

<b>Tab 4</b>	<b>SB 186</b> by <b>Hutson</b> ; (Identical to H 00105) Resign-to-run Law					
260238	A	S	WD	EE, Braynon	Delete L.85:	10/10 03:39 PM

<b>Tab 5</b>	<b>SB 192</b> by <b>Baxley</b> ; (Similar to H 00079) Public Meetings					
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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**ETHICS AND ELECTIONS**  
**Senator Perry, Chair**  
**Senator Brandes, Vice Chair**

**MEETING DATE:** Tuesday, October 10, 2017  
**TIME:** 2:00—4:30 p.m.  
**PLACE:** *Pat Thomas Committee Room, 412 Knott Building*

**MEMBERS:** Senator Perry, Chair; Senator Brandes, Vice Chair; Senators Braynon, Hutson, Lee, Passidomo, Rodriguez, and Torres

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Introduction of Committee Members and Staff		Presented
2	Committee Jurisdiction Overview		Presented
3	Presentation: Florida State Association of Supervisors of Elections		Presented
4	<b>SB 186</b> Hutson (Identical H 105)	Resign-to-run Law; Requiring an officer who qualifies for federal public office to resign from the office he or she presently holds if the terms, or any part thereof, run concurrently; prescribing requirements for the written resignation; providing for an automatic irrevocable resignation in the event of noncompliance, etc.  EE      10/10/2017 Favorable JU RC	Favorable Yeas 8 Nays 0
5	<b>SB 192</b> Baxley (Similar H 79)	Public Meetings; Specifying conditions under which members 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 may participate in fact-finding exercises or excursions, etc.  EE      10/10/2017 Favorable CA RC	Favorable Yeas 8 Nays 0

Other Related Meeting Documents

THE FLORIDA SENATE  
**APPEARANCE RECORD**

Tab #3

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10 Oct 17

Meeting Date

Bill Number (if applicable)

Topic Election Primaries

Amendment Barcode (if applicable)

Name Paul Lux

Job Title Sup. of Elections Okaloosa County

Address 302 Wilcox St, Ste 102

Phone 850-689-5600

Crestview FL 32536

Email plux@co.okaloosa.fl.us

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida State Assoc. of Supervisor of Elections

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

Tab # 3

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10/10/2017  
Meeting Date

\_\_\_\_\_  
Bill Number (if applicable)

Topic Online VOTER Registration

\_\_\_\_\_  
Amendment Barcode (if applicable)

Name WESLEY WILCOX

Job Title Supervisor of Elections, Marion County

Address P.O. Box 259  
Street

Phone 352-620-3790

Ocala FL 34478  
City State Zip

Email WWilcox@VoteMarion.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

**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 Ethics and Elections

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BILL: SB 186

INTRODUCER: Senator Hutson

SUBJECT: Resign-to-run Law

DATE: October 6, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Ulrich	EE	<b>Favorable</b>
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____

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**I. Summary:**

SB 186 requires a state or local officer seeking to run for *federal* office to submit an irrevocable resignation at least 10 days before the first day of qualifying for the office sought, *if* the terms of the two offices or any part of the terms run concurrently. Failure to do so results in an immediate and automatic resignation from the current office.

The only substantive difference between the current bill language and an analogous, pre-2008 resign-to-run requirement for officers seeking federal office is that it accelerates the resignation deadline by 10 days; prior to 2008 officers were simply required to submit an irrevocable resignation by the time they qualified.

This bill does not impact current federal office holders, who are not required to resign to run for election to another office or for reelection, where the terms of both offices overlap.

The bill takes effect upon becoming law.

**II. Present Situation:**

The resign-to-run law<sup>1</sup> prohibits an elected or appointed state or local officer from qualifying to run for another *state, district, county, or municipal* office if the terms or any part thereof overlap, unless the officer irrevocably resigns<sup>2</sup> from the office that he or she currently holds at

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<sup>1</sup> Section 99.012, F.S.

<sup>2</sup> Though irrevocable, the resignation does NOT need to be effective immediately. Rather, it must take effect no later than the *earlier* of: the date the officer would take office if elected; or, the date the officer's successor takes office.

least 10 days before qualifying starts (hereinafter, the “incumbent overlapping terms provision”).<sup>3</sup>

Until 2007, the law contained a similar incumbent overlapping terms provision for such officers seeking *federal* office, except that the irrevocable resignation had to be submitted by the time they qualified (instead of 10 days before qualifying starts).<sup>4</sup> In 2008, the Legislature repealed the federal resign-to-run portion of the law; as a result, the current incumbent overlapping terms provision DOES NOT apply to officers seeking *federal* office.

