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# **Government Operations Subcommittee**

**Wednesday, November 16, 2011  
1:30 PM  
306 HOB**

# **Meeting Packet**

**Dean Cannon  
Speaker**

**Jimmy Patronis  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Government Operations Subcommittee

**Start Date and Time:** Wednesday, November 16, 2011 01:30 pm  
**End Date and Time:** Wednesday, November 16, 2011 03:30 pm  
**Location:** 306 HOB  
**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

HB 75 Freeholder Voting by Davis  
HB 231 Intergovernmental Cooperation by Horner  
HB 351 Public Records by Moraitis

**NOTICE FINALIZED on 11/09/2011 16:01 by Love.John**



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 75 Freeholder Voting  
SPONSOR(S): Davis  
TIED BILLS: IDEN./SIM. BILLS: CS/SB 116

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Naf <i>ln</i>	Williamson <i>Law</i>
2) Community & Military Affairs Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

A freeholder election is an election in which only qualified electors who own land in the jurisdiction may vote. Current law requires each freeholder voting in a freeholder election to submit an affidavit made before an inspector affirming that he or she is a freeholder who is a qualified elector residing in the county, district, or municipality in which the election or referendum is to be held.

This bill provides an alternative to the current freeholder's affidavit requirement by also allowing a freeholder to submit a written declaration, which does not require notarization. The bill also makes it a third degree felony for any person to knowingly make a false written declaration affirming freeholder status.

The bill provides an effective date of July 1, 2012.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Freeholder Elections

A freeholder election is an election in which only qualified electors<sup>1</sup> who own land in the jurisdiction may vote.<sup>2</sup> Typically, freeholder elections concern bond issuance, district creation, and officer selection in counties, municipalities, and special districts. Some issues for which freeholder elections are held in Florida are:

- Issuance by a county, school district, municipality, special district or local governmental body with taxing powers of local bonds to finance or refinance capital projects;<sup>3</sup>
- Issuance by a county of general obligations bonds;<sup>4</sup>
- Issuance by a county of bonds to build bridges over navigable streams;<sup>5</sup>
- Creation of a water or sewer district in unincorporated areas;<sup>6</sup>
- Issuance of bonds for a water or sewer district;<sup>7</sup> and
- Creation of a special neighborhood improvement district.<sup>8</sup>

By statute, "each registered elector who makes a sworn affidavit of ownership to the inspectors, giving either a legal description, address, or location of property in the elector's name which is not wholly exempt from taxation shall be ... considered a freeholder."<sup>9</sup> Currently, each freeholder voting in a freeholder election must submit an affidavit made before an inspector affirming that he or she is a freeholder who is a qualified elector residing in the county, district, or municipality in which the election or referendum is to be held.<sup>10</sup> Compliance with the notarization requirement may be difficult for an active duty military freeholder or other Uniformed and Overseas Citizens Absentee Voting Act freeholder.<sup>11</sup>

##### Verification of Documents

Section 92.525, F.S., provides two processes for document verification that is authorized or required by law, by rule of an administrative agency, or by rule or order of court:

- By oath or affirmation before an authorized officer, or
- By the signing of a written declaration.

The form of the written declaration is specified as follows:

A written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed

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<sup>1</sup> Required qualifications for electors are set out in s. 97.041, F.S., and include, but are not limited to, age, citizenship, and residency requirements.

<sup>2</sup> See s. 100.241, F.S.

<sup>3</sup> Art. VII, s. 12, Fla. Const.

<sup>4</sup> Section 153.07, F.S.

<sup>5</sup> Section 130.18, F.S.

<sup>6</sup> Section 153.53, F.S.

<sup>7</sup> Section 153.56, F.S.

<sup>8</sup> Section 163.511, F.S.

<sup>9</sup> Section 100.241(3), F.S.

<sup>10</sup> Section 100.241(2), F.S.

<sup>11</sup> The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) (42 U.S.C. 1973ff-6) provides that UOCAVA citizens are U.S. citizens who are active members of the Uniformed Services, the Merchant Marine, and the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration, their family members, and U.S. citizens residing outside the United States.

by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.<sup>12</sup>

A person who knowingly makes a false written declaration commits perjury by false written declaration, a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.<sup>13</sup>

### **Effect of Proposed Changes**

This bill provides an alternative to the current freeholder's affidavit requirement by also allowing a freeholder to submit a written declaration as provided in s. 92.525, F.S. It also provides that a person who makes a false written declaration commits perjury by false written declaration, a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 100.241, F.S., relating to freeholder voting.

