

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 Environment and Natural Resources

BILL: SB 690

INTRODUCER: Senator Rodriguez

SUBJECT: Resilience-related Advisory Committees

DATE: January 28, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Collazo</u>	<u>Rogers</u>	<u>EN</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 690 permits certain resilience-related advisory committees to conduct public meetings and workshops by means of communications media technology pursuant to the rules of the Administrative Procedures Act. The bill provides that an advisory committee member who participates in a meeting or workshop by means of communications media technology is deemed to be present at such meeting or workshop.

The bill also provides notice requirements and audible communication requirements for such meetings. Additionally, it clarifies that other public meetings laws must be liberally construed for such meetings.

II. Present Situation:

Open Meetings Law

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."

Public policy regarding access to government meetings also is addressed in the Florida Statutes. 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 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.⁸ Minutes of a public meeting must be promptly recorded and open to public inspection.⁹ Failure to abide by public meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.¹⁰ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.¹¹

Administrative Procedure Act

The Administrative Procedure Act (APA)¹² outlines a comprehensive administrative process by which agencies exercise the authority granted by the Legislature while offering citizen involvement. The process subjects state agencies to a uniform procedure in enacting rules and issuing orders and allows citizens to challenge an agency’s decision.¹³

The term “agency” is defined in s. 120.52(1), F.S., as:

- The Governor, each state officer and state department, and each departmental unit described in s. 20.04, F.S.;¹⁴
- The Board of Governors of the State University System;
- The Commission on Ethics;
- The Fish and Wildlife Conservation Commission;
- A regional water supply authority;
- A regional planning agency;
- A multicounty special district, but only if a majority of its governing board is comprised of non-elected persons;
- Educational units;
- Each entity described in chs. 163 (Intergovernmental Programs), 373 (Water Resources), 380 (Land and Water Management), and 582 (Soil and Water Conservation), F.S., and s. 186.504 (regional planning councils), F.S.;
- Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county; and

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 Section 286.011(6), F.S.

⁹ Section 286.011(2), F.S.

¹⁰ Section 286.011(1), F.S.

¹¹ Section 286.011(3), F.S. Penalties include a fine of up to \$500 or a second degree misdemeanor.

¹² *See* ch. 120, F.S.

¹³ Joint Administrative Procedures Committee, *A Primer on Florida’s Administrative Procedure Act*, available at <http://www.japc.state.fl.us/Documents/Publications/PocketGuideFloridaAPA.pdf> (last visited Jan. 25, 2022).

¹⁴ Section 20.04, F.S., specifies the structure of the executive branch of state government.

- Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to the act by general or special law or existing judicial decisions.¹⁵

Use of Electronic Media and Public Meetings

Section 120.54(5)(b)2, F.S., requires the Administration Commission¹⁶ to create uniform rules of procedure for state agencies to use when conducting public meetings, hearings or workshops, including procedures for conducting meetings in person and by means of communications media technology.¹⁷ Unless otherwise authorized by the Legislature, these procedures for communications media technology apply only to state agencies and not to local boards or commissions.

The Office of Attorney General has opined that only state agencies can conduct meetings and vote via communications media technology, thus rejecting a school board's request to conduct board meetings via electronic means.¹⁸ The Attorney General reasoned that s. 120.54(5)(b)2, F.S., limits its terms only to uniform rules that apply to state agencies.¹⁹ The Attorney General reasoned that a similar rationale is not applicable to local boards and commissions even though it may be convenient and save money since the representation on these boards and commissions are local thus, "such factors would not by themselves appear to justify or allow the use of electronic media technology in order to assemble the members for a meeting."²⁰

Local entities authorized under current law to conduct meetings and vote by means of communications media technology include regional planning councils (RPCs)²¹ and certain entities created by an interlocal agreement.²²

¹⁵ The definition of agency does not include a municipality or legal entity created solely by a municipality and expressly excludes certain legal entities or organizations found in chs. 343, 348, and 361, F.S., and ss. 339.175 and 163.01(7), F.S.