The 2008 change allows State Senators and other State or local officers to qualify and run for a congressional office (U.S. House Representative or U.S. Senator) *without* resigning their current office. This scenario occurs most often in the case of an open congressional seat filled by special election. If the officer wins the federal seat, a “domino effect” can result in multiple vacancies to be filled at historically low-turnout, special elections.<sup>5</sup> If the election involves a U.S. House or State legislative office, the State must reimburse the affected counties for the expenses of conducting the special election(s).<sup>6</sup>

For example, assume that an incumbent U.S. House Representative decides not to seek re-election, leaving an open seat at the upcoming 2018 general election. Because of staggered terms, a State Senator whose four-year term ends in 2020 could qualify to run for the seat without resigning from the Senate. If he or she won, the governor would have to call a special election after the general election to fill the vacant *Senate* seat.<sup>7</sup> One or more House members would likely qualify to run for that seat. If one of those House members won, the Governor would have to call another special election to fill the resulting vacant *House* seat.<sup>8</sup> And so forth and so on down to the local level.

Further, depending on the *timing* of the U.S. Senate or House vacancy and *when* the dominoes start to fall, a State Senator and/or House member might have to resign during a legislative session and leave constituents unrepresented in Tallahassee. This happened on April 13, 2010, when State Sen. Ted Deutch won a special election to fill the Florida 19<sup>th</sup> Congressional District seat vacated by former Rep. Robert Wexler. Senator Deutch not only missed the last two weeks of the 2010 regular session, but his constituents remained unrepresented for the subsequent July 20 special session called by Governor Charlie Crist to propose a constitutional amendment to ban offshore drilling in state waters.<sup>9</sup> Finally, because of the Senate President and Senate

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<sup>3</sup> Section 99.012(3),(7) F.S. The resign-to-run law also prohibits a person from qualifying as a candidate for *more than one* federal, state, district, county, or municipal office if the terms of the offices or any part thereof run concurrently (the “multi-candidate” prohibition). Section 99.012(2), F.S.

<sup>4</sup> Ch. 2007-30, § 14 LAWS OF FLA. (effective Jan. 1, 2008)

<sup>5</sup> Sometimes these special elections can be set to coincide with other elections, such as primaries and general elections; other times, they cannot.

<sup>6</sup> Section 100.102, F.S. If the special election can be run on another election date like a primary, then the additional costs are likely to be minimal, if any.

<sup>7</sup> Section 100.101(2), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Governor Crist called the special session for July 20, 2010; the House of Representatives adjourned in less than 45 minutes. Associated Press, *Florida House quickly adjourns special session without voting on offshore drilling ban* (July 20, 2010), available at <http://www.foxnews.com/us/2010/07/20/florida-house-quickly-adjourns-special-session-voting-offshore-drilling-ban.html> (last accessed Feb.8, 2017). Therefore, in this instance, Senator Deutch’s constituents were not negatively impacted.

precedent, Sen. Deutch's District 30 office remained open and staffed to help constituents until the November 2010 general election — when Maria Lorts Sachs was elected to the office.<sup>10</sup>

Since the law took effect in 2008, staff was able to find three legislative special elections that serve witness to the domino effect, all of which started with Florida Senator Frederica Wilson's mid-term winning bid for a U.S. congressional seat in the November 2010 general election.<sup>11</sup>

### III. Effect of Proposed Changes:

SB 186 essentially re-adopts pre-2008 law making the “incumbent overlapping terms” provision of the resign-to-run law applicable to state and local officers seeking *federal* office. The only substantive change from the pre-2008 law involves the timing of the resignation.

Specifically, a state or local officer seeking to run for federal office must submit an irrevocable resignation no later than 10 days prior to the beginning of qualifying for the office sought, or the act of qualifying results in an automatic and immediate resignation from the current office. This change may reduce the potential for cascading “dominoes” and the associated potential for corresponding special elections, since it decreases the chances that State Senators and House members will consider a congressional run.

The bill contains a number of other technical and mechanical provisions for the new federal resignation requirement that resemble the current requirements for state and local officers seeking to run for a *different* state or local office with overlapping terms (i.e., to whom resignations are submitted, when the current offices are deemed vacant for purposes of subsequent elections, required notices, etc.).

SB 186 does not affect a current federal office holder, who is not required to resign-to-run for election to another office or for reelection.

It also makes a conforming change to clarify that state and local officers seeking to run for U.S. President or Vice President must resign their office if the terms overlap.

The bill takes effect upon becoming law.

