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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 192
INTRODUCER:	Senator Baxley
SUBJECT:	Public Meetings
DATE:	January 9, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Ulrich	EE	**Favorable**
2.	Cochran	Yeatman	CA	**Favorable**
3.	Carlton	Phelps	RC	**Favorable**

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.

II. Present Situation:

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.[1] 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.[2] This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.[3]

[1] FLA. CONST., art. I, s. 24(b).

[2] *Id.*

[3] 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 which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."

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,"[4] or the "Sunshine Law,"[5] 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.[6] The board or commission must provide the public reasonable notice of such meetings.[7] A failure to abide by open meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.[8] The minutes of a board or commission meeting also must be made available to the public.[9] A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.[10]

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of each house.[11] 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.[12]

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:[13]

> [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.

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.[14] Any assemblage of members-elect or elected members of a collegial body who "discuss matters on which

[4] *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).
[5] *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).
[6] Section 286.011(1)-(2), F.S.
[7] *Id.*
[8] *Id.*
[9] Section 286.011(2), F.S.
[10] Section 286.011(3), F.S.
[11] FLA. CONST., art. I, s. 24(c).
[12] *Id.*
[13] 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.
[14] *Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973).

foreseeable action may be taken by that board or commission" constitutes a meeting subject to the Sunshine Law.[15]

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.[16] Therefore, since a university is subject to the Sunshine Law, any committee it delegates its powers to must also hold its meetings publicly.[17]

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.[18] 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.[19]

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.[20]

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.[21]

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.[22] 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 bus trip.[23] 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

[15] *Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973).
[16] *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983).
[17] *Id.*
[18] *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969).
[19] *Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974).
[20] *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010).
[21] *Bd. of Pub. Instruction v. Doran*, 224 So. 2d 693 (Fla. 1969).
[22] *Finch v. Seminole County Sch. Bd.*, 995 So. 2d 1068 (Fla. 5th DCA 2008).
[23] *Id.*

to make decisions outside of the public scrutiny." Therefore, the court held that the bus ride was a meeting that violated the Sunshine Law.[24]

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.[25] 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.[26]

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.[27] 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."[28]

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.[29] 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.[30] 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.[31] 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."[32]

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

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[24] *Id.*
[25] *Blackford v. Sch. Bd.*, 375 So. 2d 578, 580 (Fla. 5th DCA 1979).
[26] *Id.*
[27] *Miami Beach v. Berns*, 245 So. 2d 38, 41 (Fla. 1971).
[28] *Id.*
[29] *City of Sunrise v. News and Sun-Sentinel Co.*, 542 So. 2d 1354, 1355 (Fla. 4th DCA 1989).
[30] *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).
[31] *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010).
[32] *Id.* at 757.

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.[33] Additionally, courts may also order entities to stop meeting unless they meet in the open.[34]

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.[35]

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.

This bill is effective upon becoming law.

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[33] *Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974).
[34] *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983).
[35] *Blackford v. Sch. Bd.*, 375 So. 2d 578, 581 (Fla. 5th DCA 1979).

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:

This bill merely codifies jurisprudence, so 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.