Section 2 provides an effective date of July 1, 2012.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **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:**

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<sup>12</sup> Section 92.525(2), F.S.

<sup>13</sup> Section 92.525(3), F.S. Sections 775.082, 775.083, and 775.084, F.S., specify penalties, including terms of imprisonment and fines, for felony offenders.

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This 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:

Under section 5 of the Voting Rights Act,<sup>14</sup> new legislation that implements a voting change, including but not limited to, a change in the manner of voting, change in candidacy requirements and qualifications, change in the composition of the electorate that may vote for a candidate, or change affecting the creation or abolition of an elective office, is subject to preclearance by the U.S. Department of Justice. The preclearance review is to determine if the change has a discriminatory purpose or effect that denies or abridges the right to vote on account of race, color or membership in a language minority group in a covered jurisdiction. Florida has five covered jurisdictions subject to preclearance: Collier, Hardee, Hendry, Hillsborough, and Monroe. If the Attorney General objects to the voting change, the legislation is unenforceable.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that any person who makes a false written declaration commits perjury by false written declaration and, is guilty of a third degree felony. The same penalty is already provided in s. 92.525(3), F.S., for anyone who knowingly makes a false declaration under the statute. Therefore, the penalty provision provided in the bill appears to be duplicative.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

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<sup>14</sup> 42 U.S.C. 1973aa-6.

HB 75

2012

1                   A bill to be entitled  
 2           An act relating to freeholder voting; amending s.  
 3           100.241, F.S.; permitting the submission of a written  
 4           declaration to establish that an elector is a  
 5           freeholder and qualified to vote in an election or  
 6           referendum limited to freeholders who are qualified to  
 7           vote; providing penalties; providing an effective  
 8           date.

9  
 10   Be It Enacted by the Legislature of the State of Florida:

11  
 12           Section 1.   Section 100.241, Florida Statutes, is amended  
 13   to read:

14           100.241   Freeholder voting; election; penalties for  
 15   ineligible persons who vote as freeholders.-

16           (1)   In any election or referendum in which only electors  
 17   who are freeholders are qualified to vote, the regular  
 18   registration books covering the precincts located within the  
 19   geographical area in which the election or referendum is to be  
 20   held shall be used.

21           (2)   Qualification and registration of electors  
 22   participating in a freeholder ~~such an~~ election or referendum  
 23   subject to this section shall be the same as prescribed for  
 24   voting in other elections under this code, and, in addition,  
 25   each such elector shall submit proof by affidavit made before an  
 26   inspector, or submit a written declaration as provided in s.  
 27   92.525, that the elector is a freeholder who is a qualified  
 28   elector residing in the county, district, or municipality in



29 | which the election or referendum is to be held.

30 |       (3) Each registered elector who makes a sworn affidavit of  
 31 | ownership to the inspectors, or submits a written declaration as  
 32 | provided in s. 92.525, giving either a legal description,  
 33 | address, or location of property in the elector's name which is  
 34 | not wholly exempt from taxation ~~is shall be~~ entitled to vote in  
 35 | the election or referendum and ~~is shall be~~ considered a  
 36 | freeholder.

37 |       (4) The actual costs of conducting a freeholder ~~such~~  
 38 | ~~freeholders'~~ election or referendum subject to this section  
 39 | shall be paid by the county, district, or municipality requiring  
 40 | the election or referendum ~~same to be held~~.

41 |       (5) ~~A It is unlawful for any person~~ may not ~~to~~ vote in any  
 42 | county, district, or other election or referendum which is  
 43 | limited to a vote of the electors who are freeholders, unless  
 44 | the ~~such~~ person is a freeholder and a qualified elector. A Any  
 45 | person who violates ~~the provisions of~~ this subsection commits is  
 46 | ~~guilty of~~ a misdemeanor of the first degree, punishable as  
 47 | provided in s. 775.082 or s. 775.083.

48 |       (6) A person who knowingly makes a false written  
 49 | declaration as provided in subsection (2) commits perjury by  
 50 | false written declaration, a felony of the third degree,  
 51 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

52 |       Section 2. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 75 (2012)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Committee/Subcommittee hearing bill: Government Operations  
2 Subcommittee

3 Representative Davis offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove lines 25-51 and insert:

7 each such elector shall submit a written declaration, verified  
8 pursuant to s. 92.525, affirming proof by affidavit made before  
9 ~~an inspector~~ that the elector is a freeholder who is a qualified  
10 elector residing in the county, district, or municipality in  
11 which the election or referendum is to be held.

