

## HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

|                            |                     |                                  |       |          |
|----------------------------|---------------------|----------------------------------|-------|----------|
| <b>BILL #:</b>             | HB 1295             | <b>FINAL HOUSE FLOOR ACTION:</b> |       |          |
| <b>SUBJECT/SHORT TITLE</b> | Monroe County       | 117                              | Y's 1 | N's      |
| <b>SPONSOR(S):</b>         | Raschein and others | <b>GOVERNOR'S ACTION:</b>        |       | Approved |
| <b>COMPANION BILLS:</b>    | N/A                 |                                  |       |          |

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### SUMMARY ANALYSIS

HB 1295 passed the House on April 28, 2017, and subsequently passed the Senate on May 4, 2017.

The bill authorizes the Monroe County School Board, or the Board of County Commissioners, or any political subdivision thereof, to conduct public meetings, hearings, and workshops by means of communications media technology if the board adopts uniform rules authorizing the use of communications media technology and no final action is taken at the meeting. "Communications media technology" is defined as the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

The rules adopted by the School Board or by the County Commission must provide procedures for using communications media technology for purposes of conducting public meetings, hearings, and workshops, as well as for taking evidence, testimony, and argument at public meetings. The rules must also provide that evidence, testimony, and argument must be afforded equal consideration, regardless of the method of communication.

The bill requires a notice to state that the meeting will be conducted by means of communications media technology. Lastly, the bill does not limit a person's right to inspect public records.

The bill does not impose any fiscal requirements on the state or local government and may enable local governmental entities in Monroe County to lower the cost of providing public access to governmental meetings.

The bill was approved by the Governor on June 6, 2017, ch. 2017-214, L.O.F., and became effective on that date.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Present Situation**

The Florida Constitution guarantees to every person the right to inspect or copy public records<sup>1</sup> and the right for all meetings of government collegial bodies, including those in any county, municipality, school district, or special district, at which official acts are taken or public business is transacted or discussed, to be noticed and open to the public.<sup>2</sup> The constitutional requirement is self-executing but the Legislature is required to enact laws for the enforcement of the section.<sup>3</sup>

#### Government in the Sunshine Law

Section 286.011, F.S., also known as the "Government in the Sunshine Law," enforces the requirement that 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 must be open to the public at all times.<sup>4</sup> The board or commission must provide reasonable notice of all public meetings.<sup>5</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>6</sup> Minutes of a public meeting must be promptly recorded and be open to public inspection.<sup>7</sup>

#### Notices of Meetings and Hearings

Each board, commission, or agency must include in the notice of any meeting or hearing the advice that, if a person decides to appeal any decision made by the board, agency, or commission he or she will need a record of the proceedings, and that he or she may need to ensure that a verbatim record of the proceeding is made, which includes the testimony and evidence upon which the appeal is to be based.<sup>8</sup>

"Reasonable notice" is defined neither by the Constitution nor the statute. Florida courts have held that the reasonable notice may vary depending on the facts but its purpose is "to apprise the public of the pendency of matters that might affect their rights, afford them the opportunity to appear and present their views, and afford them a reasonable time to make an appearance if they wished."<sup>9</sup> The Office of the Attorney General recommends notice of the time and place of the meeting be provided at least 7 days before the meeting except in instances of emergency or special meetings.<sup>10</sup>

#### Conducting Public Meetings by Telecommunications

Currently, Florida law authorizes state agencies to conduct public meetings or hearings using communications media technology, defined as "the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available."<sup>11</sup>

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

<sup>2</sup> Art. I, s. 24(b), Fla. Const.

<sup>3</sup> Art. I, s. 24(c), Fla. Const.

<sup>4</sup> Section 286.011(1), F.S.

<sup>5</sup> *Id.*

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

<sup>7</sup> Section 286.011(2), F.S.

<sup>8</sup> Section 286.0105, F.S.

<sup>9</sup> *Rhea v. Gainesville*, 574 So. 2d 221, 222 (Fla. 1st DCA 1991) citing Op. Atty. Gen. Fla., 73-170 (1973).

<sup>10</sup> Office of the Attorney General, *Government-in-the-Sunshine Manual*, 40 (2017 ed.).

<sup>11</sup> Section 120.54(5)(b)2., F.S.

Section 120.54(5)(b)2., F.S., requires the Administration Commission (Commission)<sup>12</sup> to adopt uniform rules of procedure including "uniform rules for use by each state agency that provide procedures for conducting public meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such public meetings, hearings, and workshops, in person and by means of communications media technology. . . ." Under the statute, the rules must provide the following:

- All evidence, testimony, and argument presented must be afforded equal consideration, regardless of the method of communication.
- The notice must state if a public meeting, hearing, or workshop is to be conducted by means of communications media technology, or if attendance may be provided by such means.
- The notice for public meetings, hearings, and workshops utilizing communications media technology must state how persons interested in attending may do so and name locations, if any, where communications media technology facilities will be available.

These uniform rules do not diminish the right to inspect public records under ch. 119, F.S.<sup>13</sup> If any agency limits points of access to public meetings, hearings and workshops subject to s. 286.011, F.S., to places not normally open to the public, any official action taken therein is void. All other laws relating to public meetings, hearings, and workshops, including penal and remedial provisions, apply to public meetings, hearings, and workshops conducted by means of communications media technology.

