

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SB 1398

INTRODUCER: Senator Flores

SUBJECT: Regional Planning Council Meetings

DATE: January 31, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Ryon</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 1398 provides requirements for establishing a quorum for meetings of regional planning councils when a voting member appears via telephone, real-time video conferencing, or similar real-time electronic or video communication.

The bill does not have an impact on state or local revenues or expenditures.

The bill takes effect July 1, 2020.

**II. Present Situation:**

**Open Meetings Law**

The Florida Constitution provides that the public has a right to access governmental meetings.<sup>1</sup> Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.<sup>2</sup> This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.<sup>3</sup>

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<sup>1</sup> FLA CONST., art. I, s. 24(b).

<sup>2</sup> *Id.*

<sup>3</sup> FLA CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: "The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”<sup>4</sup> or the “Sunshine Law,”<sup>5</sup> requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.<sup>6</sup> The board or commission must provide the public reasonable notice of such meetings.<sup>7</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 which operates in a manner that unreasonably restricts the public’s access to the facility.<sup>8</sup> Minutes of a public meeting must be promptly recorded and open to public inspection.<sup>9</sup> Failure to abide by public meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.<sup>10</sup> A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.<sup>11</sup>

The Legislature may create an exemption to public meetings requirements by passing a general law by at least a two-thirds vote of both the Senate and the House of Representatives.<sup>12</sup> The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>13</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>14</sup>

The following are general exemptions from the requirement that all meetings of any state agency or authority be open to the public:

- That portion of a meeting that would reveal a security or fire safety system plan; and
- Any portion of a team meeting at which negotiation strategies are discussed.<sup>15</sup>

### **Administrative Procedure Act**

The Administrative Procedure Act (APA)<sup>16</sup> outlines a comprehensive administrative process by which agencies exercise the authority granted by the Legislature while offering citizen

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<sup>4</sup> *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

<sup>5</sup> *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

<sup>6</sup> Section 286.011(1)-(2), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 286.011(6), F.S.

<sup>9</sup> Section 286.011(2), F.S.

<sup>10</sup> Section 286.011(1), F.S.

<sup>11</sup> Section 286.011(3), F.S. Penalties include a fine of up to \$500 or a second degree misdemeanor.

<sup>12</sup> FLA CONST., art. I, s. 24(c).

<sup>13</sup> *Id.*

<sup>14</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>15</sup> Section 286.0113, F.S. “Team” means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

<sup>16</sup> See ch. 120, F.S.

involvement. The process subjects state agencies to a uniform procedure in enacting rules and issuing orders and allows citizens to challenge an agency's decision.<sup>17</sup>

The term "agency" is defined in s. 120.52(1), F.S., as:

- The Governor, each state officer and state department, and each departmental unit described in s. 20.04, F.S.;<sup>18</sup>
- The Board of Governors of the State University System;
- The Commission on Ethics;
- The Fish and Wildlife Conservation Commission;
- A regional water supply authority;
- A regional planning agency;
- A multicounty special district, but only if a majority of its governing board is comprised of non-elected persons;
- Educational units;
- Each entity described in chs. 163 (Intergovernmental Programs), 373 (Water Resources), 380 (Land and Water Management), and 582 (Soil and Water Conservation), F.S., and s. 186.504 (regional planning councils), F.S.;
- Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county; and
- Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to the act by general or special law or existing judicial decisions.<sup>19</sup>

### Use of Electronic Media and Public Meetings

Section 120.54(5)(b)2, F.S., requires the Administration Commission<sup>20</sup> to 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>21</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.<sup>22</sup> The notice must also state how individuals interested in attending may do so.<sup>23</sup> 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>24</sup> In addition to agencies required to

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<sup>17</sup> See Joint Administrative Procedures Committee, *A Primer on Florida's Administrative Procedure Act*, available at <http://www.japc.state.fl.us/Documents/Publications/PocketGuideFloridaAPA.pdf> (last visited Jan. 15, 2020).

<sup>18</sup> Section 20.04, F.S., specifies the structure of the executive branch of state government.

<sup>19</sup> The definition of agency does not include a municipality or legal entity created solely by a municipality and expressly excludes certain legal entities or organizations found in chs. 343, 348, and 361, F.S., and ss. 339.175 and 163.01(7), F.S.

<sup>20</sup> Section 14.202, F.S. The Administration Commission is composed of the Governor and the Cabinet (The Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture compose the Cabinet. Section 20.03(1), F.S.).

<sup>21</sup> Section 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>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

comply with ch. 120, F.S., certain entities created by an interlocal agreement may conduct public meetings and workshops via communications media technology.<sup>25</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>26</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 via electronic means.<sup>27</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.<sup>28</sup> 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."<sup>29</sup>

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."<sup>30</sup> 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 physically attend the meeting due to extraordinary circumstances such as illness, to participate and vote at the meeting via communications media technology.<sup>31</sup>

### **Florida Regional Planning Councils**

The Florida Regional Planning Council Act<sup>32</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>33</sup> RPCs span multiple counties within the geographical boundaries of any one comprehensive planning district.<sup>34</sup> The voting membership of a RPC must consist of representatives living within the geographical area covered by the council.<sup>35</sup> The ten RPCs are as follows: West Florida, Apalachee, North Central Florida, Northeast Florida, East Central Florida, Tampa Bay, Central Florida, Southwest Florida, Treasure Coast, and South

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<sup>25</sup> Section 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>26</sup> Robert Eschenfelder, *Modern Sunshine: Attending Public Meetings in the Digital Age*, 84 Fla. B.J. 28 (2010).

<sup>27</sup> Op. Att'y Gen. Fla. 98-28 (1998).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Section 186.501–186.513, F.S.

<sup>33</sup> Section 186.502(4), F.S.

<sup>34</sup> Section 186.504, F.S.

<sup>35</sup> Section 186.504(2), F.S.

Florida.<sup>36</sup> Each RPC consists of anywhere from three (South Florida) to 12 counties (North Central Florida).<sup>37</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 120.525, F.S., to authorize the use of communication media technology for board meetings of RPCs that cover three or more counties. Specifically, a voting member who appears via telephone, real-time videoconferencing, or similar real-time electronic or video communication that is broadcast publicly at the meeting location may be counted toward the quorum requirement if at least one-third of the voting members of such RPC are physically present at the meeting location.

The bill also requires the member to provide oral, written, or electronic notice of his or her intent to appear via communications media technology to their respective planning council at least 24 hours before the scheduled meeting.

**Section 2** provides the bill takes effect July 1, 2020.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. State Tax or Fee Increases:

None.

#### E. Other Constitutional Issues:

None identified.

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<sup>36</sup> Section 186.512, F.S.

<sup>37</sup> *Id.*

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 120.525 of the Florida Statutes.

**IX. Additional Information:**

## A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

## B. Amendments:

None.