

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	HB 231 (CS/SB 396)	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Horner and others (Oelrich)	115 Y's	0 N's
COMPANION BILLS:	CS/SB 396	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

HB 231 passed the House on February 23, 2012. The bill was amended by the Senate on March 1, 2012, and subsequently passed the House on March 6, 2012.

In part, the bill authorizes a separate legal entity created under the Florida Interlocal Cooperation Act of 1969, with member public agencies located in at least five counties, of which three are not contiguous, to conduct public meetings and workshops by means of communications media technology.

The bill defines the term "communications media technology" as a conference telephone, video conference, or other communications technology by which all persons attending a public meeting or workshop may audibly communicate.

The bill provides notice requirements for any such meeting or workshop.

The bill provides that participation by an officer, board member, or other representative of a member public agency in a meeting or workshop conducted through communications media technology constitutes that individual's presence at such meeting or workshop. As such, members of the separate legal entity would no longer be required to be physically present at meetings or workshops in order to meet quorum requirements.

The bill also revises the definition of "electric utility" in the Florida Interlocal Cooperation Act of 1969 to also include those municipalities, authorities, commissions, special districts, or other public bodies that own, maintain, or operate an electrical generation, transmission, or distribution system within the state on June 25, 2008. It also provides Legislative intent that each electric utility included in the revised definition of electric utility may exercise the powers granted by the Joint Power Act, in conjunction with the exercise of the powers and authority granted by the Florida Interlocal Cooperation Act of 1969.

The bill does not have a fiscal impact on state government. The fiscal impact on local governments is indeterminate. The bill may reduce or eliminate travel and per diem expenses for members of the separate legal entity due to the use of communications media technology; however, the requirement to provide a location where communications media technology is available to the public may create an expense that is indeterminate at this time.

The bill was approved by the Governor on April 27, 2012, ch. 2012-164, Laws of Florida. The effective date of the bill is July 1, 2012.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Open Meetings Laws

Art. I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of the executive branch and local government be open and noticed to the public.

Public policy regarding access to public meetings is addressed further in the Florida Statutes. The Sunshine Law¹ requires all meetings of a public board or commission to be open to the public.² Reasonable notice of such meetings must be provided.³

For a meeting or hearing where notice is required, the notice must include the advice 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. The requirements of this section do not apply to the notice provided in s. 200.065(3).⁴

The Administrative Procedure Act

The Administrative Procedure Act requires the Administration Commission to adopt uniform rules of procedure.⁵ The uniform rules of procedure, which are to be used by each state agency, must provide procedures for conducting public meetings, hearings, and workshops, in person and by means of communications media technology.⁶ "Communications media technology" is defined as the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.⁷

If a public meeting, hearing, or workshop is conducted by means of communications media technology, or if attendance may be provided by such means, the public notice must state how persons may attend and name locations where communications media technology facilities will be available.⁸

The uniform rules of procedure for conducting public meetings, hearings, and workshops, in person and by means of communications media technology, may not be construed to diminish the right to inspect public records under chapter 119, F.S. Limiting points of access to public meetings, hearings, and workshops subject to the provisions of the Sunshine Law 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

¹ See s. 286.011, F.S.

² Section 286.011(1), F.S., specifically states:

All meetings of any board or commission of a state agency or authority, or of an agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the State 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 is considered binding except as taken or made at such meeting.

³ Section 286.011(1), F.S.

⁴ Section 286.0105, F.S.

⁵ See ch. 120, F.S.

⁶ See ch. 28-109, F.A.C.

⁷ Section 120.54(5)(b)2., F.S.

