

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** HB 1097 Regional Planning Council Meetings

**SPONSOR(S):** Geller and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1398

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**FINAL HOUSE FLOOR ACTION:** 113 Y's 0 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

HB 1097 passed the House on March 11, 2020, as CS/SB 1398.

Current law allows certain agencies to conduct public meetings, hearings, and workshops in person or by means of communications media technology. The board members may participate in the public meetings and vote via communications media technology if the meeting notice stipulates that the member will be participating via such means. While clear authority exists to allow state agencies to participate in public meetings and vote via communications media technology, such authorization does not exist for local government entities. Instead, local board members may only participate in meetings where formal action will be taken and vote remotely if a quorum of a local board is physically present at the public meeting and only if extraordinary circumstances require the member to appear remotely.

This bill authorizes the use of communications media technology for board meetings of regional planning councils (RPC) that cover three or more counties and creates statutory quorum requirements for such meetings. The bill provides that if at least one-third of the voting members are physically present at the meeting location the remaining voting members may participate via telephone, real-time videoconferencing, or similar real-time electronic or video communication, which must be broadcast publicly at the meeting location. The member attending the meeting remotely must provide notice of his or her intent to appear remotely at least 24 hours before the scheduled meeting. Members appearing by such electronic means count towards the quorum requirement and may vote.

The bill also requires the Department of Economic Opportunity, when selecting applicants for Community Planning Technical Assistance Grants, to give preference to certain small counties and municipalities located near a proposed multiuse corridor interchange.

The bill does not appear to have a fiscal impact on state or local government.

The bill was approved by the Governor on June 29, 2020, ch. 2020-122, L.O.F., and becomes effective on July 1, 2020.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Present Situation

##### Public Meetings

The Florida Constitution sets forth the state's public policy regarding access to government meetings.<sup>1</sup> The section requires 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.

The "Government in the Sunshine Law," or "Sunshine Law," further requires 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.<sup>2</sup> The board or commission must provide reasonable notice of all public meetings.<sup>3</sup> 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 that operates in a manner that unreasonably restricts the public's access to the facility.<sup>4</sup> Minutes of a public meeting must be promptly recorded and open to public inspection.<sup>5</sup>

##### Use of Electronic Media and Public Meetings

The Administration Commission<sup>6</sup> must promulgate rules to create uniform rules of procedure for state agencies to use when conducting public meetings, hearings, or workshops, including procedures for conducting meetings in person and by means of communications media technology.<sup>7</sup> The agency must state in the notice that the public meeting, hearing, or workshop will be conducted by means of communications media technology, or if attendance may be provided by such means. The notice must also state how individuals interested in attending may do so. Notwithstanding the use of electronic media technology, all evidence, testimony, and argument presented at the public meeting must be afforded equal consideration, regardless of the method of communication.<sup>8</sup> In addition to agencies required to comply with ch. 120, F.S., the Administrative Procedure Act, certain entities created by an interlocal agreement may conduct public meetings and workshops via communications media technology.<sup>9</sup>

While current law allows state agencies and certain entities created by an interlocal agreement to conduct meetings and vote by means of communications media technology, there has been a question over whether or not local boards or agencies may conduct meetings in the same fashion.<sup>10</sup> The Office of Attorney General has opined that only state agencies can conduct meetings and vote via communications media technology, thus rejecting a school board's request to conduct board meetings

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<sup>1</sup> Art. I, s. 24(b), Fla. Const.

<sup>2</sup> S. 286.011(1), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> S. 286.011(6), F.S.

<sup>5</sup> S. 286.011(2), F.S.

<sup>6</sup> S. 14.202, F.S. The Administration Commission is composed of the Governor and the Cabinet.

<sup>7</sup> S. 120.54(5)(b)2., F.S. The term "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

<sup>8</sup> *Id.*

<sup>9</sup> S. 163.01(18), F.S. (Allowing 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).

<sup>10</sup> Robert Eschenfelder, *Modern Sunshine: Attending Public Meetings in the Digital Age*, 84 Fla. B.J. 28 (2010).

via electronic means.<sup>11</sup> The Attorney General reasoned that s. 120.54(5)(b)2., F.S., limits its terms only to uniform rules that apply to state agencies. The Attorney General explained that “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.” The Attorney General reasoned that a similar rationale is not applicable to local boards and commissions even though it may be convenient and save money since the representation on these boards and commissions are local; thus, “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.” However, if a quorum of a local board is physically present at the public meeting, a board may allow a member who is unavailable to attend physically the meeting due to extraordinary circumstances such as illness, to participate and vote at the meeting via communications media technology.<sup>12</sup>

### Florida Regional Planning Councils

The Florida Regional Planning Council Act<sup>13</sup> allows the creation of regional planning councils (RPC). The Legislature has recognized RPCs as the “only multipurpose regional entity that is in position to plan for and coordinate intergovernmental solutions to growth-related problems on greater-than local issues, provide technical assistance to local governments, and meet other needs of the communities in each region.”<sup>14</sup> RPCs span multiple counties within the geographical boundaries of any one comprehensive planning district.<sup>15</sup> The voting membership of a regional planning council must consist of representatives living within the geographical area covered by the council.<sup>16</sup> The 10 RPCs are as follows: West, Apalachee, North Central, Northeast, East Central, Tampa Bay, Central, Southwest, Treasure Coast, and South.<sup>17</sup> Each RPC consists of anywhere from three (South) to 12 counties (North Central).<sup>18</sup>

### Department of Economic Opportunity Technical Assistance Grant Program

The Department of Economic Opportunity (DEO), as the state land planning agency, must help communities find creative solutions to foster vibrant, healthy communities and is authorized to use various means to provide direct and indirect technical assistance within available resources.<sup>19</sup> The Bureau of Community Planning and Growth within DEO manages the Community Planning Technical Assistance Grant Program (program). Under the program, DEO awards grant funds to counties, cities, and RPCs to assist local governments in developing economic development strategies, meeting the requirements of the Community Planning Act, addressing critical local planning issues, and promoting innovative planning solutions to challenges identified by local government applicants.<sup>20</sup> The program has funded a wide range of activities, including the development and revision of comprehensive plan amendments, economic development strategic plans, affordable housing action plans, downtown master plans, transportation master plans, and revitalization plans.