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<sup>10</sup> In a communication from Sen. Deutch to Senate President Jeff Atwater, Sen. Deutch stated:

*I hope that Governor Crist will fill my Senate vacancy as soon as possible, especially considering the strong likelihood of a special session. I also strongly urge you to keep the District 30 office open and staffed until a new senator is seated, following recent Senate precedent. The District 30 constituents continue to rely on the Senate office staff's ability to navigate Florida's bureaucracy for Medicaid; unemployment; elder care issues; changes related to obtaining driver's licenses; and condominium and homeowner issues, to name a few.*

See Florida Senate Journal, Number 16 —Regular Session, p. 618 (April 15, 2010) (letter from Sen. Deutch to Pres. Atwater).

<sup>11</sup> The Democratic Special Primary (2.8.2011) and Special General Election in State Senate District 33 (3.1.2011), and the Democratic Special Primary in House District 103 (2.8.2011).

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Reducing the number of special elections for U.S. House and State legislative races will reduce the need for campaign contributions and could adversely impact businesses that derive revenue from elections, such as campaign consultants, media outlets, direct mail, etc. The fiscal impact is indeterminate but expected to be minimal, given the relatively small number of special elections since the law took effect in 2008.

## C. Government Sector Impact:

***Non-Recurring***

The bill will reduce State reimbursements to counties for conducting primarily State legislative special primary and special general elections resulting from the early departure of a current office holder's successful campaign for federal office. Since the law took effect in 2008, the State has reimbursed counties just over \$1.7 million dollars for three special elections.<sup>12</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>12</sup> E-mail to Jonathan Fox, Chief Attorney, Senate Ethics and Elections Comm. from Rebecca Grissom, Budget and Legislative Analyst, Florida Department of State (Feb, 24, 2011).



**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 99.012, 121.121.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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260238

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
10/10/2017	.	
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	.	
	.	

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The Committee on Ethics and Elections (Braynon) recommended the following:

1           **Senate Amendment**

2

3           Delete line 85

4           and insert:

5           Section 3. This act shall take effect January 1, 2019.

By Senator Hutson

7-00236B-18

2018186\_\_

A bill to be entitled

An act relating to the resign-to-run law; amending s. 99.012, F.S.; requiring an officer who qualifies for federal public office to resign from the office he or she presently holds if the terms, or any part thereof, run concurrently; prescribing requirements for the written resignation; providing for an automatic irrevocable resignation in the event of noncompliance; specifying that a resignation creates a vacancy in office; revising an exception to the resign-to-run law; amending s. 121.121, F.S.; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (4) through (7) of section 99.012, Florida Statutes, are renumbered as subsections (5) through (8), respectively, a new subsection (4) is added to that section, and present subsection (7) of that section is amended, to read:

99.012 Restrictions on individuals qualifying for public office.—

(4) (a) Any officer who qualifies for federal public office must resign from the office he or she presently holds if the terms, or any part thereof, run concurrently with each other.

(b) The resignation is irrevocable.

(c) The resignation must be submitted at least 10 days before the first day of qualifying for the office he or she intends to seek.

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

7-00236B-18

2018186\_\_

(d) The written resignation must be effective no later than the earlier of the following dates:

1. The date the officer would take office, if elected; or
2. The date the officer's successor is required to take office.

(e) 1. An elected district, county, or municipal officer shall submit his or her resignation to the officer before whom he or she qualified for the office he or she holds, with a copy to the Governor and the Department of State.

2. An appointed district, county, or municipal officer shall submit his or her resignation to the officer or authority which appointed him or her to the office he or she holds, with a copy to the Governor and the Department of State.

3. All other officers shall submit their resignations to the Governor with a copy to the Department of State.

(f) 1. The failure of an officer who qualifies for federal public office to submit a resignation pursuant to this subsection constitutes an automatic irrevocable resignation, effective immediately, from the office he or she presently holds.

2. The Department of State shall send a notice of the automatic resignation to the Governor, and in the case of a district, county, or municipal officer, a copy to:

- a. The officer before whom he or she qualified if the officer held an elective office; or
- b. The officer or authority who appointed him or her if the officer held an appointive office.

(g) Notwithstanding the provisions of any special act to the contrary, with regard to an elective office, the resignation

Page 2 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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2018186\_\_

59 creates a vacancy in office to be filled by election, thereby  
60 authorizing persons to qualify as candidates for nomination and  
61 election as if the officer's term were otherwise scheduled to  
62 expire. With regard to an elective charter county office or  
63 elective municipal office, the vacancy created by the officer's  
64 resignation may be filled for that portion of the officer's  
65 unexpired term in a manner provided by the respective charter.  
66 The office is deemed vacant upon the effective date of the  
67 resignation submitted by the official in his or her letter of  
68 resignation.