12 (3) Each registered elector who submits the written  
13 declaration ~~makes a sworn affidavit of ownership to the~~  
14 ~~inspectors,~~ giving either a legal description, address, or  
15 location of property in the elector's name which is not wholly  
16 exempt from taxation is ~~shall be~~ entitled to vote in the  
17 election or referendum and is ~~shall be~~ considered a freeholder.

18 (4) The actual costs of conducting a freeholder such  
19 ~~freeholders'~~ election or referendum subject to this section

Amendment No.

20 shall be paid by the county, district, or municipality requiring  
21 the election or referendum ~~same to be held~~.

22 (5) A ~~It is unlawful for any person~~ may not ~~to~~ vote in any  
23 county, district, or other election or referendum which is  
24 limited to a vote of the electors who are freeholders, unless  
25 the ~~such~~ person is a freeholder and a qualified elector. A ~~Any~~  
26 person who violates ~~the provisions of~~ this subsection commits ~~is~~  
27 ~~guilty of~~ a misdemeanor of the first degree, punishable as  
28 provided in s. 775.082 or s. 775.083.  
29  
30  
31

32 -----  
33 **T I T L E A M E N D M E N T**

34 Remove lines 3-7 and insert:

35 100.241, F.S.; deleting the current process and creating a new  
36 process by which an elector may establish that he or she is a  
37 freeholder and qualified to vote in an election or referendum  
38 limited to freeholders who are qualified to vote; providing an  
39 effective  
40



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 231 Intergovernmental Cooperation

SPONSOR(S): Horner

TIED BILLS: IDEN./SIM. BILLS: SB 396

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Thompson	Williamson <i>AW</i>
2) Community & Military Affairs Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Currently, state agencies are authorized to conduct public meetings, hearings, and workshops by means of "communications media technology." No such authorization exists for local governmental entities, including separate legal entities created by an interlocal agreement.

The bill authorizes a separate legal entity that administers or executes an interlocal agreement, with member public agencies located in at least 10 counties, to conduct public meetings and workshops by means of communications media technology. It provides that participation by an officer, board member, or other representative of a member public agency in a meeting or workshop conducted through communications media technology constitutes that individual's presence at such meeting or workshop.

The bill defines the term "communications media technology" as a conference telephone, a video conference, or other communications technology by which all persons attending a public meeting or workshop may audibly communicate.

The bill requires the notice for any such meeting or workshop to state that the meeting or workshop will be conducted through the use of communications media technology, specify how persons interested in attending may do so, and provide a location where communications media technology facilities are available.

The bill does not have a fiscal impact on state government. It may have a fiscal impact on local governments. See Fiscal Comments section for further details.

The bill provides an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Open Meetings Laws

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 the executive branch and local government be open and noticed to the public.

Public policy regarding access to public meetings is addressed further in the Florida Statutes. The Sunshine Law<sup>1</sup> requires that all meetings of a public board or commission be open to the public.<sup>2</sup> Reasonable notice of such meetings must be provided.<sup>3</sup>

For a meeting or hearing where notice is required, the notice must include the advice that:

If a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The requirements of this section do not apply to the notice provided in s. 200.065(3).<sup>4</sup>

##### The Administrative Procedure Act

The Administrative Procedure Act<sup>5</sup> requires the Administration Commission to adopt uniform rules of procedure. The uniform rules of procedure, which are to be used by each state agency, must provide procedures for conducting public meetings, hearings, and workshops, in person and by means of communications media technology. "Communications media technology" is defined as the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.<sup>6</sup>

If a public meeting, hearing, or workshop is conducted by means of communications media technology, or if attendance may be provided by such means, the public notice must state how persons may attend and name locations where communications media technology facilities will be available.<sup>7</sup>

The uniform rules of procedure for conducting public meetings, hearings, and workshops, in person and by means of communications media technology, may not be construed to diminish the right to inspect public records under chapter 119, F.S. Limiting points of access to public meetings, hearings and workshops subject to the provisions of the Sunshine Law to places not normally open to the public is

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<sup>1</sup> See s. 286.011, F.S.

<sup>2</sup> Section 286.011(1), F.S., specifically states:

All meetings of any board or commission of a state agency or authority, or of an agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the State Constitution, at which official acts are to be taken, are declared to be public meetings open to the public at all times, and no resolution, rule or formal action is considered binding except as taken or made at such meeting.