⁸ *Id.*

circumstances is void and of no effect.⁹ 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 are to be liberally construed in their application.¹⁰

The Legislature has provided further limited authorization for the use of communications technology in conducting public meetings. The governing board of a water management district, a basin board, a committee, or an advisory board is authorized to conduct meetings by means of communications media technology in accordance with the Administration Commission's uniform rules of procedure.¹¹ The Department of Business and Professional Regulation is specifically authorized to use communications media technology in conducting meetings of the Florida Building Commission or in any meeting held in conjunction with a meeting of the commission.¹² Further, the Legislature, in 2006, approved a one-year "test program" that allowed county commissioners in Monroe County, spread apart by a 120-mile chain of islands, to use teleconferencing equipment for special meetings and be deemed in attendance for purposes of establishing a quorum.¹³

Interlocal Agreements

Separate Legal Entity

The purpose of the Florida Interlocal Cooperation Act of 1969 (Act)¹⁴ is to allow local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage to provide services and facilities that will best address the geographic, economic, population, and other factors that affect the needs and development of local communities. The Act authorizes public agencies¹⁵ to exercise jointly, by contract in the form of an interlocal agreement, any power, privilege, or authority shared by those agencies in order to more efficiently provide services and facilities.¹⁶ An interlocal agreement may provide for a separate legal or administrative entity to administer or execute the agreement, which may be a commission, board, or council constituted pursuant to the agreement.¹⁷

A separate legal or administrative entity created by an interlocal agreement is authorized to:

- Make and enter into contracts;
- Employ agencies or employees;
- Acquire, construct, manage, maintain, or operate buildings, works, or improvements;
- Acquire, hold, or dispose of property; and
- Incur debts, liabilities, or obligations which do not constitute the debts, liabilities, or obligations of any of the parties to the agreement.¹⁸

⁹ *Id.*

¹⁰ *Id.*

¹¹ Section 373.079(7), F.S.

¹² Section 553.75(3), F.S.

¹³ See ch. 2006-350, L.O.F. The special law was automatically repealed one year after it took effect. It was reported to House staff, in conversations with Monroe County officials, that the use of the teleconferencing equipment was largely ineffective due to problems at the time with the technology.

¹⁴ See s. 163.01, F.S.

¹⁵ Section 163.01(3)(b), F.S., defines "public agency" as:

A political subdivision, agency, or officer of this state or of any state of the United States, including, but not limited to, state government, county, city, school district, single and multipurpose special district, single and multipurpose public authority, metropolitan or consolidated government, a separate legal entity or administrative entity [that is authorized to administer or execute the agreement], an independently elected county officer, any agency of the United States Government, a federally recognized Native American tribe, and any similar entity of any other state of the United States.

¹⁶ Section 163.01(4) and (5), F.S.

¹⁷ Section 163.01(7)(a), F.S.

¹⁸ Section 163.01(7)(b), F.S.

Meetings

Florida courts have held that the Sunshine Law extends to discussions and deliberations as well as formal actions taken by a public board or commission.¹⁹ Consequently, meetings of a separate legal or administrative entity and its governing board are subject to Florida's public meetings requirements.²⁰ The Act does not include an authorization to conduct public meetings, hearings, or workshops by means of communications media technology.

Electric Utility

The Act defines "electric utility" as having the same meaning as provided in the Joint Power Act.^{21,22} The Joint Power Act definition of "electric utility" includes any municipality, authority, commission, or other public body, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electrical energy generation, transmission, or distribution system within the state on June 25, 1975.²³ This excludes any such electric utilities that began operations after June 25, 1975.

In a referendum election on September 9, 2003, the residents of the City of Winter Park voted to exercise the buy-out option in the city's franchise agreement with Progress Energy Florida in order to own and operate its own utility. Consequently, the City of Winter Park established its own municipal electric utility and began serving retail electric customers on June 1, 2005.²⁴ According to the Florida Municipal Power Association, no other municipal utility has begun operating since 1975.²⁵ The Reedy Creek Improvement District operates an electric transmission and distribution system as a special district.²⁶

Joint Power Act

The Joint Power Act provides the authority for municipal electric utilities to join together for the joint financing, constructing, acquiring, managing, operating, utilizing, and owning of electric power supply projects.²⁷ The Act provides for project powers,²⁸ supplementation of powers,²⁹ limitations on joint ownership,³⁰ financing through the issuance of bonds,³¹ and limitations on taxing power.³²

Effect of Proposed Changes

The bill authorizes a separate legal entity created under the Florida Interlocal Cooperation Act of 1969,³³ with member public agencies located in at least five counties, of which three are not contiguous, to conduct public meetings and workshops by means of communications media

¹⁹ *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973) (Sunshine Law applies to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter upon which foreseeable action will be taken by the board or commission).