69 (8)(7) Nothing contained in subsection (3) or subsection  
70 (4) relates to persons holding any federal office or seeking the  
71 office of President or Vice President.

72 Section 2. Subsection (2) of section 121.121, Florida  
73 Statutes, is amended to read:

74 121.121 Authorized leaves of absence.—

75 (2) A member who is required to resign his or her office as  
76 a subordinate officer, deputy sheriff, or police officer because  
77 he or she is a candidate for a public office which is currently  
78 held by his or her superior officer who is also a candidate for  
79 reelection to the same office, in accordance with s. 99.012(5)  
80 s. 99.012(4), shall, upon return to covered employment, be  
81 eligible to purchase retirement credit for the period between  
82 his or her date of resignation and the beginning of the term of  
83 office for which he or she was a candidate as a leave of absence  
84 without pay, as provided in subsection (1).

85 Section 3. This act shall take effect upon becoming a law.



The Florida Senate

## Committee Agenda Request

**To:** Senator Keith Perry, Chair  
Committee on Ethics and Elections

**Subject:** Committee Agenda Request

**Date:** August 31, 2017

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I respectfully request that **Senate Bill #186**, relating to Resign-to-Run Law, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in blue ink that reads "Travis Hutson".

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Senator Travis Hutson  
Florida Senate, District 7

THE FLORIDA SENATE  
**APPEARANCE RECORD**

Tab # 7

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10-10-2017

Meeting Date

186

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S

Street

Phone 727/897-9291

St Petersburg

City

FL

State

33705

Zip

Email justice2jesus@yahoo.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

The Florida Senate  
**COMMITTEE VOTE RECORD**

**COMMITTEE:** Ethics and Elections  
**ITEM:** SB 186  
**FINAL ACTION:** Favorable  
**MEETING DATE:** Tuesday, October 10, 2017  
**TIME:** 2:00—4:30 p.m.  
**PLACE:** 412 Knott Building

FINAL VOTE		SENATORS	10/10/2017 Amendment 260238 <sup>1</sup>					
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Braynon						
X		Hutson						
X		Lee						
X		Passidomo						
X		Rodriguez						
X		Torres						
X		Brandes, VICE CHAIR						
X		Perry, CHAIR						
8	0	<b>TOTALS</b>	-	WD				
<b>Yea</b>	<b>Nay</b>		<b>Yea</b>	<b>Nay</b>	<b>Yea</b>	<b>Nay</b>	<b>Yea</b>	<b>Nay</b>

CODES: FAV=Favorable    RCS=Replaced by Committee Substitute    TP=Temporarily Postponed    WD=Withdrawn  
 UNF=Unfavorable    RE=Replaced by Engrossed Amendment    VA=Vote After Roll Call    OO=Out of Order  
 -R=Reconsidered    RS=Replaced by Substitute Amendment    VC=Vote Change After Roll Call    AV=Abstain from Voting

**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 Ethics and Elections

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BILL: SB 192

INTRODUCER: Senator Baxley

SUBJECT: Public Meetings

DATE: October 3, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carlton</u>	<u>Ulrich</u>	<u>EE</u>	<u>Favorable</u>
2.	<u>                    </u>	<u>                    </u>	<u>CA</u>	<u>                    </u>
3.	<u>                    </u>	<u>                    </u>	<u>RC</u>	<u>                    </u>

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**I. Summary:**

SB 192 revises Florida’s “Government in the Sunshine Law”, or “Sunshine Law,” by codifying judicial interpretation and application of s. 286.011, F.S. Specifically, the bill provides from jurisprudence definitions for the terms: “de facto meeting,” “discussion,” “meeting,” “official act,” and “public business.” The bill also provides guidelines for boards to conduct permissible fact-finding exercises or excursions.

Finally, the bill provides in statute that notice is not required when two or more members of a board are gathered if no official acts are taken and no public business is discussed.

The bill is effective upon becoming law.

**II. Present Situation:**

**Open Meetings Laws**

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>

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<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



The Florida Statutes also provide that governmental meetings must be open to the public. 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> A failure to abide by open meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.<sup>8</sup> The minutes of a board or commission meeting also must be made available to the public.<sup>9</sup> A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.<sup>10</sup>

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of each house.<sup>11</sup> An exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>12</sup>

### **Who is Subject to the Sunshine Law?**

Article I, s. 24(b) of the Florida Constitution, in pertinent part, provides that meetings of the following bodies must be open and noticed to the public:

[A]ny 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.

