

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 361	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Criminal Justice Subcommittee; Kerner; Campbell and others	112 Y's	0 N's
COMPANION BILLS:	(SB 1042)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 361 passed the House on April 24, 2013, and subsequently passed the Senate on April 25, 2013.

Currently, two counties in Florida have established "criminal justice commissions," each of which is comprised of members of both the public and private sector. The commissions discuss a multitude of issues relating to local criminal justice practices, policies, and program developments, including issues related to jail population and overcrowding, tracking crimes in the community, and matters of general policing. Criminal justice commissions are currently subject to public meetings requirements. Therefore, discussions that occur among two or more members of the commission, which involve matters that are being considered or may foreseeably come before the commission, must be properly noticed and conducted as an open meeting.

The bill exempts duly constituted criminal justice commissions from public meeting requirements for any portion of a meeting of commission members where the members discuss active criminal intelligence or active criminal investigative information which is currently being considered, or may foreseeably come before the commission.

The bill repeals the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

The bill was approved by the Governor on June 14, 2013, ch. 2013-196, L.O.F., and will become effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Public Meetings Laws

State Constitution: Open Meetings

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that 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, be open and noticed to the public.

Article I, s. 24(c) of the State Constitution authorizes the Legislature to provide exemptions from the open meeting requirements upon a two-thirds vote of both legislative chambers, in a bill that specifies the public necessity giving rise to the exemption.

Government in the Sunshine Law

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires 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 be open to the public at all times.¹ The board or commission must provide reasonable notice of all public meetings.² 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.³ Minutes of a public meeting must be promptly recorded and be open to public inspection.⁴

The Open Government Sunset Review Act⁵ provides that a public meeting exemption may be created or maintained only if it serves an identifiable public purpose and the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁶ However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects 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; or
- Protects trade or business secrets.⁷

Criminal Justice Commissions

Currently, two counties in Florida have established "criminal justice commissions."⁸ Membership of these commissions is comprised of members of both the public⁹ and private sectors. These members

¹ Section 286.011(1), F.S.

² *Id.*

³ Section 286.011(6), F.S.

⁴ Section 286.011(2), F.S.

⁵ Section 119.15, F.S.

⁶ *Id.*

⁷ *Id.*

collaborate to improve the criminal justice system in their community.¹⁰ The commissions discuss and make recommendations to the boards of county commissioners on a multitude of issues relating to local criminal justice practices, policies, and program developments.¹¹ Other issues discussed at commission meetings include jail population and overcrowding, tracking crimes in the community, and matters of general policing.¹²

Because a criminal justice commission is an appointed commission that is not specifically exempted, they are currently covered under the Sunshine Law. Therefore, any meetings of a commission are subject to the Sunshine Law. Consequently, discussions that occur among members of a commission, such as the sheriff, public defender, or state attorney, which involve matters that may foreseeably come before or are currently being considered by the commission, must be properly noticed and conducted as an open meeting in accordance with the Sunshine Law.¹³ Discussions among public officials on issues that do not require action by the commission do not violate the Sunshine Law.¹⁴

Effect of the Bill

The bill creates a public meeting exemption for “that portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information that is currently being considered by, or which may foreseeably come before, the commission” from public meeting requirements. However, at any meeting in which such matters are being discussed, the bill requires the commission members to publicly disclose the fact that such matters will be discussed.

The bill defines a “duly constituted criminal justice commission” as an advisory commission created by municipal or county ordinance whose membership is comprised of private and public sector persons and whose purpose is to examine local criminal justice issues.

The bill also provides the following definitions by reference to s. 119.011, F.S.:

- “Criminal intelligence information” means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.
- “Criminal investigative information” means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.¹⁵

⁸ In 2004, the Board of County Commissioners of Sarasota County passed Resolution number 2004-251, creating the Sarasota County Criminal Justice Commission. (On file with the Criminal Justice Subcommittee). In 1988, Palm Beach County enacted Ordinance No. 88-16, creating the Palm Beach County Criminal Justice Commission. (On file with the Criminal Justice Subcommittee).

⁹ *Id.* Public sector members include: the chief judge of the respective county; the county sheriff; members of the board of county commission; the state attorney; the public defender; the clerk of the circuit court; a representative from the police chief’s association; a representative from the Bureau of Alcohol, Tobacco, and Firearms; the police chief; a representative from Florida Department of Law Enforcement; and a representative from Florida Department of Corrections.

¹⁰ About the Criminal Justice Commission, <http://www.pbcgov.org/criminaljustice/aboutcjc/> (last visited on March 14, 2013).

¹¹ *Id.*

¹² *Id.*

¹³ Attorney General Opinion 93-41.

¹⁴ *Id.*

¹⁵ “Criminal intelligence information” and “criminal investigative information” does not include:

- The time, date, location, and nature of a reported crime.
- The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h), F.S.
- The time, date, and location of the incident and of the arrest.
- The crime charged.
- Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), F.S., and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1), F.S., until released at trial if it is found that the release of such information would:
 - Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and

- “Active” has the following meanings:
 - Criminal intelligence information is considered “active” as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
 - Criminal investigative information is considered “active” as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.
 - In addition, criminal intelligence and criminal investigative information is considered “active” while such information is directly related to pending prosecutions or appeals. The word “active” does not apply to information in cases that are barred from prosecution under the provisions of s. 775.15, F.S., or other statute of limitation.

The bill repeals the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.¹⁶

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

○ Impair the ability of a state attorney to locate or prosecute a codefendant.

• Information and indictments except as provided in s. 905.26, F.S.

¹⁶ Article 1, Sec. 24(c), FLA. CONST.