

**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: CS/SB 972

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Rodriguez

SUBJECT: Administrative Entity Telecommunication Meetings

DATE: March 24, 2021      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<b>Fav/CS</b>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 972 provides that any separate administrative entity created by interlocal agreement, which has member public agencies in four contiguous counties, may conduct public meetings and workshops using communication media technology. Currently, only separate legal entities established by interlocal agreement, which have member public agencies located in at least five counties, of which at least three are not contiguous, may conduct public meetings and workshops using communications media technology.

This change allows administrative entities that have member public agencies in at least five counties and meet either the noncontiguous restriction in current law or the contiguous restriction under the bill to conduct meetings and workshops via communication media technologies. Additionally, the bill allows legal entities that have at least five counties and meet the new contiguous restriction to conduct public meetings and workshops by means of communications media technology.

The bill also expressly provides that s. 286.0114, F.S., (which sets for the requirements for public participation at public meetings) applies to public meetings and workshops conducted by means of communication media technology.

The bill takes effect July 1, 2021.

## II. Present Situation:

### Open Government 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>

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>

Section 286.0114, F.S., is an extension of the open meetings provision of s. 286.011, F.S. and specifically provides, with limited exceptions,<sup>12</sup> that members of the public must be given a reasonable opportunity to be heard on a proposition before a board or commission. Section 286.0114, F.S., recognizes that public participation need not be occur at the meeting at which

<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.”

<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> Section 286.011(3), F.S., provides that the reasonable opportunity to be heard provision does not apply to:

- An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;
- An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;
- A meeting that is exempt from [s. 286.011](#); or
- A meeting during which the board or commission is acting in a quasi-judicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

official action on a proposition takes place as long as the public is allowed to speak before official action is taken and that a board or commission may adopt rules or policies regulating such public participation. Such rules and policies are limited to those that:

- Provide guidelines regarding the amount of time an individual has to address the board or commission;
- Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;
- Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or
- Designate a specified period of time for public comment.<sup>13</sup>

### Use of Electronic Media and Public Meetings

Section 120.54(5)(b)2, F.S., requires the Administration Commission<sup>14</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>15</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>16</sup> The notice must also state how individuals interested in attending may do so.<sup>17</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>18</sup> Section 120.525(4), F.S., expressly authorizes a voting member of a regional planning council that covers three or more counties to appear via telephone, real-time videoconferencing, or similar real-time electronic video communication if at least one-third of the voting members of the regional planning council are physically present at the meeting location. In addition to state agencies required to comply with ch. 120, F.S., certain entities created by an interlocal agreement may conduct public meetings and workshops via communications media technology.<sup>19,20</sup>

While current law allows state agencies and certain regional planning councils and 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>21</sup> The Office of Attorney General has opined that only

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<sup>13</sup> Section 286.0114(4), F.S.

<sup>14</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>15</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>16</sup> *Id.*

<sup>17</sup> *Id.*

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

<sup>19</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>20</sup> Section 120.525(4), F.S.

<sup>21</sup> Robert Eschenfelder, *Modern Sunshine: Attending Public Meetings in the Digital Age*, 84 Fla. B.J. 28 (2010).

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>22</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>23</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>24</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>25</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>26</sup>

### **Interlocal Agreements**

The Florida Interlocal Cooperation Act of 1969 allows local governmental units to enter into mutually advantageous agreements to provide services or facilities to other localities.<sup>27</sup> This section of the law allows the state's public agencies to exercise joint governmental powers with any other public agency of the state, of any other state, or the United States Government.<sup>28</sup> To effectuate interlocal cooperation under this section, local governmental units jointly exercising power must form and execute a contract detailing the relationship's terms and conditions.<sup>29</sup>

### ***Separate Legal Entity or Administrative Entity***

Under s. 163.01(7), F.S., 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.

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.<sup>30</sup>

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<sup>22</sup> Op. Att'y Gen. Fla. 98-28 (1998).

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

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

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> See s. 163.01, F.S.

<sup>28</sup> *Id.* at (4)

<sup>29</sup> *Id.* at (5)

<sup>30</sup> Section 163.01(7)(b), F.S.