Beginning in fiscal year (FY) 2011-2012, the Legislature has annually appropriated state funds to DEO to implement the program. From FY 2015-2016 to FY 2019-2020, DEO has spent almost \$6 million on 173 approved grant projects.<sup>21</sup>

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<sup>11</sup> 98-28 Fla. Op. Att’y Gen. 2 (1998).

<sup>12</sup> *Id.*

<sup>13</sup> S. 186.501, F.S.

<sup>14</sup> S. 186.502(4), F.S.

<sup>15</sup> S. 186.504, F.S.

<sup>16</sup> S. 186.504(2), F.S.

<sup>17</sup> Florida Regional Councils Associations, <http://www.flregionalcouncils.org/> (last visited Jan. 13, 2020).

<sup>18</sup> *Id.*

<sup>19</sup> S. 163.3168(3), F.S.

<sup>20</sup> DEO, Division of Community Planning, *Technical Assistance*, available at: <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/technical-assistance> (last visited March 11, 2020).

<sup>21</sup> Information received from DEO (on file with the Local, Federal & Veterans Affairs Subcommittee).

## M-CORES Program

Enacted during the 2019 Regular Session, the Multi-use Corridors of Regional Economic Significance (M-CORES) Program is designed to advance the construction of regional corridors that will accommodate multiple modes of transportation and multiple types of infrastructure.<sup>22</sup> The specific purpose of the M-CORES Program is to revitalize rural communities, encourage job creation in those communities, and provide regional connectivity while leveraging technology, enhancing the quality of life and public safety, and protecting the environment and natural resources.<sup>23</sup>

The M-CORES Program is designed to resolve certain issues and provide certain benefits, including hurricane evacuation; congestion mitigation; trade and logistics; broadband, water, and sewer connectivity; energy distribution; autonomous, connected, shared, and electric vehicle technology; other transportation modes, such as shared-use nonmotorized trails, freight and passenger rail, and public transit; mobility as a service; availability of a trained workforce skilled in traditional and emerging technologies; protection or enhancement of wildlife corridors or environmentally sensitive areas; and protection or enhancement of primary springs protection zones and farmland preservation areas.<sup>24</sup> The following three corridors comprise the M-CORES Program:

- Southwest-Central Florida Connector (Collier County to Polk County);
- Suncoast Connector (Citrus County to Jefferson County); and
- Northern Turnpike Connector (the northern terminus of the Florida Turnpike northwest to the Suncoast Parkway).<sup>25</sup>

As required by law, the Florida Department of Transportation (FDOT) has assembled three task forces to study the three specific multi-use corridors.<sup>26</sup> The task forces must report their evaluations in a final report submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2020.<sup>27</sup> The law requires, to the maximum extent feasible, project construction to begin no later than December 31, 2022, with projects open to traffic no later than December 31, 2030.<sup>28</sup>

### **Effect of the Bill**

This bill authorizes the use of communication media technology for board meetings of RPCs that cover three or more counties and establishes quorum requirements for such meetings. The bill provides that if at least one-third of the voting members are physically present at the meeting location, the remaining voting members may participate via telephone, real-time videoconferencing, or similar real-time electronic or video communication, which must be broadcast publicly at the meeting location. The bill requires the member who will be appearing at the meeting via communications media technology to provide oral, written, or electronic notice to the RPC at least 24 hours before the scheduled meeting. Members appearing by such electronic means count towards the quorum requirement and may vote.

The bill also requires DEO, when selecting applications for Community Planning Technical Assistance Grants, to give preference to counties with populations of 200,000 or less, and the municipalities located within such counties,<sup>29</sup> for assistance in:

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<sup>22</sup> For additional detailed information about M-CORES, see the FDOT M-CORES website, *available at*: <https://floridamcores.com/> (last visited March 11, 2020).

<sup>23</sup> S. 338.2278(1), F.S.

<sup>24</sup> S. 338.2278(1)(a)-(k), F.S.

<sup>25</sup> S. 338.2278(2)(a)-(c), F.S.

<sup>26</sup> S. 338.2278(c)1., F.S.

<sup>27</sup> S. 338.2278(3)(c)9., F.S.

<sup>28</sup> S. 338.2278(6), F.S.

<sup>29</sup> Under the bill, only counties and related municipalities that will have an M-CORES project interchange within their territory will be eligible for such preference. The location of such interchanges will depend upon the planned routes of the three M-CORES projects.

- Determining whether an area in and around a proposed multiuse corridor interchange contains appropriate land uses and natural resource protection; and
- Developing or amending a local government's comprehensive plan to provide for the land uses, natural resource protection, and intended benefits associated with a proposed multiuse corridor interchange.

## 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:

Authorizing RPCs to use communications media technology for quorum purposes may save on travel time and cost

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The bill may have a positive fiscal impact on qualifying counties and municipalities receiving DEO grants where current M-CORES projects exist.