Regional Council, at least six members must be present and able to vote to constitute a quorum, and a vote of a majority of the quorum would constitute legal action by the Council. (A member present but with a conflict not only cannot vote or take any part in the deliberation, the member cannot be counted as part of the quorum.) Any challenge to the actions taken by a majority vote of a quorum of the Regional Council would be subject to defense by State Risk Management, which provides liability defense to all State officers and employees for actions taken within the scope of their duties.

The First Things First statutes provide an additional protection to a challenge of Regional Council actions. Pursuant to A.R.S. Section 8-1162(F), members of the Regional Councils are immune from personal liability for actions approved by a majority of the Council. While a simple majority of a quorum is sufficient to take legal action, under the FTF statutes the immunity that results from six votes (a majority of the Regional Council) is stronger. Therefore, it is recommended that

the Regional Councils should always strive to obtain six votes. However, if it is not possible to obtain the six votes necessary for immunity, legal action may be taken by a majority of a quorum, with the same risk management coverage available that protects all State officers and employees from liability for acts within the scope of their official duties.

Please review this change with your Regional Councils. Should you have any questions please contact me.