Furthermore, s. 286.011, F.S., provides, in relevant part, that all meetings of the following entities must be open to the public:<sup>13</sup>

[A]ny board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, ... including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings.

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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> *Id.*

<sup>9</sup> Section 286.011(2), F.S.

<sup>10</sup> Section 286.011(3), F.S.

<sup>11</sup> FLA. CONST., art. I, s. 24(c).

<sup>12</sup> *Id.*

<sup>13</sup> Not all meetings must be noticed to the public according to s. 286.011(1), F.S.; only board or commission meetings must be reasonably noticed.

The Sunshine Law applies to “[m]embers-elect of boards, commissions, agencies, etc.” as soon as they are elected, even if they have not yet been sworn into office.<sup>14</sup> Any assemblage of members-elect or elected members of a collegial body who “discuss matters on which foreseeable action may be taken by that board or commission” constitutes a meeting subject to the Sunshine Law.<sup>15</sup>

The Sunshine Law has broad application, even to entities that are not normally considered a government body. Case law provides that a university is subject to the Sunshine Law, even if it is not usually considered a state agency.<sup>16</sup> Therefore, since a university is subject to the Sunshine Law, any committee it delegates its powers to must also hold its meetings publicly.<sup>17</sup>

Florida courts have held that the intent behind the Sunshine Law is to provide public access to the entire decision-making process, because it is the “how and why” public officials decided to act which interests the public, not merely the final decision.<sup>18</sup> Accordingly, if a government collegial body delegates its decision-making powers to another group, then those meetings must be public, even if the group is formed of private citizens.<sup>19</sup>

### **What is a “Meeting” that Should be Held in the Sunshine?**

The Legislature has not defined the term “meeting” within the context of the Sunshine Law. However, the courts have. In *Sarasota Citizens for Responsible Gov't v. City of Sarasota* the Florida Supreme Court stated:

[M]eetings within the meaning of the Sunshine Law include any gathering, formal or informal, of two or more members of the same board or commission where the members deal with some matter on which foreseeable action will be taken by the Board.<sup>20</sup>

The Court has also interpreted the intent of the Sunshine Law in relation to the types of assemblages that constitute a “meeting”:

The obvious intent of the Government in the Sunshine Law, *supra*, was to cover any gathering of some of the members of a public board where those members discuss some matters on which foreseeable action may be taken by the board.<sup>21</sup>

A meeting, within the meaning of the Sunshine Law, can occur even if the members of a collegial body do not speak to each other about a topic where foreseeable action may take place. Courts have ruled that the *opportunity* to make a decision was sufficient to make a gathering of school officials a public meeting.<sup>22</sup> In one case, school board members, two school board candidates, a superintendent and his deputy, and members of the press, toured new school bus routes on a school bus. The school board members sat several rows away from each other as a precaution and none of the members discussed preferences, expressed opinions or voted on the

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<sup>14</sup> *Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973).

<sup>15</sup> *Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973).

<sup>16</sup> *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983).

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

<sup>18</sup> *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969).

<sup>19</sup> *Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974).

<sup>20</sup> *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010).

<sup>21</sup> *Bd. of Pub. Instruction v. Doran*, 224 So. 2d 693 (Fla. 1969).

<sup>22</sup> *Finch v. Seminole County Sch. Bd.*, 995 So. 2d 1068 (Fla. 5<sup>th</sup> DCA 2008).

bus trip.<sup>23</sup> Despite taking those precautions, the court opined that the school board “had ultimate decision-making authority,” gathered in a confined space, and had “the opportunity at that time to make decisions outside of the public scrutiny.” Therefore, the court held that the bus ride was a meeting that violated the Sunshine Law.<sup>24</sup>

A “sunshine meeting” may also occur even if the members of a board do not assemble or share information through an intermediary. In this case, a superintendent met individual school board members in succession to discuss redistricting, but denied acting as a “go-between” or sharing the opinions of one board member with another one.<sup>25</sup> Although board members did not exchange information or otherwise congregate, the court in finding a violation of the Sunshine Law, held:

The scheduling of six sessions of secret discussions, repetitive in content, in rapid-fire seriatim and of such obvious official portent, resulted in de facto meetings by two or more members of the board at which official action was taken.<sup>26</sup>

Any meeting when public officials meet to avoid being seen or heard by the public violates the Sunshine Law, regardless of whether that meeting is formal or informal.<sup>27</sup> The judiciary has advised, “[i]f a public official is unable to know whether by convening two or more officials he is violating the law, he should leave the meeting forthwith.”<sup>28</sup>

Not all meetings of government officials are subject to the Sunshine Law, and the presence of two government officials alone is not sufficient to require a public meeting.<sup>29</sup> In addition to the exemptions listed in statute, staff meetings and fact-finding meetings are exceptions to the Sunshine Law and there is no requirement that these meetings be open and noticed to the public.