The Commission adopted uniform rules governing proceedings by communications technology, currently codified as ch. 28-109, F.A.C. Separate rules provide definitions,<sup>14</sup> application,<sup>15</sup> notice,<sup>16</sup> and for taking evidence and testimony.<sup>17</sup>

While state agencies may conduct meetings, hearings, or workshops by communications media technology, there is no similar statute providing such authorization for local governments.<sup>18</sup> Additionally, the requirements for public meetings and other aspects of the Government in the Sunshine Law must be interpreted most favorably to the public, having been enacted for the public benefit.<sup>19</sup>

The Attorney General has concluded that where a quorum of membership is required for a collegial body to discuss or transact relevant public business, including taking final action, in a properly noticed public meeting, that quorum of members must be present physically at the meeting place in order to constitute a proper quorum.<sup>20</sup>

### Florida's Voting Requirement Law

Pursuant to s. 286.012, F.S., no member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act. A vote must be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest.<sup>21</sup> In

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<sup>12</sup> The Administration Commission is comprised of the Governor and Cabinet. Section 14.202, F.S. Affirmative action by the Commission requires the approval of the Governor and at least two other members.

<sup>13</sup> Section 120.54(5)(b)2., F.S.

<sup>14</sup> Rule 28-109.002, F.A.C.

<sup>15</sup> Rule 28-109.003, F.A.C.

<sup>16</sup> Rule 28-109.005, F.A.C.

<sup>17</sup> Rule 28-109.006, F.A.C.

<sup>18</sup> Op. Att'y. Gen. Fla. 98-28. See Office of the Attorney General, *Government-in-the-Sunshine Manual*, 35 (2017 ed.).

<sup>19</sup> *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260, 263 (Fla. 1973); *Zorc v. City of Vero Beach*, 722 So. 2d 891, 897 (Fla. 4th DCA 1999).

<sup>20</sup> Op. Att'y. Gen. Fla. 2001-66. See Office of the Attorney General, *Government-in-the-Sunshine Manual*, 35 (2017 ed.).

<sup>21</sup> Section 286.012, F.S. See ss. 112.311, 112.313, 112.3143, F.S.

such cases, the member must comply with the disclosure requirements in the Code of Ethics for Public Officers and Employees.<sup>22</sup>

### School Boards and Board of County Commissioners

The legislative and governing body of a county has the power to carry on county government.<sup>23</sup> To the extent not inconsistent with general or special law, this includes the power to perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law.<sup>24</sup>

Similarly, a district school board may adopt policies and procedures necessary for the daily business operation of the district school board. These include, but are not limited to, district school board policy development, adoption, and repeal, and district school board meeting procedures, including participation via telecommunications networks, use of technology at meetings, and presentations by nondistrict personnel. School board policies and procedures may also address citizen communications with the district school board and with individual district school board members, collaboration with local government and other entities as required by law, and organization of the district school board, including special committees and advisory committees.<sup>25</sup>

### Monroe County

Monroe County's Board of County Commissioners (Board) is composed of five members serving staggered terms of four years.<sup>26</sup> The Board meets on the third Wednesday and Thursday of every month at one of the three following locations: the Murray E. Nelson Government Center in Key Largo, the Marathon Government Center in Marathon, or the Harvey Government Center in Key West.<sup>27</sup> Meeting in various locations in part is due to Monroe County's length and limited road access.<sup>28</sup>

### **Effect of the Bill**

Notwithstanding s. 286.011, F.S., the bill authorizes the School Board of Monroe County or the Board of County Commissioners of Monroe County, or any political subdivision thereof, to conduct public meetings, hearings, and workshops by means of communications media technology if the board adopts uniform rules authorizing the use of communications media technology and **no final action** is taken at the meeting.

The rules must provide procedures for using communications media technology for purposes of conducting public meetings, hearings, and workshops, as well as for taking evidence, testimony, and argument at public meetings. The rules must also provide that evidence, testimony, and argument must be afforded equal consideration, regardless of the method of communication.

A notice stating a public meeting, hearing, or workshop will be conducted by means of communications media technology must also state how persons interested in attending may do so and name locations, if any, where communications media technology facilities will be available.

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<sup>22</sup> *Id.* See also s. 112.3143, F.S.

<sup>23</sup> Section 125.01(1), F.S.

<sup>24</sup> Section 125.01(1)(w), F.S.

<sup>25</sup> Section 1001.43(10), F.S.

<sup>26</sup> Art. VIII, s. 1, Fla. Const.

<sup>27</sup> Monroe County Board of County Commissioners website, available at <http://www.monroecounty-fl.gov/index.aspx?nid=27> (last visited March 21, 2017).

<sup>28</sup> According to the Florida Dept. of Transportation, the distance from Key Largo to Key West alone is 98 miles. See <http://fdotewp1.dot.state.fl.us/CityToCityMileage/viewera.aspx> (last accessed 3/21/2017).

The bill does not limit a person's right to inspect public records under ch. 119, F.S. Additionally, limiting points of access to public meetings, hearings, and workshops subject to the "Government in the Sunshine Law," to places not normally open to the public is presumed to violate the right of access of the public and will result in any official action taken under such circumstances being void. Any other laws relating to public meetings, hearings, and workshops, including penal and remedial provisions, will apply to public meetings, hearings, and workshops conducted by means of communications media technology and must be liberally construed in their application.

## 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:

None.

### C. ECONOMIC IMPACT STATEMENT FILED?    Yes, attached ☒    No ☐

### D. NOTICE PUBLISHED?    Yes ☒    No ☐

IF YES, WHEN? February 1, 2017

WHERE? *Key West Citizen*, a daily newspaper published in Key West, in Monroe County, Florida.

### E. REFERENDUM(S) REQUIRED?    Yes ☐    No ☒

IF YES, WHEN?