

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 Committee on Rules

BILL: CS/CS/SB 224

INTRODUCER: Rules Committee; Governmental Oversight and Accountability Committee; and Senator Wright

SUBJECT: Citizen Volunteer Advisory Committees

DATE: January 31, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<u>Favorable</u>
2.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Hunter</u>	<u>Twogood</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 224 authorizes citizen volunteer advisory committees created to provide technical expertise and support to the National Estuary Program to conduct public meetings and workshops by means of communications media technology, as permitted by the Administrative Procedures Act. The bill provides that an advisory committee member who participates in a meeting or workshop by means of communications media technology is deemed to be present at such meeting or workshop.

The bill also provides notice requirements and audible communication requirements for such meetings.

The bill is not expected to impact state or local government revenues and expenditures.

The bill takes effect upon becoming a law.

II. Present Situation:

Open Meetings Law

The Florida Constitution provides that the public has a right to access governmental meetings.¹ 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.² This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.³ 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,”⁴ or the “Sunshine Law,”⁵ 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.⁶ Meetings of advisory boards appointed to make recommendations to an appointing authority, but that do not otherwise act on a final determination, are also subject to the Sunshine Law.⁷ Conversely, “a committee is not subject to the Sunshine Law if the committee has only been delegated information-gathering or fact-finding authority and only conducts such activities.”⁸

The board or commission must provide the public reasonable notice of such meetings.⁹ 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.¹⁰ Minutes of a public meeting must be promptly recorded and open to public inspection.¹¹

Failure to abide by public meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.¹² A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.¹³

¹ FLA CONST., art. I, s. 24(b).

² *Id.*

³ 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.”

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

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

⁶ Section 286.011(1)-(2), F.S.

⁷ Op. Att’y Gen. Fla. 98-13 (1998). *See also*, *Krause v. Reno*, 366 So.2d 1244 (Fla. Dist. Ct. App. 1979);

⁸ *Sarasota Citizens for Responsible Gov’t. v. City of Sarasota*, 48 So.3d 755, 762-763 (Fla. 2010), quoting *Wood v. Marston*, 442 So.2d at 940-41 (Fla. 1983).

⁹ *Id.*

¹⁰ Section 286.011(6), F.S.

¹¹ Section 286.011(2), F.S.

¹² Section 286.011(1), F.S.

¹³ Section 286.011(3), F.S. Penalties include a fine of up to \$500 or a second degree misdemeanor.

Administrative Procedure Act

The Administrative Procedure Act (APA)¹⁴ outlines a comprehensive administrative process by which agencies exercise the authority granted by the Legislature while offering citizen 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.¹⁵

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.;¹⁶
- 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.¹⁷

Use of Electronic Media and Public Meetings

Section 120.54(5)(b)2, F.S., requires the Administration Commission¹⁸ to create uniform rules 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 (CMT).¹⁹ Specifically, a notice for a public meeting, hearing, or workshop that will use CMT must state:

- That the public meeting will be conducted using CMT;
- If attendance may be provided for through CMT;

¹⁴ See ch. 120, F.S.

¹⁵ 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. 22, 2024).

¹⁶ Section 20.04, F.S., specifies the structure of the executive branch of state government.

¹⁷ 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.

¹⁸ 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.).

¹⁹ 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. See also, Rules 28-109.001-.006, Fla. Admin. Code.

- How persons who wish to attend²⁰ the meeting may do so; and
- The locations at which CMT facilities will be available to allow participation in the meeting.

Other laws relating to public meetings, hearings, and workshops, including penal and remedial provisions, apply to meetings conducted by means of CMT, and must be “liberally construed in their application to such public meetings, hearings, and workshops.”²¹

A body subject to public meetings laws that will conduct its meeting exclusively using CMT must provide a means for a member of the public to attend, which must include physical attendance if the available technology is insufficient to permit all interest persons to attend.²² The public access to the meeting must be provided via a “designated place where a person interested in attending a CMT proceeding may go for the purpose of attending the proceeding.”²³

Unless otherwise authorized by the Legislature, these procedures for communications media technology apply only to state agencies and not to local boards or commissions.

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.²⁴ 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.²⁵ The Attorney General explained 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.”²⁶

The Attorney General clarified this finding, stating in a 2020 opinion, that “any requirement for physical presence of members derives from other law specifying that a quorum be present to lawfully conduct public business or that the meeting of a local government body be held at a place within the body’s jurisdiction.”²⁷ Therefore, in the absence of any law otherwise, local government bodies that require a quorum to conduct their business may only use communications media technology to do so if either a statute permits a quorum to be present by

²⁰ Rule 28-109.002, Fla. Admin. Code defines attendance as having access to the CMT network being used to conduct a proceeding, or being used to take evidence, testimony, or argument relative to issues considered at the proceeding. The entity must also publish a public meeting notice which includes the address of each access point (a designated place where a person interested in attending a CMT proceeding may go for the purpose of attending). *See*, Rules 28-109.002, and .005, Fla. Admin. Code.

²¹ Section 120.54(5)(b)2., F.S.

²² *See*, Rule 28-109.004, Fla. Admin. Code.

²³ Rule 28-109.002(1), F.S.

²⁴ Op. Att’y Gen. Fla. 98-28 (1998).

²⁵ *Id.* 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.”

²⁶ *Id.* 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.