Officials may also meet alone with their staff or employees for “fact-finding” purposes in order to execute their duties without violating the Sunshine Law.<sup>30</sup> In addition, case law states that as long as they do not have decision making authority, “fact-finding” committees are not subject to the Sunshine Law.<sup>31</sup> The Florida Supreme Court ruled that “[w]hen a committee has been established for and conducts only information gathering and reporting, the activities of that committee are not subject to § 286.011, Fla. Stat.”<sup>32</sup>

### **What Happens if a Meeting Violates the Sunshine Law?**

Section 286.011(1), F.S., provides that the penalty for violating the Sunshine Law is to undo any business conducted in a meeting that should have been public. Specifically, it states, “no

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

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

<sup>25</sup> *Blackford v. Sch. Bd.*, 375 So. 2d 578, 580 (Fla. 5<sup>th</sup> DCA 1979).

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

<sup>27</sup> *Miami Beach v. Berns*, 245 So. 2d 38, 41 (Fla. 1971).

<sup>28</sup> *Id.*

<sup>29</sup> *City of Sunrise v. News and Sun-Sentinel Co.*, 542 So. 2d 1354, 1355 (Fla. 4<sup>th</sup> DCA 1989).

<sup>30</sup> *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010). See also *Bennett v. Warden*, 333 So. 2d 97 (Fla. Dist. Ct. App. 1976).

<sup>31</sup> *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010).

<sup>32</sup> *Id.* at 757.

resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.”

Courts have meted out a wide range of punishments to bodies who have violated the Sunshine Law, the most severe of which is to make a final action void. A violation of the Sunshine Law is “an irreparable public injury” and it does not matter if an entity did not intend to engage in such an act.<sup>33</sup> Additionally, courts may also order entities to stop meeting unless they meet in the open.<sup>34</sup>

However, it is worth noting that some courts have been more lenient and permitted entities to “cure” the violations. For example, a court may permit a body to cure Sunshine Law violations by requiring that information be made public and that all the subject matter be “reexamined and rediscussed” in an open meeting.<sup>35</sup>

### III. Effect of Proposed Changes:

The bill creates s. 286.011(1)(a), F.S., codifying judicial interpretation and application of the terms: “de facto meeting,” “discussion,” “meeting,” “official act,” and “public business.” Those terms are defined as follows:

- “De facto meeting” means the use of board or commission staff or third parties, acting as intermediaries, to facilitate discussion of public business between board or commission members.
- “Discussion” means a conversation between or among board or commission members regardless of whether through oral, written, electronic, or any other form of communication.
- “Meeting” means a gathering, whether formal or informal, of two or more members of the same board or commission, even if they have not yet taken office.
- “Official act” means the adoption of a resolution or rule or other formal action being taken by the board or commission.
- “Public business” means any matter before, or foreseeably expected to come before, the board or commission.

The bill also specifies that members of a board may participate in “fact-finding” exercises or excursion to research public business, and may participate in meetings with a member of the Legislature if:

- The board provides reasonable notice;
- A vote, official act, or an agreement regarding a future action does not occur;
- There is no discussion of “public business” that occurs; and
- There are appropriate records, minutes, audio recordings, or video recordings made and retained as a public record.

Finally, the bill provides that, if there is a gathering of two or more board members where no official acts are taken and no public business is discussed, then no public notice or access is required.

<sup>33</sup> *Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974).

<sup>34</sup> *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983).

<sup>35</sup> *Blackford v. Sch. Bd.*, 375 So. 2d 578, 581 (Fla. 5<sup>th</sup> DCA 1979).

