

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 Governmental Oversight and Accountability

BILL: SB 894

INTRODUCER: Senator Bradley

SUBJECT: Governing Body Meetings

DATE: February 5, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 894 allows a municipality's governing body to convene meetings and conduct official business via teleconferencing or other technological means two times per calendar year as long as such meetings meet all the requirements of public notice, public access, and public participation.

Meetings that include formal actions on ordinances or are quasi-judicial may not be conducted via teleconferencing or other technological means.

The limitations placed on meetings conducted via teleconferencing relating to public notice, access, and participation may be suspended upon the declaration of a state of emergency issued by the Governor.

There is no impact state revenues and expenditures, but the bill may have an insignificant, indeterminate impact on local government expenditures relating to the implementation of meetings technology. See Section V.

The bill takes effect July 1, 2024.

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 reasonable 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

¹ FLA CONST., art. I, s. 24(b).

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 Public policy regarding access to government meetings is also addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,” or the “Sunshine Law,” requires all meetings of any board or commission of any state agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken must be open to the public at all times.⁴ The governing board or commission must provide the public reasonable notice of such meetings.⁵

Members of the public must be given a reasonable opportunity to be heard on a proposition before a board or commission, with certain exceptions,⁶ including certain emergency situations affecting the public health, welfare, or safety of citizens and official acts that are no more than a ministerial.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

Use of Electronic Media and Public Meetings

Section 120.54(5)(b)2, F.S., authorizes state agencies to conduct public meetings via communications media technology¹² provided that the board complies with uniform rules of procedure¹³ adopted by the state Administration Commission.¹⁴ These rules contain notice requirements and procedures for providing points of access to the public. For example, a body subject to public meetings laws that will conduct its meeting exclusively using communications media technology must provide a means for a member of the public to attend, which must

² *Id.*

³ *Id.* 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.”

⁴ Section 286.011(1)-(2), F.S.

⁵ *Id.*

⁶ Section 286.0114(2), F.S.

⁷ Section 286.0114(3), F.S.

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 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.

¹³ Rule 28-109, F.A.C.

¹⁴ *See* Op. Att’y Gen. Fla. 98-28 (1998). The Administration Commission is composed of the Governor and the Cabinet (s. 14.202, F.S.) The Cabinet is composed of the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture compose the Cabinet (s. 20.03(1), F.S.).

include physical attendance if the available technology is insufficient to permit all interest persons to attend.¹⁵ The public access to the meeting must be provided via a “designated place where a person interested in attending a communications media technology proceeding may go for the purpose of attending the proceeding.”¹⁶

While state agencies may conduct meetings, hearings, or workshops by communications media technology, there is no similar statute providing such authorization for local governments.

Over the years, the Office of the Attorney General has opined on a number of questions relating to the use of communications media technology for local government meetings. The Attorney General has concluded that where a quorum of membership is required for a local body to discuss or transact relevant public business in a properly noticed public meeting, that quorum of members must be present physically at the meeting place in order to constitute a proper quorum.¹⁷

Most recently, during the COVID-19 pandemic, the Attorney General was presented with the question whether and to what extent local governments may utilize teleconferencing or other technological means to convene meetings and conduct official business.¹⁸ The Attorney General advised that local governments may only conduct meetings by teleconferencing or other technological means if either:

- A statute permits a quorum to be present by means other than in person; or
- The in-person requirement for constituting a quorum is lawfully suspended during a state of emergency.¹⁹

However, in such case, public access must be afforded which permits the public to attend the meeting, which public access may be provided by teleconferencing or technological means.²⁰

The Attorney General has also advised that if a quorum of a local board is physically present, “the participation of an absent member by telephone conference or other interactive electronic technology is permissible when such absence is due to extraordinary circumstances such as illness.”²¹

Additionally, the physical presence of a quorum has not been required where electronic media technology is used to allow public access and participation at workshop meetings where no formal action will be taken.²² For example, the Attorney General advised that airport authority members may conduct information discussions and workshops over the internet, provided proper notice is given, and interactive access by members of the public is provided.²³

¹⁵ See, Rule 28-109.004, F.A.C.

¹⁶ Rule 28-109.002(1), F.S.

¹⁷ Op. Att’y Gen. Fla. 2020-03 (2020).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Op. Att’y Gen. Fla 2003-41 (2003).

²² Office of the Attorney General, *Government-in-the-Sunshine Manual*, 39 (2023 ed.), .), available at <https://www.myfloridalegal.com/sites/default/files/2023-05/2023GovernmentInTheSunshineManual.pdf> (last visited Jan. 11, 2024).