### ***Meetings***

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.<sup>31</sup> Consequently, meetings of a separate legal or administrative entity and its governing board are subject to Florida's public meeting requirements.<sup>32</sup>

### ***Communications Media Technology***

Section 163.01(18), F.S., of the Florida Interlocal Cooperation Act provides that any separate legal entity created by interlocal agreement may conduct public meetings, hearings, and workshops by means of communications media technology if the legal entity includes public agencies located in at least five counties, of which at least three are not contiguous.<sup>33</sup> The communications media technology provision was added to s. 163.01, F.S., in 2012.<sup>34</sup>

The notice for any public meeting or workshop conducted by communications media technology must state that the meeting will be conducted through communications media technology; specify how persons interested in attending may do so; and provide a location where communications media technology facilities are available. The participation by an officer, board member, or other representatives of a member public agency in a meeting conducted through communications media technology constitutes that individual's presence at such meeting. The term "communications media technology" means conference telephone, video conference, or other communications technology by which all persons attending a public meeting or workshop may audibly communicate.<sup>35</sup>

### **The Southeast Florida Regional Climate Change Compact**

The four contiguous counties of Broward, Miami-Dade, Monroe, and Palm Beach formally adopted the Southeast Florida Regional Climate Change Compact ("Compact") in 2009.<sup>36</sup> The Compact advances climate mitigation and adaptation strategies. A component of the Compact includes the establishment of the Compact Leadership Committee, which is a separate legal entity established pursuant to the Florida Interlocal Cooperation Act.<sup>37</sup> Each of the four counties has one representative that serves on the Committee and may select an alternate, both of whom

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<sup>31</sup> *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).

<sup>32</sup> Op. Att'y Gen. Fla. 82-66 (1982).

<sup>33</sup> "Being in actual contact: touching along a boundary or at a point" *Contiguous*, Merriam Webster Dictionary.

<sup>34</sup> Chapter 2012-164, Laws of Florida. The effort to normalize the use of communications media technology largely started in 2006 when the Legislature 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. *See* ch. 2006-350, Laws of Florida.

<sup>35</sup> Section 163.01(18), F.S.

<sup>36</sup> A White House Climate Action Champions Case Study, *Southeast Florida Regional Climate Change Compact*, available at: <https://www.energy.gov/sites/prod/files/2016/03/f30/Southeast%20Florida%20Case%20Study.pdf> (last visited Feb. 25, 2021).

<sup>37</sup> Miami-Dade Legislative Item, File Number: 202455 (Dec. 15, 2020), available at: <http://www.miamidade.gov/govaction/legistarfiles/Matters/Y2020/202455.pdf> (last visited Feb. 25, 2021) (the most recent renewal of interlocal agreement provisions related to the Southeast Florida Regional Climate Change Compact).

must have experience and knowledge in the area of resilience and climate change and must have a leadership position related to the area of resilience and climate change in the respective county's government.<sup>38</sup>

### III. Effect of Proposed Changes:

The bill amends s. 163.01, F.S., to provide that any separate administrative entity created by interlocal agreement, which has member public agencies in four contiguous counties, may conduct public meetings and workshops by means of communication media technology. This change allows administrative entities that have member public agencies in at least five counties and meet either the noncontiguous restriction in current law or the contiguous restriction under the bill (e.g., Southeast Florida Regional Climate Change Compact) to conduct meetings and workshops via communication media technologies. Additionally, the change permits legal entities that have at least five counties and meet the new contiguous restriction to conduct public meetings and workshops by means of communications media technology.

The bill also expressly provides that s. 286.0114, F.S., (which sets for the requirements for public participation at public meetings) applies to public meetings and workshops conducted by means of communication media technology.

The bill takes effect on July 1, 2021.

### IV. Constitutional Issues:

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

Not applicable. The bill does not require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or 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>38</sup> *Id.* at p.3.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

Conducting public meetings and workshops via communication media technology may provide applicable entities nominal cost savings.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 163.01 of the Florida Statutes.

**IX. Additional Information:**

## A. Committee Substitute – Statement of Substantial Changes:

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

**CS by Governmental Oversight and Accountability on March 24, 2021:**

The CS expressly provides that s. 286.0114, F.S., (which sets for the requirements for public participation at public meetings) applies to public meetings and workshops conducted by means of communication media technology.

## B. Amendments:

None.