This bill is effective upon becoming law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Art. I, s.24(c) of the Florida Constitution provides the manner in which exemptions to Florida's Sunshine Laws may be created and requires a two-thirds vote of each house in order for such exemptions to be enacted. Because this bill does not create any new exemptions or codify existing jurisprudentially-created exemptions, neither the substantive requirements nor the two-thirds vote in each house requirement apply to this bill.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Because this bill merely codifies jurisprudence, it is not anticipated that this bill will have a fiscal impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends s. 286.011, Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Baxley

12-00191-18

2018192\_\_

1 A bill to be entitled  
 2 An act relating to public meetings; amending s.  
 3 286.011, F.S.; defining terms; specifying conditions  
 4 under which members of any board or commission of any  
 5 state agency or authority or of any agency or  
 6 authority of any county, municipal corporation, or  
 7 political subdivision may participate in fact-finding  
 8 exercises or excursions; providing for construction;  
 9 providing an effective date.  
 10  
 11 Be It Enacted by the Legislature of the State of Florida:  
 12  
 13 Section 1. Subsection (1) of section 286.011, Florida  
 14 Statutes, is amended, present subsections (2) through (8) of  
 15 that section are renumbered as subsections (3) through (9),  
 16 respectively, and a new subsection (2) is added to that section,  
 17 to read:  
 18 286.011 Public meetings and records; public inspection;  
 19 criminal and civil penalties.-  
 20 (1)(a) As used in this section, the term:  
 21 1. "De facto meeting" means the use of board or commission  
 22 staff or third parties, acting as intermediaries, to facilitate  
 23 discussion of public business between board or commission  
 24 members.  
 25 2. "Discussion" means a conversation between or among board  
 26 or commission members regardless of whether through oral,  
 27 written, electronic, or any other form of communication.  
 28 3. "Meeting" means a gathering, whether formal or informal,  
 29 of two or more members of the same board or commission, even if

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

12-00191-18

2018192\_\_

30 they have not yet taken office.  
 31 4. "Official act" means the adoption of a resolution or  
 32 rule or other formal action being taken by the board or  
 33 commission.  
 34 5. "Public business" means any matter before, or  
 35 foreseeably expected to come before, the board or commission.  
 36 (b) Except as otherwise provided in the State Constitution,  
 37 all meetings or de facto meetings of any board or commission of  
 38 any state agency or authority or of any agency or authority of  
 39 any county, municipal corporation, or political subdivision at  
 40 which official acts are to be taken or public business is to be  
 41 transacted or discussed are declared to be public meetings open  
 42 to the public, except as otherwise provided in the  
 43 Constitution, including meetings with or attended by any person  
 44 elected to such board or commission, but who has not yet taken  
 45 office, at which official acts are to be taken are declared to  
 46 be public meetings open to the public at all times, and  
 47 (c) Members of the same board or commission may participate  
 48 in fact-finding exercises or excursions to research public  
 49 business, and may participate in meetings with a member of the  
 50 Legislature, if:  
 51 1. The board or commission provides reasonable notice;  
 52 2. A vote, an official act, or an agreement regarding an  
 53 action at a future meeting does not occur;  
 54 3. A discussion of public business, as those terms are  
 55 defined in paragraph (a), does not occur; and  
 56 4. Appropriate records, minutes, audio recordings, or video  
 57 recordings are made and retained as a public record.  
 58 (d) A ~~no~~ resolution, rule, or formal action is not ~~shall be~~

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

12-00191-18

2018192\_\_

59 considered binding unless ~~except as~~ taken or made at a public  
60 ~~such~~ meeting. The board or commission must provide reasonable  
61 notice of all such meetings.

62 (2) So long as no official acts are taken and any public  
63 business is not discussed, subsection (1) may not be construed  
64 to require public notice of and access to any gathering of two  
65 or more members of the same board or commission.

66 Section 2. This act shall take effect upon becoming a law.



# THE FLORIDA SENATE

**COMMITTEES:**  
Governmental Oversight and Accountability, *Chair*  
Criminal Justice, *Vice Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on Health and  
Human Services  
Transportation

**SELECT COMMITTEE:**  
Joint Select Committee on Collective Bargaining

**JOINT COMMITTEE:**  
Joint Legislative Auditing Committee

**SENATOR DENNIS BAXLEY**  
12th District

September 19, 2017

The Honorable Senator Keith Perry  
312 Senate Office Building  
Tallahassee, Florida 32399

Dear Chairman Perry,

I respectfully request you place Senate Bill 192 Public Meetings on your next available agenda.

This bill allows two or more county commissioners to discuss issues pertaining to business as in fact-finding exercises or excursions to research public business, so long as no official acts are taken and any public business is not discussed, that would require public notice of, and access to, any gathering of two or more members of the same board or commission.

I appreciate your favorable consideration.

Onward & Upward,

*Dennis Baxley*

Dennis Baxley  
Senator, District 12

DKB/dd

cc: Cameron Ulrich, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012  
Email: [baxley.dennis@flsenate.gov](mailto:baxley.dennis@flsenate.gov)

**JOE NEGRON**  
President of the Senate

**ANITERE FLORES**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

Tab #5

10-10

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

192

Bill Number (if applicable)

Topic Public Meetings

Amendment Barcode (if applicable)

Name Brian Sullivan

Job Title Chief Legal Council

Address 100 N. Monroe St.