²³ Op. Att’y Gen. Fla 2001-66 (2001). See *Id.*

Statutory Authorizations for Use of Communication Media Technology

There are instances in current law that expressly allow specified local entities to conduct public meetings via communications media technology with varying limitations. For example:

- A voting member of a regional planning council²⁴ that covers three or more counties may participate via telephone or videoconferencing to be counted towards a quorum, provided that at least one-third of the voting members are physically present at the meeting location.
- Certain entities created by interlocal agreement whereby the member agencies are located in at least five counties, of which three are not contiguous, may conduct public meetings and workshops by means of communications media technology.²⁵
- The Jacksonville Transit Authority may meet via communications media technology, however; a resolution, rule, or formal action is not binding unless a quorum is physically present at the noticed meeting location, and only members physically present may vote on any item.²⁶

Additionally, ch. 2017-214, Laws of Florida, authorizes the Monroe County School Board, Monroe County Commission, or any political subdivision thereof, to adopt rules and procedures for using communications media technology for meetings at which no final action is taken. Due to the length of the Florida Keys, Monroe County conducts physical meetings in three separate locations.²⁷ The highway connecting the Florida Keys spans 113 miles.²⁸

Municipal Governance

There are 411 municipalities in Florida, ranging in population from 8 to 924,900.²⁹ Just above 50 percent of Floridians live within the borders of a municipality.³⁰ The governing board of a municipality can have any number of members, whereby the smallest board has three members and the largest has 19.³¹ Ch. 166, F.S., governs the laws regarding municipalities.³²

Municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide municipal services, and

²⁴ Section 120.525(4), F.S. Pursuant to ch. 186, F.S., regional planning councils (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.

²⁵ Section 163.01(18), F.S.

²⁶ Section 349.04, F.S.

²⁷ See Monroe County Board of County Commissioners website, <https://www.monroecounty-fl.gov/1015/Board-of-County-Commissioners> (last visited Jan. 31, 2024).

²⁸ Miami Herald, *Driving down the Overseas Highway in the Florida Keys? What to know about your trip*, available at <https://www.miamiherald.com/news/local/community/florida-keys/article253285093.html> (last visited Jan. 12, 2024).

²⁹ Florida League of Cities, *Florida's Cities*, https://www.floridaleagueofcities.com/docs/default-source/resources/about-florida-cities5ff9bbc41a9e6c4e8be5ff0000e8da5f.pdf?sfvrsn=ba67d7d5_0 (last visited Jan 31, 2024).

³⁰ *Id.*

³¹ Florida League of Cities, *Florida Is Her Cities*, <https://floridaleagueofcities.com/docs/default-source/resources/yc-fun-facts-flyer-2019.pdf?> (last visited Jan. 31, 2024).

³² Section 166.011, F.S.

exercise any power for municipal purposes, except as otherwise provided by law.³³ The governing body of a municipality has broad “home rule” legislative powers to enact ordinances, local laws, to perform governmental functions and exercise power to promote the health, welfare, safety, and quality of life of a local government’s residents.

Municipalities must notice intent to consider an ordinance 10 days before adoption and read the ordinance by title or in full on at least two separate days before adoption by vote.³⁴ While law making is done through ordinances, municipalities also have public meetings for many informal actions as well. To conduct business a municipality must have a quorum physically present, and a quorum is typically a majority of members of a governing board.³⁵

While members of a municipal governing body must participate in a public meeting in person to take action on any item, some municipalities have adopted a hybrid meeting process to allow participants from the public to participate in meetings via teleconferencing.³⁶

Section 166.0213, F.S., provides specified allowances to municipalities regarding their public meetings. Small municipalities with less than 500 residents can hold meetings within 5 miles of the exterior jurisdictional boundary of the municipality under certain circumstances.³⁷ Additionally, municipalities may hold joint meetings to receive, discuss, and act upon matters of mutual interest with the governing body of the county where the municipality is located or the governing body of another municipality.³⁸

Quasi-Judicial Hearings

Municipalities also must convene quasi-judicial meetings when citizens challenge certain land use decisions. A quasi-judicial process is a meeting of the governing body where members can only consider the competent and substantial evidence before the board, and the matters function similar to a court proceeding.³⁹ The Sunshine Law does not allow governing boards to hold closed-door hearings or deliberations purely because the board is acting in a “quasi-judicial” capacity.⁴⁰

States of Emergency

The State Emergency Management Act, ch. 252, F.S., was enacted to be the legal framework for state emergency management activities, recognizing Florida’s vulnerability to a wide range of

³³ FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.

³⁴ Section 166.041(3)(a), F.S.

³⁵ Op. Att’y Gen. Fla. 2010-34 (2010).

³⁶ *See* Tampa City Council, *Quasi-Judicial and Legislative Virtual Meeting Information*, <https://www.tampa.gov/city-council/quasi> (last visited Jan. 31, 2024) and City of Lake Worth Beach, *Virtual Meetings*, <https://lakeworthbeachfl.gov/government/virtual-meetings/> (last visited Jan 31, 2024).

³⁷ Section 166.0213(1), F.S.

³⁸ Section 166.0213(2), F.S.

³⁹ City of North Miami, *Resident’s Guide to a Quasi-Judicial Process*, <https://www.northmiamifl.gov/960/Residents-Guide-to-a-Quasi-Judicial-Proc> (last visited Jan. 31, 2024).