²⁷ Op. Att’y Gen. Fla. 2020-03.

means other than in-person or the in-person requirement for constituting a quorum is lawfully suspended.²⁸

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.²⁹

Other entities authorized under current law to conduct meetings and vote by means of communications media technology include:

- Regional planning councils (RPCs) that cover three or more counties;³⁰
- A water management district's governing board, basin board, committee, or advisory board;³¹
- The Florida Inland Navigation District's Board of Governors;³²
- Charter school governing boards, however, their appointed representative and principal or director must be physically present;³³ and
- Members of special committees and advisory committees that operate under a District School Board.³⁴

National Estuary Program

Estuaries are wetland watersheds where a river body of water meets the sea,³⁵ which are unique ecosystems consisting of many animals that rely on them for food, breeding and migration.³⁶ The United States Environmental Protection Agency (EPA) has established a non-regulatory program that currently improves the waters, habitats and living resources of 28 estuaries across the country called the National Estuary Program (NEP).³⁷ NEPs seek to develop a long term plan for their watershed that involves community members in the decision making process.³⁸

As such, there are advisory committees relating to estuary partnerships across the state that advise on policies related to NEP watersheds. These include the Indian River Lagoon National

²⁸ *Id.*

²⁹ This provision allowing the use of communications media technology was added in 2012. *See*, ch. 2012-164, Laws of Fla.

³⁰ Section 120.525(4), F.S. However, note that at least one-third of the RPC's voting members must be physically present at the meeting location. Chapter 186, F.S., finds that RPCs are comprehensive planning districts of the state, designated as the primary organization to address problems and plan solutions that are of greater-than-local concern or scope and recognized as Florida's multipurpose regional entities in a position to plan for and coordinate intergovernmental solutions to growth-related problems. By statute, the state is divided into 10 RPC regions. Each county must be a member of their respective RPC and municipalities may be members at their option.

³¹ Section 373.079(7), F.S.

³² Section 374.983(3), F.S.

³³ Section 1002.33(9)(p)3., F.S.

³⁴ Section 1001.43(10), F.S.

³⁵ National Oceanic and Atmospheric Administration, What is an Estuary? Available at <https://oceanservice.noaa.gov/facts/estuary.html> (last visited Jan. 31, 2024)

³⁶ *Id.*

³⁷ United States Environmental Protection Agency, Overview of the National Estuary Program, available at <https://www.epa.gov/nep/overview-national-estuary-program> (last visited Jan. 31, 2024.)

³⁸ *Id.*

Estuary Program³⁹ and the Coastal and Heartland National Estuary Partnership.⁴⁰ NEP advisory committees provide input about public policy concerns and ideas⁴¹ to their leadership. These advisory meetings are open to the public.⁴²

III. Effect of Proposed Changes:

The bill amends s. 286.011, F.S., to authorize citizen advisory committees created to provide technical expertise and support to the National Estuary Program established by Congress under s. 320 of the Clean Water Act whose membership is composed of representatives of four or more counties, to conduct public meetings and workshops by means of communications media technology pursuant to the rules of the Administrative Procedures Act. This will allow such meetings to be conducted by telephonic hearing, video-conferencing, and any other electronic transmission of printed matter, audio, full-motion video, freeze-frame video compressed video, and digital video.

The bill provides that an advisory committee member who participates in a meeting or workshop by means of communications media technology is deemed to be present at such meeting. This will increase the likelihood that a quorum can be established for the committee meetings using attendance via communications media technology. The bill requires that communications media technology allow for all persons attending such public meeting or workshop to audibly communicate, as would be allowed if they were physically present.

The bill states that notice for such a meeting or workshop must state whether it will be conducted using communications media technology, how an interested person may participate, and the locations of any facilities where communications media technology will be available. This could still require a physical meeting location to allow public access to the meeting conducted by communications media technology.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

³⁹ The Indian River Lagoon National Estuary Program executed an interlocal agreement between Volusia County, Brevard County, St. Lucie County, Martin County, Florida Department of Environmental Protection, St. Johns Water Management District, South Florida Water Management District, and the Indian River Lagoon Coalition to support the estuary available at https://onelagoon.org/wp-content/uploads/2017-2ndAmendedInterlocal__20200201.pdf (last visited Jan. 19, 2024).

⁴⁰ The Coastal and Heartland National Estuary Partnership is made up of representatives from a number of cities and counties as well as members of the public. Their governance is available at <https://www.chnep.org/governance> (last visited Jan. 22, 2024).

⁴¹ See, e.g., Coastal & Heartland National Estuary Partnership, Citizen's Advisory Committee, <https://www.chnep.org/citizens-advisory-committee> (last visited Jan. 22, 2024).

⁴² *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Members of citizens volunteer advisory committees may be required to spend less money to travel to attend committee meetings. This may attract additional participation in such committees.

C. Government Sector Impact:

Authorizing citizen volunteer advisory committees to use communication media technology for meeting purposes may save on travel time and cost for these entities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 286.011 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/CS by Rules on January 30, 2024:

The CS clarifies that the bill applies to citizen volunteer advisory committees, created to provide technical expertise and support to the National Estuary Program established by Congress under s. 320 of the Clean Water Act.

CS by Governmental Oversight and Accountability on January 22, 2024:

The CS removes language that is duplicative of s. 120.54(5)(b), F.S.

- B. Amendments:

None.