¹⁶ Section 14.202, F.S. The Administration Commission is composed of the Governor and the Cabinet (The Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture compose the Cabinet. Section 20.03(1), F.S.).

¹⁷ Section 120.54(5)(b)2, F.S. The term "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

¹⁸ Op. Att'y Gen. Fla. 98-28 (1998).

¹⁹ *Id.* The Attorney General explained that "allowing state agencies and their boards and commissions to conduct meetings via communications media technology under specific guidelines recognizes the practicality of members from throughout the state participating in meetings of the board or commission."

²⁰ *Id.* However, if a quorum of a local board is physically present at the public meeting, a board may allow a member who is unavailable to physically attend the meeting due to extraordinary circumstances such as illness, to participate and vote at the meeting via communications media technology.

²¹ Section 120.525(4), F.S. Chapter 186, F.S., finds that RPCs are comprehensive planning districts of the state, designated as the primary organization to address problems and plan solutions that are of greater-than-local concern or scope and recognized as Florida's multipurpose regional entities in a position to plan for and coordinate intergovernmental solutions to growth-related problems. By statute, the state is divided into 10 RPC regions. Each county must be a member of their respective RPC and municipalities may be members at their option.

²² Section 163.01(18), F.S. (Allowing public agencies located in at least five counties, of which at least three are not contiguous, to conduct public meetings and workshops by means of communications media technology).

Resilience-related Advisory Committees

In 2021, the Legislature authorized the Department of Environmental Protection (DEP), subject to specific legislative appropriation, to provide funding to regional resilience entities that are established by general purpose local governments and whose responsibilities include planning for the resilience needs of communities and coordinating intergovernmental solutions to mitigate adverse impacts of flooding and sea level rise.²³ The DEP is authorized to provide funding to regional resilience entities for the following purposes:

- Providing technical assistance to counties and municipalities.
- Coordinating multijurisdictional vulnerability assessments.
- Developing project proposals to be submitted for inclusion in the statewide resilience plan.²⁴

Local governments who apply for inclusion as a regional resilience entity must have a memorandum of understanding between the members of the entity, or an equivalent, to be eligible to apply.²⁵ According to DEP, seven regional resilience entities have applied for funding from the DEP.

Florida's local governments are at the forefront of preparing for and addressing flooding and sea level rise.²⁶ Generally, every community will need to go through a process of planning and implementing adaptation strategies and projects.²⁷ Florida's coastal local governments must have a coastal management element in their comprehensive plans which advances objectives to protect public safety and coastal resources.²⁸

Many local governments in the state have worked together to form regional resilience entities that vary in size and distance between member governments. Examples of regional resilience entities²⁹ that exist across the state include the Southeast Florida Regional Climate Change

²³ Section 380.093(6), F.S.

²⁴ Section 380.093(6), F.S.

²⁵ See DEP, Office of Resilience & Coastal Protection, *Resilient Florida*, available at <https://frcp.secure-platform.com/a> (last visited Jan. 25, 2022).

²⁶ See DEP, *Florida Adaptation Planning Guidebook*, at I, available at <https://floridadep.gov/sites/default/files/AdaptationPlanningGuidebook.pdf> (last visited Jan. 25, 2022).

²⁷ See DEP, *Florida Resilient Coastlines Program - Grants*, <https://floridadep.gov/rcp/florida-resilient-coastlines-program/content/florida-resilient-coastlines-program-funded> (last visited Jan. 25, 2022).

²⁸ Sections 380.24, 163.3177(6)(g), and 163.3178(2), F.S. Section 380.24, F.S., provides the description of which local governments are subject to these requirements: “[u]nits of local government abutting the Gulf of Mexico or the Atlantic Ocean, or which include or are contiguous to waters of the state where marine species of vegetation listed by rule as ratified in s. 373.4211 constitute the dominant plant community...”

