HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 79 Public Meetings
SPONSOR(S): Roth
TIED BILLS: **IDEN./SIM. BILLS:** SB 192

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	9 Y, 1 N	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.

The "Government in the 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. Minutes of a public meeting must be promptly recorded and be open to public inspection.

The bill defines "de facto meeting" as the use of board or commission staff or third parties, acting as intermediaries, to facilitate a discussion of public business between or among board or commission members. The bill clarifies that de facto meetings are subject to the Sunshine Law.

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

- The board or commission provides reasonable notice;
- A vote, an official act, or an agreement regarding an action at a future meeting 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.

The bill also 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.

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

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]

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.[6] 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.[7]

Definition of "Meeting"

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.[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] *Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973).
[7] *Id.*
[8] *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010).

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.[9]

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.[10] 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.[11] 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.[12]

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.[13] 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.[14]

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.[15] 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."[16]

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.[17] 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.[18] 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.[19] The Florida Supreme Court ruled that "[w]hen a committee has been established for and

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[9] *Bd. of Pub. Instruction v. Doran*, 224 So. 2d 693 (Fla. 1969).
[10] *Finch v. Seminole County Sch. Bd.*, 995 So. 2d 1068 (Fla. 5th DCA 2008).
[11] *Id.*
[12] *Id.*
[13] *Blackford v. Sch. Bd.*, 375 So. 2d 578, 580 (Fla. 5th DCA 1979).
[14] *Id.*
[15] *Miami Beach v. Berns*, 245 So. 2d 38, 41 (Fla. 1971).
[16] *Id.*
[17] *City of Sunrise v. News and Sun-Sentinel Co.*, 542 So. 2d 1354, 1355 (Fla. 4th DCA 1989).
[18] *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).
[19] *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010).

conducts only information gathering and reporting, the activities of that committee are not subject to § 286.011, Fla. Stat."[20]

Effect of the Bill

The bill creates the following definitions:

- "De facto meeting" means the use of board or commission staff or third parties, acting as intermediaries, to facilitate a discussion of public business between or among 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 clarifies that de facto meetings are subject to the Sunshine Law.

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

- The board or commission provides reasonable notice;
- A vote, an official act, or an agreement regarding an action at a future meeting 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.

B. SECTION DIRECTORY:

Section 1. amends s. 286.011, F.S., relating to public meetings and public records; public inspection; criminal and civil penalties.

Section 2. provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[20] *Id.* at 757.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Definition of “Meeting”
The definition of “meeting” refers to a gathering of two or more members of the same board or commission, even if they have not yet taken office; however, by definition, a member of a board or commission has already taken office.

Fact-finding Exercises
It is unclear whether the provision regarding fact-finding exercises and excursions requires such exercises and excursions to be open to the public.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.