<sup>3</sup> Section 286.011(1), F.S.

<sup>4</sup> Section 286.0105, F.S.

<sup>5</sup> See Chapter 120, F.S.

<sup>6</sup> See s. 120.54(5)(b)2., F.S.

<sup>7</sup> *Id.*

presumed to violate the right of access of the public, and any official action taken under such circumstances is void and of no effect.<sup>8</sup>

### Interlocal Agreements

The Florida Interlocal Cooperation Act of 1969 (Act)<sup>9</sup> authorizes public agencies<sup>10</sup> to exercise jointly, by contract in the form of an interlocal agreement, any power, privilege, or authority shared by those agencies in order to more efficiently provide services and facilities.<sup>11</sup> An interlocal agreement may provide for a separate legal or administrative entity to administer or execute the agreement, which may be a commission, board, or council constituted pursuant to the agreement.<sup>12</sup>

A separate legal or administrative entity created by an interlocal agreement is authorized to:

- Make and enter into contracts;
- Employ agencies or employees;
- Acquire, construct, manage, maintain, or operate buildings, works, or improvements;
- Acquire, hold, or dispose of property; and
- Incur debts, liabilities, or obligations which do not constitute the debts, liabilities, or obligations of any of the parties to the agreement.<sup>13</sup>

Florida courts have held that the Sunshine Law extends to discussions and deliberations as well as formal actions taken by a public board or commission.<sup>14</sup> Consequently, meetings of a separate legal or administrative entity and its governing board are subject to Florida's public meetings requirements.<sup>15</sup> The Act does not include an authorization to conduct public meetings, hearings, or workshops by means of communications media technology.

### **Effect of Proposed Changes**

The bill authorizes a separate legal entity created under the Florida Interlocal Cooperation Act of 1969 (Act), with member public agencies located in at least 10 counties, to conduct public meetings and workshops by means of communications media technology. The bill defines the term "communications media technology" as a conference telephone, video conference, or other communications technology by which all persons attending a public meeting or workshop may audibly communicate.

The bill requires the notice for any such public meeting or workshop to:

- State that the meeting or workshop will be conducted through the use of communications media technology;
- Specify how persons interested in attending may do so; and
- Provide a location where communications media technology facilities are available.

The bill provides that participation by an officer, board member, or other representative of a member public agency in a meeting or workshop conducted through communications media technology constitutes that individual's presence at such meeting or workshop. As such, members of the separate

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<sup>8</sup> *Id.*

<sup>9</sup> *See* s. 163.01, F.S.

<sup>10</sup> Section 163.01(3)(b), F.S., defines a public agency as:

A political subdivision, agency, or officer of this state or of any state of the United States, including, but not limited to, state government, county, city, school district, single and multipurpose special district, single and multipurpose public authority, metropolitan or consolidated government, a separate legal entity or administrative entity, an independently elected county officer, any agency of the United States Government, a federally recognized Native American tribe, and any similar entity of any other state of the United States.

<sup>11</sup> Section 163.01(4) and (5), F.S.

<sup>12</sup> Section 163.01(7)(a), F.S.

<sup>13</sup> Section 163.01(7)(b), F.S.

<sup>14</sup> *Hough v. Stembriage*, 278 So. 2d 288 (Fla. 3d DCA 1973) (Sunshine Law applies to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter upon which foreseeable action will be taken by the board or commission).

<sup>15</sup> Florida Attorney General Opinion 82-66.

legal entity would no longer be required to be physically present at meetings or workshops in order to meet quorum requirements. This could allow a quorum to be obtained more readily, allowing for greater efficiency and ease of operations for such entity conducting business.

**B. SECTION DIRECTORY:**

Section 1 amends s. 163.01, F.S., to authorize certain separate legal entities created, under the Florida Interlocal Cooperation Act of 1969, to conduct public meetings and workshops by means of communications media technology.

Section 2 provides an effective date of July 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

Indeterminate. See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

An individual's expenses associated with travelling to the meetings may be reduced or eliminated; however, an individual who cannot travel and who does not have the appropriate communications media technology would be impaired from attending the public meeting.

