

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 361 Public Meetings/Criminal Justice Commissions

SPONSOR(S): Criminal Justice Subcommittee; Kerner

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1042

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Cox	Cunningham
2) Government Operations Subcommittee	13 Y, 0 N	Stramski	Williamson
3) Judiciary Committee	16 Y, 0 N	Cox	Havlicak

SUMMARY ANALYSIS

Both the Florida Constitution and Florida Statutes require all meetings of any public body of the executive branch or local government at which official acts are to be taken or at which public business of such body is to be discussed to be open and noticed to the public.

Currently, two counties in Florida have established "criminal justice commissions," each of which is comprised of members of both the public and private sector. The commissions discuss a multitude of issues relating to local criminal justice practices, policies, and program developments, including issues related to jail population and overcrowding, tracking crimes in the community, and matters of general policing.

Criminal justice commissions are currently subject to public meetings requirements. Therefore, discussions that occur among two or more members of the commission, which involve matters that are being considered or may foreseeably come before the commission, must be properly noticed and should be conducted as an open meeting.

The bill exempts duly constituted criminal justice commissions from public meeting requirements. This exemption is limited to any portion of a meeting of commission members where the members discuss active criminal intelligence or active criminal investigative information which is currently being considered, or may foreseeably come before the commission.

The bill repeals the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill provides an effective date of July 1, 2013.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public meeting exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Meetings Laws

State Constitution: Open Meetings

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 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, be open and noticed to the public.

Article I, s. 24(c) of the State Constitution authorizes the Legislature to provide exemptions from the open meeting requirements upon a two-thirds vote of both legislative chambers, in a bill that specifies the public necessity giving rise to the exemption.

Government in the Sunshine Law

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.¹ The board or commission must provide reasonable notice of all public meetings.² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.³ Minutes of a public meeting must be promptly recorded and be open to public inspection.⁴

The Open Government Sunset Review Act⁵ provides that a public meeting exemption may be created or maintained only if it serves an identifiable public purpose and the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁶ However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.⁷

Criminal Justice Commissions

Currently, two counties in Florida have established "criminal justice commissions."⁸ Membership of these commissions is comprised of members of both the public⁹ and private sectors. These members

¹ Section 286.011(1), F.S.

² *Id.*

³ Section 286.011(6), F.S.

⁴ Section 286.011(2), F.S.

⁵ Section 119.15, F.S.

⁶ *Id.*

⁷ *Id.*

⁸ In 2004, the Board of County Commissioners of Sarasota County passed Resolution number 2004-251, creating the Sarasota County Criminal Justice Commission. (On file with the Criminal Justice Subcommittee). In 1988, Palm Beach County enacted Ordinance No. 88-16, creating the Palm Beach County Criminal Justice Commission. (On file with the Criminal Justice Subcommittee).

collaborate to improve the criminal justice system in their community.¹⁰ The commissions discuss and make recommendations to the boards of county commissioners on a multitude of issues relating to local criminal justice practices, policies, and program developments.¹¹ Other issues discussed at commission meetings include jail population and overcrowding, tracking crimes in the community, and matters of general policing.¹²

Because a criminal justice commission is an appointed commission that is not specifically exempted, they are currently covered under the Sunshine Law. Therefore, any meetings of a commission are subject to the Sunshine Law. Consequently, discussions that occur among members of a commission, such as the sheriff, public defender, or state attorney, which involve matters that may foreseeably come before or are currently being considered by the commission, must be properly noticed and should be conducted as an open meeting in accordance with the Sunshine Law.¹³ Discussions among public officials on issues that do not require action by the commission do not violate the Sunshine Law.¹⁴

Effect of the Bill

The bill creates a public meeting exemption for “that portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information that is currently being considered by, or which may foreseeably come before, the commission” from public meeting requirements. However, at any meeting in which such matters are being discussed, the bill requires the commission members to publicly disclose the fact that such matters will be discussed.

The bill defines a “duly constituted criminal justice commission” as an advisory commission created by municipal or county ordinance whose membership is comprised of private and public sector persons and whose purpose is to examine local criminal justice issues.

The bill also provides the following definitions by reference to s. 119.011, F.S.:

- “Criminal intelligence information” means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.
- “Criminal investigative information” means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.¹⁵
- “Active” has the following meanings:

⁹ *Id.* Public sector members include: the chief judge of the respective county; the county sheriff; members of the board of county commission; the state attorney; the public defender; the clerk of the circuit court; a representative from the police chief’s association; a representative from the Bureau of Alcohol, Tobacco, and Firearms; the police chief; a representative from Florida Department of Law Enforcement; and a representative from Florida Department of Corrections.

¹⁰ About the Criminal Justice Commission, <http://www.pbcgov.org/criminaljustice/aboutcjc/> (last visited on March 14, 2013).

¹¹ *Id.*

¹² *Id.*

¹³ Attorney General Opinion 93-41.

¹⁴ *Id.*

¹⁵ “Criminal intelligence information” and “criminal investigative information” does not include:

- The time, date, location, and nature of a reported crime.
- The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h), F.S.
- The time, date, and location of the incident and of the arrest.
- The crime charged.
- Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), F.S., and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1), F.S., until released at trial if it is found that the release of such information would:
 - Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and
 - Impair the ability of a state attorney to locate or prosecute a codefendant.
- Information and indictments except as provided in s. 905.26, F.S.

- Criminal intelligence information is considered “active” as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
- Criminal investigative information is considered “active” as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.
- In addition, criminal intelligence and criminal investigative information is considered “active” while such information is directly related to pending prosecutions or appeals. The word “active” does not apply to information in cases that are barred from prosecution under the provisions of s. 775.15, F.S., or other statute of limitation.

The bill provides for the repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.¹⁶

B. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law relating to criminal justice commissions and provides a public meeting exemption.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

¹⁶ Article 1, Sec. 24(c), FLA. CONST.
STORAGE NAME: h0361e.JDC
DATE: 3/28/2013

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 take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other: Sunshine Law Exemption

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public meeting exemption; thus, it requires a two-thirds vote for final passage. Article I, Section 24(c) of the Florida Constitution, also provides that a general law providing for a public meeting exemption "shall state with specificity the public necessity justifying the exemption." It could be argued that the bill's public necessity statement does not articulate with specificity a public necessity that is "sufficiently compelling to override the strong public policy of open government."¹⁷

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 12, 2013, the Criminal Justice Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the public records exemption;
- Narrows the public meetings exemption to "that portion of a meeting of a duly constituted criminal justice commission in which members of the commission discuss active criminal intelligence information or active criminal investigative information;" and
- Defines the terms "duly constituted criminal justice commission," "active," "criminal intelligence information," and "criminal investigative information."

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.