

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 413 Public Meetings and Workshops for Regional Advisory Committees

SPONSOR(S): Local Administration, Federal Affairs & Special Districts Subcommittee, Altman

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 224

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	16 Y, 0 N, As CS	Darden	Darden
2) State Affairs Committee	17 Y, 0 N	Rando	Williamson

SUMMARY ANALYSIS

The Florida Constitution requires all meetings of any collegial public body of the executive branch of state government or 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 Administration Commission is required 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 (CMT). These procedures for CMT meetings apply only to state agencies and not to local boards or commissions.

In 1987, Congress established a non-regulatory program called the National Estuary Program (NEP) to help improve the waters, habitats, and living resources of specified estuaries across the country. Currently, there are 28 NEPs with four located in Florida. Each NEP is governed by a management conference (MC), which may themselves establish advisory committees or enter into interlocal agreements with other regional bodies to help and advise the MC.

The bill provides that, notwithstanding any law to the contrary, a regional advisory committee created to provide technical expertise and support to the NEP whose membership is composed of representatives from four or more counties may conduct public meetings and workshops using CMT. An advisory committee member who participates in the meeting or a workshop using CMT is considered present. The CMT used for such a meeting must allow all persons attending to audibly communicate as if they were physically present.

The bill requires the public notice of the meeting to state whether it will be conducted using CMT, how an interested person may participate, and the location of any facilities where CMT will be available.

The bill may have a positive fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Meetings

The Florida Constitution requires all meetings of any collegial public body of the executive branch of state government or 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.¹ The Legislature, however, may provide by general law an exemption² from public meeting requirements provided that the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.³

Current law also addresses public policy regarding access to government meetings, further requiring all meetings of any board or commission of any state agency or authority, or of any agency or authority of any county, municipality, or political subdivision, at which official acts are to be taken to be open to the public at all times, unless the meeting is exempt.⁴ The board or commission must provide reasonable notice of all public meetings.⁵ 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.⁶ Minutes of a public meeting must be promptly recorded and open to public inspection.⁷ Failure to abide by public meeting requirements will invalidate any resolution, rule, or formal action adopted at a meeting.⁸ A public officer or member of a governmental entity who violates public meeting requirements is subject to civil and criminal penalties.⁹

Use of Electronic Media and Public Meetings

Current law requires the Administration Commission¹⁰ 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 (CMT).¹¹ Unless otherwise authorized by the Legislature, these procedures for CMT 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 CMT, thus rejecting a school board's request to conduct board meetings via electronic means.¹² The Attorney General reasoned that s. 120.54(5)(b)2., F.S., of the Administrative Procedure Act¹³ limits its terms only to uniform rules that apply to state agencies.¹⁴ The Attorney General reasoned that a similar rationale is not applicable to local boards and commissions, even though it may be convenient and

¹ Art. 1, s. 24(b), FLA. CONST.

² A public meeting exemption means a provision of general law which provides that a specified meeting, or portion thereof, is not subject to the access requirements of s. 286.011, F.S., or s. 24, Art. I of the Florida Constitution. See s. 119.011(8), F.S.

³ Art. I, s. 24(c), FLA. CONST.

⁴ S. 286.011(1), F.S.

⁵ *Id.*

⁶ S. 286.011(6), F.S.

⁷ S. 286.011(2), F.S.

⁸ S. 286.011(1), F.S.

⁹ S. 286.011(3), F.S.

¹⁰ The Administration Commission is composed of the Governor and the Cabinet. S. 14.202, F.S.

¹¹ 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.

¹² Op. Att'y Gen. Fla. 98-28 (1998).

¹³ See ch. 120, F.S.