Phone 810-335-0150

Street

Tallahassee

FL

City

State

Zip

Email bsullivan@flcounties.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Association of Counties

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

Tab # 5

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10/10

Meeting Date

192

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Casey Cook

Job Title Senior Legislative Advocate

Address PO Box 1757  
Street

Phone \_\_\_\_\_

Tallahassee FL 32302  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

TC #5

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10/10/2017

Meeting Date

192

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S.  
Street

Phone 727/897-9291

St Petersburg FL 33705  
City State Zip

Email justice2jesus@yahoo.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

The Florida Senate  
**COMMITTEE VOTE RECORD**

**COMMITTEE:** Ethics and Elections  
**ITEM:** SB 192  
**FINAL ACTION:** Favorable  
**MEETING DATE:** Tuesday, October 10, 2017  
**TIME:** 2:00—4:30 p.m.  
**PLACE:** 412 Knott Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Braynon						
X		Hutson						
X		Lee						
X		Passidomo						
X		Rodriguez						
X		Torres						
X		Brandes, VICE CHAIR						
X		Perry, CHAIR						
8	0	<b>TOTALS</b>						
<b>Yea</b>	<b>Nay</b>		<b>Yea</b>	<b>Nay</b>	<b>Yea</b>	<b>Nay</b>	<b>Yea</b>	<b>Nay</b>

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting

# CourtSmart Tag Report

Room: KN 412

Case No.:

Type:

Caption: Senate Ethics and Elections

Judge:

Started: 10/10/2017 2:03:38 PM

Ends: 10/10/2017 2:43:59 PM

Length: 00:40:22

2:03:48 PM Meeting Called to Order  
2:03:51 PM Roll Call  
2:03:55 PM Quorum Present  
2:04:22 PM Tab 1 - Introduction of Committee Members and Staff  
2:05:19 PM Members introduce themselves and Staff Director introduces Professional Staff  
2:07:10 PM Tab 2 - Committee Jurisdiction Overview  
2:12:00 PM Senator Rodriguez with a question  
2:12:29 PM Staff Director with response  
2:13:11 PM Senator Rodriguez with follow-up  
2:14:01 PM Chairman Perry with comments  
2:14:18 PM Tab 5 - SB 192 Public Meetings by Senator Baxley  
2:15:29 PM Appearance Cards  
2:15:39 PM Brian Sullivan, Chief Legal Counsel - Florida Association of Counties, waives in support  
2:15:46 PM Casey Cook, Florida League of Cities, waives in support  
2:16:03 PM Brian Pitts, Trustee -Justice 2 Jesus, speaks in support  
2:21:34 PM Chairman calls for debate  
2:21:38 PM Senator Baxley closes on bill  
2:23:03 PM Roll Call on SB 192  
2:23:15 PM SB 192 reported favorably  
2:23:28 PM Tab 3 - Presentation by Florida State Association of Supervisors of Elections  
2:23:38 PM Paul Lux, Supervisor of Elections - Okaloosa County  
2:30:57 PM Question by Senator Torres  
2:31:12 PM Mr. Lux with response  
2:32:56 PM Chairman Perry with question  
2:33:04 PM Mr. Lux with response  
2:34:00 PM Chairman Perry with follow-up  
2:34:13 PM Mr. Lux with response  
2:34:30 PM Chairman Perry with comments  
2:34:39 PM Mr. Lux responds  
2:35:06 PM Senator Torres with question  
2:35:14 PM Mr. Lux responds  
2:35:29 PM Wesley Wilcox, Supervisor of Elections, Marion County  
2:38:14 PM Question from Senator Torres  
2:38:35 PM Mr. Wilcox with response  
2:38:58 PM Senator Torres with follow-up  
2:39:06 PM Mr. Wilcox with response  
2:41:38 PM Tab 4 -SB 186 Resign-to-run Law by Senator Hutson  
2:41:48 PM Senator Hutson explains the bill  
2:42:07 PM Amendment Barcode 260238 by Senator Braynon  
2:42:26 PM Amendment withdrawn  
2:42:41 PM Appearance Card  
2:42:45 PM Brian Pitts - Justice 2 Jesus waives in support  
2:42:53 PM Senator Hutson waives closing  
2:43:00 PM Roll Call  
2:43:12 PM SB 186 reported favorably  
2:43:34 PM Senator Hutson moves to adjourn  
2:43:38 PM Meeting Adjourned