²⁰ Op. Att'y Gen. Fla. 82-66 (1982).

²¹ Section 163.01(3)(f), F.S.

²² The Joint Power Act is codified as ch. 361, part II, F.S. The purpose of the Joint Power Act is to implement the provisions of s. 10(d), Art. VII of the State Constitution, which authorizes a municipality, county, special district, or agency thereof, to be a joint owner of, give, lend, or use its taxing power or credit for the joint ownership, construction and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person.

²³ Section 163.01(3)(f), F.S., provides the same definition for "electric utility" as provided in s. 361.11(2), F.S., of the Joint Power Act.

²⁴ The City of Winter Park, Electric Utility Department, http://www.cityofwinterpark.org/Pages/Departments/Electric_Utility.aspx (last visited March 7, 2012).

²⁵ Email received from Karen Peterson, Florida Municipal Power Association, March 1, 2012 (on file with the Government Operations Subcommittee).

²⁶ Reedy Creek Improvement District, Utilities Division, http://www.rcid.org/Utilities_Main.cfm (last visited March 8, 2012).

²⁷ See part II, ch. 361, F.S.

²⁸ See s. 361.13, F.S.

²⁹ See s. 361/16, F.S.

³⁰ See s. 361.14

³¹ See s. 361.15, F.S.

³² See s. 361.17, F.S.

³³ See ch. 163, F.S.

technology. Separate legal entities that would qualify under the bill may have member public agencies spread throughout the state, which makes travel to one location and the establishment of a quorum both difficult and costly.

The bill defines the term “communications media technology” as a conference telephone, video conference, or other communications technology by which all persons attending a public meeting or workshop may audibly communicate. The exact wording of the definition of “communications media technology” in the bill differs from the definition provided in s. 120.54(5)(b)2., F.S., however the definition provided in the bill may provide greater flexibility to encompass future advances in communications technology.

The bill requires the notice for any such meeting or workshop to:

- State that the meeting or workshop will be conducted through the use of communications media technology;
- Specify how persons interested in attending may do so; and
- Provide a location where communications media technology facilities are available.

The bill provides that participation by an officer, board member, or other representative of a member public agency in a meeting or workshop conducted through communications media technology constitutes that individual’s presence at such meeting or workshop. As such, members of the separate legal entity would no longer be required to be physically present at meetings or workshops in order to meet quorum requirements. This could allow a quorum to be obtained more readily, allowing for greater efficiency and ease of operations for such entity conducting business.

The bill revises the definition of “electric utility” in the Florida Interlocal Cooperation Act of 1969 to include those municipalities, authorities, commissions, special districts, or other public bodies that own, maintain, or operate an electrical generation, transmission, or distribution system within the state on June 25, 2008. It appears that the revised definition allows the City of Winter Park, which began operating an electric utility in 2005, to participate in joint activities pursuant to the Act. Further, it clarifies that special districts may also participate in such joint activities under the Act, such as the Reedy Creek Improvement District.

The bill also provides Legislative intent that each electric utility included in the revised definition of such utility may exercise the powers granted by the Joint Power Act, in conjunction with the exercise of the powers and authority granted by the Florida Interlocal Cooperation Act of 1969. It is further the intent of the Legislature that the revised definition be enacted in furtherance of and consistent with the application of the Joint Power Act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: Indeterminate. See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

An individual's expenses associated with traveling to public meetings may be reduced or eliminated based on the location where the communications media technology is made available.

D. FISCAL COMMENTS:

The bill may reduce or eliminate travel and per diem expenses for members of the separate legal entity due to the use of communications media technology; however, the requirement to provide a location where communications media technology is available to the public may create an expense that is indeterminate at this time.