¹⁴ *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."

cost-effective, 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.”¹⁵

Local entities authorized under current law to conduct meetings and vote by means of CMT include regional planning councils (RPCs)¹⁶ and certain entities created by an interlocal agreement.¹⁷

National Estuary Program

Estuaries are wetland watersheds where a river body of water meets the sea,¹⁸ which are unique ecosystems consisting of many animals that rely on them for food, breeding, and migration.¹⁹ In 1987, Congress established a non-regulatory program — the National Estuary Program (NEP) — within the United States Environmental Protection Agency (EPA)²⁰ with the goal of protecting and restoring “the water quality and ecological integrity of estuaries of national significance.”²¹ Each of the 28 current NEPs develops and implements a long-term plan for its watershed that involves community members in the decision-making process.²² Florida has four NEPs:

- Coastal and Heartland NEP.
- Indian River Lagoon NEP.
- Sarasota NEP.
- Tampa Bay NEP.²³

A body known as an NEP management conference (MC)²⁴ oversees each NEP watershed and may appoint advisory committees to advise the conference on various topics such as research, restoration, technical expertise, public involvement, and resource management.²⁵ Some MCs have entered into partnerships with special districts through interlocal agreements, such as the Indian River Lagoon NEP²⁶ and the Sarasota NEP,²⁷ that provide for the special district to advise the MC and help administer the NEP watershed. Meetings of these advisory bodies are open to the public.

Effect of Proposed Changes

The bill provides that, notwithstanding any law to the contrary, a regional advisory committee created to provide technical expertise and support to the NEP composed of representatives from four or more

¹⁵ *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. Op. Att’y Gen. Fla. 2002-82 (2002).

¹⁶ S. 120.525(4), F.S. 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.

¹⁷ See 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).

¹⁸ National Oceanic and Atmospheric Administration, *What is an Estuary?*, <https://oceanservice.noaa.gov/facts/estuary.html> (last visited Feb. 8, 2024).

¹⁹ *Id.*

²⁰ 33 U.S.C. § 1330.

²¹ United States Environmental Protection Agency, *Bipartisan Infrastructure Law National Estuary Program*, https://www.epa.gov/system/files/documents/2022-07/NEP%20BIL%20Fact%20Sheet_0.pdf (last visited Feb. 9, 2024).

²² United States Environmental Protection Agency, *Overview of the National Estuary Program*, <https://www.epa.gov/nep/overview-national-estuary-program> (last visited Feb. 8, 2024).

²³ Florida Department of Environmental Protection, *National Estuary Program Links*, <https://floridadep.gov/rcp/fcmp/content/national-estuary-program-links> (last visited Feb. 9, 2024).

²⁴ 33 U.S.C. § 1330(a).

²⁵ See e.g. Coastal & Heartland National Estuary Partnership, *Governance*, <https://www.chnep.org/governance> (last visited Feb. 8, 2024).

²⁶ The Indian River Lagoon National Estuary Program is sponsored by Volusia County, Brevard County, St. Lucie County, Martin County, Fla. Department of Environmental Protection, St. Johns Water Management District, South Florida Water Management District, and the Indian River Lagoon Coalition to support the Indian River Lagoon estuary. See First Amended and Restated Indian River Lagoon National Estuary Program Interlocal Agreement, available at https://onelagoon.org/wp-content/uploads/irlnep_amended_interlocal_agreement_2015.pdf (last visited Feb. 8, 2024).

²⁷ Sarasota NEP, *Our Plan*, <https://sarasotabay.org/about-sbep/our-plan/> (last visited Feb. 9, 2024).

counties may conduct public meetings and workshops using CMT. An advisory committee member who participates in the meeting or a workshop using CMT is considered present. The CMT used for such a meeting must allow all persons attending to audibly communicate as if they were physically present.

The bill requires the public notice of the meeting to state whether it will be conducted using CMT, how an interested person may participate, and the location of any facilities where CMT will be available.

B. SECTION DIRECTORY:

Section 1: Amends s. 286.011, F.S., relating to public meetings and records.

Section 2: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may reduce state government expenditures to the extent state agencies that participate in regional advisory committees may save on travel time and costs by using CMT.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may reduce local government expenditures to the extent local governments that participate in regional advisory committees may save on travel time and costs by using CMT.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 7, 2024, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment limited the provisions of the bill to regional advisory committees that were created to provide technical expertise and support to the NEP.

This analysis is drafted to the committee substitute as passed by the Local Administration, Federal Affairs & Special Districts Subcommittee.