²⁹ DEP, *Resilient Florida Grant Program Webinar Presentation*, available at <http://publicfiles.dep.state.fl.us/CAMA/FRCP/Resilient%20Florida%207.14.21%20Resources/Resilient%20Florida%20Grant%20Program%20Webinar%20Presentation%20-%20July%2014,%202021.pdf> (last visited Jan. 25, 2022).

Compact,³⁰ East Central Florida Regional Resilience Collaborative,³¹ and the Tampa Bay Regional Resiliency Coalition.³²

The majority of these type of entities follow the boundaries of Florida's RPCs and are often coordinated by the respective RPC. While membership is typically coordinated through county boundaries, resilience entities often seek out member partners from municipalities within the geographic region, as well as businesses, universities, and non-profit organizations.³³ Members of the entities often meet to enact compacts relating to the region's approach to resilience.

Southeast Florida Regional Climate Change Compact

The Southeast Florida Regional Climate Change Compact is a longstanding partnership between Broward, Miami-Dade, Monroe, and Palm Beach Counties executed in January 2010. This entity was formed to engage regional partners to work collaboratively to reduce regional greenhouse gas emissions, implement adaptation strategies, and build climate resilience within member communities and across the Southeast Florida region. Since its inception, the Compact counties have collaborated on mitigation and adaptation strategies, worked to build bipartisan support for climate action, and forged partnerships with stakeholders, including federal, state, and municipal governments and agencies; economic development entities; community-based organizations; and the academic community.³⁴

III. Effect of Proposed Changes:

SB 690 amends s. 286.011, F.S., to authorize resilience-related advisory committees whose membership is composed solely of representatives of four or more counties, when there is at least 200 miles of geographic distance between the county seats of the two most distant counties to conduct public meetings and workshops by means of communications media technology pursuant to the rules of the Administrative Procedures Act. Of the seven regional resilience entities that have applied for funding from DEP, this bill appears to currently apply only to the Southeast Florida Regional Climate Change Compact.

The bill provides that an advisory committee member who participates in a meeting or workshop by means of communications media technology is deemed to be present at such meeting. The bill

³⁰ Southeast Florida Regional Climate Change Compact, *About the Compact*, available at <https://southeastfloridaclimatecompact.org/> (last visited Jan. 25, 2022).

³¹ In 2018, the East Central Florida Regional Planning Council adopted a resolution to convene stakeholders across the region to develop a structure and framework for a regional resilience collaborative. Members include Lake, Orange, Osceola, Volusia, and Brevard counties and 22 member cities. See East Central Florida Regional Planning Council, *East Central Florida Regional Resilience Collaborative*, available at <https://www.ecfrpc.org/resiliencecollaborative> (last visited Jan. 25, 2022).

³² The Tampa Bay Regional Resiliency Coalition is comprised of members from Citrus, Hernando, Hillsborough, Manatee, Pasco and Pinellas counties and the 21 municipalities that come together to discuss complex regional issues; develop strategic regional responses for resolving them; and build consensus for setting and accomplishing regional goals. See Tampa Bay Regional Planning Council, *Tampa Bay Regional Resiliency Coalition*, available at <https://www.tbrpc.org/coalition/> (last visited Jan. 25, 2022).

³³ Tampa Bay Regional Planning Council, *Participate in the Tampa Bay Regional Resiliency Coalition*, available at <https://www.tbrpc.org/coalitionpartner/> (last visited Jan. 25, 2022).

³⁴ Southeast Florida Regional Climate Change Compact, *What is the Compact?*, available at <https://southeastfloridaclimatecompact.org/about-us/what-is-the-compact/> (last visited Jan. 25, 2022).

requires that communications media technology must allow for all persons attending such public meeting or workshop to audibly communicate, as would be allowed if they were physically present.

The bill states that notice for such a meeting or workshop must state whether it will be conducted using communications media technology, how an interested person may participate, and the locations of any facilities where communications media technology will be available.

Additionally it clarifies that other public meetings laws must be liberally construed for such meetings.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Authorizing resilience-related advisory committees to use communication media technology for meeting purposes may save on travel time and cost for these entities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 286.011 of the 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.