

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 231 Intergovernmental Cooperation

SPONSOR(S): Horner

TIED BILLS: **IDEN./SIM. BILLS:** SB 396

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	14 Y, 0 N	Thompson	Williamson
2) Community & Military Affairs Subcommittee	11 Y, 0 N	Gibson	Hoagland
3) State Affairs Committee	16 Y, 0 N	Thompson	Hamby

SUMMARY ANALYSIS

Currently, state agencies are authorized to conduct public meetings, hearings, and workshops by means of "communications media technology." No such authorization exists for local governmental entities, including separate legal entities created by an interlocal agreement.

The bill authorizes a separate legal entity that administers or executes an interlocal agreement, with member public agencies located in at least 10 counties, to conduct public meetings and workshops by means of communications media technology. It 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.

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

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, to specify how persons interested in attending may do so, and to provide a location where communications media technology facilities are available.

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 provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED 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 that all meetings of a public board or commission 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 ch. 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 S. 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 S. 286.011(1), F.S.

⁴ S. 286.0105, F.S.

⁵ See ch. 120, F.S.

⁶ See ch. 28-109, F.A.C.

⁷ S. 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

Section 163.01(2), F.S., provides that the purpose behind the enactment of the Florida Interlocal Cooperation Act of 1969 (Act)¹⁴ was 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

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

⁹ *Id.*

¹⁰ *Id.*

¹¹ S. 373.079(7), F.S.

¹² S. 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 S. 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 S. 163.01(4) and (5), F.S.

¹⁷ S. 163.01(7)(a), F.S.

¹⁸ S. 163.01(7)(b), F.S.

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.

Effect of Proposed Changes

The bill authorizes a separate legal entity created under the Florida Interlocal Cooperation Act of 1969 (Act), with member public agencies located in at least 10 counties, to conduct public meetings and workshops by means of communications media technology. Separate legal entities that would qualify under the bill often 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.

B. SECTION DIRECTORY:

Section 1: amends s. 163.01, F.S., to authorize certain separate legal entities created under the Florida Interlocal Cooperation Act of 1969 to conduct public meetings and workshops by means of communications media technology.

Section 2: provides an effective date of July 1, 2012.

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:

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).

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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Art. 1, s. 24(b) of the State Constitution provides:

All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

The Attorney General has issued numerous advisory opinions regarding the participation of local government board members in public meetings through the use of telecommunications media and the compliance of such meetings with Florida's public meetings laws. In one opinion, it was concluded that a county commissioner who was physically unable to attend a commission meeting because of medical treatment could participate in the meeting by using an interactive video and telephone system that allowed her to see the other members of the board and the audience at the meeting and that allowed the board and audience to see her.²¹ The opinion recognized that s. 125.001, F.S., required meetings of the county commission to be held in a public place in the county, and therefore, since a quorum of the members of the county commission would actually be meeting in a public place the statute would be satisfied.²² A similar conclusion was reached in a later opinion, which stated a district school board could use electronic media technology in order to allow a

²¹ Op. Att'y Gen. Fla. 92-44 (1992).

²² *Id.*

physically absent member to attend a public meeting if a quorum of the members of the board were physically present at the meeting site.²³

To further this point, in 2009, the Attorney General issued an advisory opinion stating:

For meetings where a quorum is required, this office, in a number of formal and informal opinions, has stated that concerns about the validity of official actions taken by a public body when less than a quorum is present suggest a very conservative reading of the statute. This office has concluded that, in the absence of a statute to the contrary, the requisite number of members must be physically present at a meeting in order to constitute a quorum. While a quorum is not required for a meeting to be subject to the Government in the Sunshine Law, to the extent that any advisory body is required to have a quorum in order to conduct official business, it appears that the members of these bodies must, *in the absence of a statute to the contrary*, be physically present in order to constitute a quorum.²⁴ [emphasis added].

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

²³ Op. Att’y Gen. Fla. 98-28 (1998).

²⁴ Op. Att’y Gen. Fla. 09-56 (2009) *citing* Op. Att’y Gen. Fla. 83-100 (1983) and Op. Att’y Gen. Fla. 89-39 (1989) *citing* 20 C.J.S. *Counties* s. 99b. & c.; 62 C.J.S. *Municipal Corporations* s. 399, for the principle that in order to constitute a quorum the requisite number of members must be actually present at the meeting and the requisite number cannot be made up by telephoning absent members and obtaining their vote over the telephone.