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M E M O R A N D U M

TO: Members of the Florida Building Commission
and Technical Advisory Committees

FROM: Suzanne H. Schmith
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SUBJECT: Proxy Voting and Telephone Participation

DATE: November 18, 1998

The purpose of this memo is clarify issues regarding the use of proxy votes by the commission and telephone participation in commission and TAC meetings.

Neither the Commission's procedural rules, chapter 9B-3, Florida Administrative Code (F.A.C.), nor the Uniform Rules of Procedure, chapters 28-101 through 28-111, F.A.C., address these issues. Therefore, the Commission must be guided by the Florida Sunshine Law, section 286.011, Florida Statutes, and general open government principles.

The Sunshine Law declares that all meetings of a commission at which official acts are taken are public meetings which must be open to the public at all times, and that no formal action will be binding unless taken or made at such a public meeting. Proxy voting is not directly addressed, but it is my opinion that such a voting procedure should be avoided as violative of the intent of the law. Voting by proxy eliminates the opportunity for a commission member to participate in discussions which precede the vote, receive public comment related to the vote, and relate his or her explanation for voting in favor of or in opposition to a measure.

While the Sunshine Law does not directly address telephonic participation by commission members, the Attorney General has advised that such participation should be allowed as long as it satisfies the requirements of the law. *See 94-55 Op. Att'y Gen.* (1994). In determining that the Bass Museum Board of Trustees, a public board subject to the Sunshine Law, could allow a board member to participate by telephone, the Attorney General explained:

Compliance would involve providing notice and access to the public at such meetings through the use of such devices as a speaker telephone that would allow the absent member to participate in discussions, to be heard by the other board members and the public to hear discussions taking place during the meeting.

94-55, *Op. Att'y Gen.*,159. As these procedures have been followed by the commission in both instances in which telephone participation has been allowed, the commission has acted within the scope of the Sunshine Law.

Telephone participation requires preparation and specialized equipment. Depending upon the meeting place, conference phones and adequate sound equipment may or may not be available. Hotel conference coordinators and their staff also need advance notice in order to provide the necessary equipment. For these reasons, the commission may want to consider policy guidelines for allowing telephone participation, such as limiting its use to medical emergency and requiring a minimum number of days notice to the commission staff.