

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Communications, Energy, and Public Utilities Committee

BILL: CS/SB 396

INTRODUCER: Communications, Energy, and Public Utilities Committee and Senators Oelrich and Gaetz

SUBJECT: Intergovernmental cooperation

DATE: January 12, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	Favorable
2.	Wiehle	Carter	CU	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill authorizes a separate legal entity created by an interlocal agreement that has members located in at least five counties, of which at least three are not contiguous, to conduct public meetings and workshops by means of “communications media technology.” The bill defines the term “communications media technology” and sets out notice requirements for the meetings, including a requirement to provide a location where communications media technology facilities are available.

The bill substantially amends s. 163.01 of the Florida Statutes.

II. Present Situation:

Open Meetings Laws

Article 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. “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.⁶

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.⁷

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 circumstances is void and of no effect.⁸

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 Chapter 120, F.S.

⁶ See s. 120.54(5)(b)2., F.S.

⁷ *Id.*

⁸ *Id.*

Interlocal Agreements

The Florida Interlocal Cooperation Act of 1969 (Act)⁹ authorizes public agencies¹⁰ 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.¹¹ 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.¹²

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.¹³

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.¹⁴ Consequently, meetings of a separate legal or administrative entity and its governing board are subject to Florida's public meetings requirements.¹⁵ The Act does not include an authorization to conduct public meetings, hearings, or workshops by means of communications media technology.

III. Effect of Proposed Changes:

Section 1 amends s. 163.01, F.S., to authorize a separate legal entity created under the Interlocal Cooperation Act with member public agencies located in at least five counties, of which at least three are not contiguous, to conduct public meetings and workshops by means of communications media technology. It 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.

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.

⁹ See s. 163.01, F.S.

¹⁰ Section 163.01(3)(b), F.S., defines a 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, 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.”

¹¹ Section 163.01(4) and (5), F.S.

¹² Section 163.01(7)(a), F.S.

¹³ Section 163.01(7)(b), F.S.

¹⁴ *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).

¹⁵ Florida Attorney General Opinion 82-66.

- 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.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Section 24 (b), Art. 1 of the State Constitution, states:

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 Office of the Attorney General (OAG) has issued numerous opinions regarding the participation of local governmental board members in public meetings through use of telecommunications media and the compliance of such meetings with Florida's public meetings laws. In one opinion, the OAG 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. The opinion recognized that s. 125.001, F.S., required that meetings of the county commission be held in a public place in the county but noted that a quorum of the members of the county commission would be present at the public place.¹⁶ A similar conclusion was reached in a later opinion that stated a district school board could use electronic media technology in order to allow a physically absent member to attend a public meeting if a quorum of the members of the board was physically present at the meeting site.¹⁷

However, in general, the OAG has displayed a reluctance to allow members of local boards or commissions to use telecommunications media:

¹⁶ Florida Attorney General Opinion 92-44.

¹⁷ Florida Attorney General Opinion 98-28.

Allowing state agencies and their boards and commissions to conduct meetings via communications media technology under specific guidelines recognizes the practicality of members from throughout the state participating in meetings of the board or commission. While the convenience and cost savings of allowing members from diverse geographical areas to meet electronically might be attractive to a local board or commission such as a school board, the representation on a school board is local and such factors would not by themselves appear to justify or allow the use of electronic media technology in order to assemble the members for a meeting.¹⁸

The OAG has argued that a concern about the validity of official actions taken by a public body when less than a quorum is present requires a very conservative reading of the statutes. Thus, the OAG has concluded that, in the absence of a statute to the contrary, a quorum of the members must be physically present at a meeting in order to take action.¹⁹ To further this point, in 2009, the OAG provided that “the legislative requirement of a quorum and the designation of the number required to constitute a quorum argues for the physical presence of that number of board members at a meeting.”²⁰

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill could potentially save money by reducing 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.

¹⁸ *Id.*

¹⁹ Florida Attorney General Opinions 83-100 and 89-39 quoting 62 C.J.S. Municipal Corporations s. 399, p. 757, which provides: "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."

²⁰ Florida Attorney General Opinion 09-56.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Communications, Energy, and Public Utilities Committee on January 12, 2012:

The committee substitute reduces the requirement that a separate legal entity have member public agencies located in at least 10 counties to conduct public meetings and workshops by means of communications media technology to at least five counties, of which at least three are not contiguous.

- B. **Amendments:**

None.