⁴⁰ Office of the Attorney General, *Government-in-the-Sunshine Manual*, 36 (2023 ed.), <https://www.myfloridalegal.com/sites/default/files/2023-05/2023GovernmentInTheSunshineManual.pdf> (last visited Jan. 31, 2024).

emergencies, including natural, manmade, and technological disasters.⁴¹ In order to reduce Florida's vulnerability to these circumstances and to prepare to respond to them, the act promotes the state's emergency readiness through enhanced coordination, long-term planning, and adequate funding.⁴²

The act also delineates the Governor's authority to declare a state of emergency. When a state of emergency is issued, the Governor has the power to issue executive orders, proclamations and rules that have the force and effect of law.⁴³ In March 2020, during a state of emergency in response to the COVID-19 pandemic, the Governor issued an executive order suspending the requirement that a quorum be present in person and allowing local governments to meet via communications media technology, such as telephonic and video conferencing, as provided in s. 120.54(5)(b)2, F.S.⁴⁴

III. Effect of Proposed Changes:

The bill amends s. 166.0213, F.S., to allow the governing body of a municipality to convene meetings and conduct official business via teleconferencing or other technological means as long as such meetings meet all the requirements of public notice, public access, and public participation up to two times per calendar year.

The bill prohibits meetings that include formal actions on ordinances or are quasi-judicial from being conducted via teleconferencing or other technological means.

The bill explicitly allows for the suspension of the limitations placed on meetings conducted via teleconferencing relating to public notice, access, and participation upon the declaration of a state of emergency issued by the Governor pursuant to ch. 252, F.S., the State Emergency Act.

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

⁴¹ Section 252.311(1), F.S.

⁴² Section 252.311(2), F.S.

⁴³ Section 252.36(1)(b), F.S.

⁴⁴ Office of the Governor Executive Order 20-69, available at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-69.pdf (last visited Feb. 1, 2024).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill may allow, via declaration of a state of emergency, the waiver of constitutionally required open meetings provisions, such as the requirement to provide adequate public notice and access to the public meeting.⁴⁵ This is beyond the scope of current executive emergency powers, which include power to:

- Suspend the provisions of any regulatory statute which prescribes the procedures for conduct of state business or the orders or rules of any state agency;⁴⁶
- Commandeer or use any private property necessary to cope with the emergency, subject to compensation;⁴⁷
- Direct and compel evacuation from any stricken or threatened area within the state for the preservation of life or other emergency mitigation, response, or recovery;⁴⁸
- Suspend or limit the sale of alcoholic beverages, firearms, explosives, and combustibles;⁴⁹ and
- Take measures concerning civilian conduct, the movement and cessation of movement of pedestrian and vehicular traffic, the calling of public meetings and gatherings, and the evacuation and reception of civilian population.⁵⁰

This provision would require a two-thirds vote of the Legislature to implement an exemption to public meetings requirements pursuant to article I, s. 24 of the Florida Constitution.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

⁴⁵ See, FLA. CONST. art. I, s. 24; *Frankenmuth Mutual Ins. Co. v. Magaha*, 769 So. 2d 1012, 1021 (Fla. 2000).

⁴⁶ Section 252.36(5)(a), F.S.

⁴⁷ Section 252.36(5)(d), F.S.

⁴⁸ Section 252.36(5)(e), F.S.

⁴⁹ Section 252.36(5)(h), F.S.

⁵⁰ Section 252.36(5)(j), F.S.

C. Government Sector Impact:

Municipal governments that wish to conduct public meetings via teleconferencing or other technological means may be required to spend additional funds to implement appropriate technology to allow for public attendance procedures required by law and rule.

VI. Technical Deficiencies:

The bill sponsor may wish to specify what entity (the Governor, the municipality, or another) may suspend, as a result of a declaration of a state of emergency, the limitations on municipal meetings that occur via teleconferencing or other technological means. Alternatively, the bill could specify that the provisions must be specifically waived in the declaration of a state of emergency.

The bill sponsor may also wish to limit the duration of the waiver to a specified time frame, rather than the duration of the state of emergency. Declarations of states of emergency often extend well past the catastrophe itself. For example, the Governor issued on January 4, 2024, the most recent extension of the declaration of a state of emergency for Hurricane Ian, which made landfall in Fort Myers, Florida on September 28, 2022.⁵¹

VII. Related Issues:

A municipality may be able to use a declaration of a state of emergency, the basis of which does not actually impact the municipality, to avoid the limits the bill places on teleconferencing meetings or meetings that meet using other technological-means. The sponsor may wish to require that the state of emergency impact the municipality in which the meeting will occur.

VIII. Statutes Affected:

This bill substantially amends section 166.0213 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.

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

⁵¹ Fla. Exec. Order No. 24-02 (Jan. 4, 2023), <https://www.flgov.com/wp-content/uploads/2024/01/EO-24-02.pdf> (last visited Feb. 2, 2024).