

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 843 Pub. Meetings and Records/Meetings Between Two Members of Board or Commission
SPONSOR(S): Oversight, Transparency & Administration Subcommittee; Donalds and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1004

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	13 Y, 1 N, As CS	Moore	Harrington
2) Local, Federal & Veterans Affairs Subcommittee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. It requires all meetings of any collegial public body of the executive branch of state government or of 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, to be open and noticed to the public. In addition, the "Government in the Sunshine Law" or "Sunshine Law," further requires 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 to be open to the public at all times.

The bill authorizes two members of any board or commission, including persons elected or appointed to such board or commission who have not yet taken office, of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision with a total membership of at least five members to meet in private and discuss public business without providing notice of such meeting or recording the meeting. Such meetings are exempt from open meetings requirements if:

- The members do not adopt a resolution or rule to take any other formal action, or agree to do so at a future meeting, at such meeting. A resolution or rule adopted, or any other formal action taken, in violation of this prohibition is void.
- The members do not discuss an appropriation, a contract, or any other public business that involves the direct expenditure of public funds to a private vendor.
- The meeting is not intended to frustrate or circumvent the purpose of the open meetings laws.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill does not appear to have a fiscal impact on the state or local governments.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public meeting exemption. The bill creates a new public meeting exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Meetings Law

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. It requires all meetings of any collegial public body of the executive branch of state government or of 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, to be open and noticed to the public.

Public policy regarding access to government meetings is also addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires 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 to be open to the public at all times. The board or commission must provide reasonable notice of all public meetings.¹ Minutes of a public meeting must be promptly recorded and be open to public inspection.²

No resolution, rule, or formal action is considered binding, unless action is taken or made at a public meeting.³ Acts taken by a board or commission in violation of this requirement are considered void,⁴ though a failure to comply with open meeting requirements may be cured by independent final action by the board or commission fully in compliance with public meeting requirements.⁵

Public Meeting Exemptions

Art. I, s. 24(c) of the State Constitution authorizes the Legislature to provide by general law for the exemption of meetings from the requirements of Art. I, s. 24(a) and (b) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

The Open Government Sunset Review Act⁶ further provides that a public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.⁷

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁸

¹ Section 286.011(1), F.S.

² Section 286.011(2), F.S.

³ Section 286.011(1), F.S.

⁴ *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010).

⁵ *Finch v. Seminole County School Board*, 995 So. 2d 1068 (Fla. 5th DCA 2008).

⁶ See s. 119.15, F.S.

⁷ Section 119.15(6)(b), F.S.

Effect of Proposed Changes

The bill authorizes two members of any board or commission, including persons elected or appointed to such board or commission who have not yet taken office, of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision with a total membership of at least five members to meet in private and discuss public business without providing notice of such meeting or recording the meeting. Such meetings are exempt from open meeting requirements if:

- The members do not adopt a resolution or rule to take any other formal action, or agree to do so at a future meeting, at such meeting. A resolution or rule adopted, or any other formal action taken, in violation of this prohibition is void.
- The members do not discuss an appropriation, a contract, or any other public business that involves the direct expenditure of public funds to a private vendor.
- The meeting is not intended to frustrate or circumvent the purpose of the open meeting laws.

The bill provides a public necessity statement as required by the State Constitution, specifying that it is a public necessity to protect meetings between two board or commission members under certain circumstances in order to facilitate a more thorough vetting of policies and appropriations that such members are responsible for examining and understanding.

The bill provides for repeal of the public meeting exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

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

Section 2. provides a public necessity statement.

Section 3 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state government revenues.

2. Expenditures:

The bill does not appear to have an impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill does not appear to have an impact on local government expenditures.

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. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure 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:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public meeting exemption. The bill creates a new public meeting exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public meeting exemption. The bill creates a new public meeting exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public meeting exemption for meetings between two members of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision if the board or commission has at least five total members. The public meeting exemption facilitates a more thorough vetting of policies and appropriations that such members are responsible for examining and understanding. The exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2017, the Oversight, Transparency & Administration Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarified that the bill only creates a public meeting exemption and does not create a public record exemption. This analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Administration Subcommittee.