**D. FISCAL COMMENTS:**

The bill may reduce or eliminate travel and per diem expenses for members of the separate legal entity due to the use of communications media technology; however, the requirement to provide a location where communications media technology is available to the public may create an expense.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures 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:

Section 24 (b), Art. 1 of the State Constitution, states:

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, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

The Office of the Attorney General (OAG) has issued numerous opinions regarding the participation of local governmental board members in public meetings through use of telecommunications media and the compliance of such meetings with Florida's public meetings laws. In one opinion, the OAG concluded that a county commissioner who was physically unable to attend a commission meeting because of medical treatment could participate in the meeting by using an interactive video and telephone system that allowed her to see the other members of the board and the audience at the meeting and that allowed the board and audience to see her. The opinion recognized that s. 125.001, F.S., required that meetings of the county commission be held in a public place in the county but noted that a quorum of the members of the county commission would be present at the public place.<sup>16</sup> A similar conclusion was reached in a later opinion, which stated a district school board could use electronic media technology in order to allow a physically absent member to attend a public meeting if a quorum of the members of the board was physically present at the meeting site.<sup>17</sup>

However, in general, the OAG has displayed a reluctance to allow members of local boards or commissions to use telecommunications media:

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. While the convenience and cost savings of allowing members from diverse geographical areas to meet electronically might be attractive to a local board or commission such as a school board, the representation on a school board is local and 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.<sup>18</sup>

The OAG has argued that a concern about the validity of official actions taken by a public body when less than a quorum is present requires a very conservative reading of the statutes. Thus, the OAG has concluded that, in the absence of a statute to the contrary, a quorum of the members must be physically present at a meeting in order to take action.<sup>19</sup> To further this point, in 2009, the OAG provided that "the legislative requirement of a quorum and the designation of the number required to constitute a quorum argues for the physical presence of that number of board members at a meeting."<sup>20</sup>

### B. RULE-MAKING AUTHORITY:

None.

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<sup>16</sup> Florida Attorney General Opinion 92-44.

<sup>17</sup> Florida Attorney General Opinion 98-28.

<sup>18</sup> *Id.*

<sup>19</sup> Florida Attorney General Opinions 83-100 and 89-39 quoting 62 C.J.S. Municipal Corporations s. 399, p. 757, which provides: "In order to constitute a quorum the requisite number of members must be actually present at the meeting and the requisite number cannot be made up by telephoning absent members and obtaining their vote over the telephone."

<sup>20</sup> Florida Attorney General Opinion 09-56.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

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A bill to be entitled  
 An act relating to intergovernmental cooperation;  
 amending s. 163.01, F.S.; authorizing certain parties  
 to an interlocal agreement to conduct public meetings  
 and workshops by means of communications media  
 technology; providing notice requirements; providing a  
 definition; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (18) is added to section 163.01,  
 Florida Statutes, to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(18) Any separate legal entity created under subsection  
(7) that has member public agencies located in at least 10  
counties may conduct public meetings and workshops by means of  
communications media technology. The notice for any such public  
meeting or workshop shall state that the meeting or workshop  
will be conducted through the use of communications media  
technology; specify how persons interested in attending may do  
so; and provide a location where communications media technology  
facilities are available. The participation by an officer, board  
member, or other representative of a member public agency in a  
meeting or workshop conducted through communications media  
technology constitutes that individual's presence at such  
meeting or workshop. As used in this subsection, the term  
"communications media technology" means conference telephone,  
video conference, or other communications technology by which

HB 231

2012

29 all persons attending a public meeting or workshop may audibly  
30 communicate.

31 Section 2. This act shall take effect July 1, 2012.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 351 Public Records  
SPONSOR(S): Moraitis, Jr.  
TIED BILLS: IDEN./SIM. BILLS: SB 570

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Williamson <i>raw</i>	Williamson <i>raw</i>
2) State Affairs Committee			

SUMMARY ANALYSIS

Current law provides several public record exemptions for the identity of a donor or prospective donor to an organization who wishes to remain anonymous. Examples include the Cultural Endowment Program, the direct support organization for the Florida Agricultural Museum, and the direct support organization for the John and Mable Ringling Museum of Art.

The bill creates a public record exemption for the identity of a donor or prospective donor to a publicly owned performing arts center who desires to remain anonymous. It provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it 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.
- Protects trade or business secrets.

###### Public Record Exemptions, Donor Information

Current law provides several public record exemptions for the identity of a donor or prospective donor to an organization who wishes to remain anonymous. Examples include the Cultural Endowment Program,<sup>3</sup> the direct support organization for the Florida Agricultural Museum,<sup>4</sup> and the direct support organization for the John and Mable Ringling Museum of Art.<sup>5</sup>

###### Performing Arts Centers

Florida has many performing arts centers in every region of the state. Their ownership, management, and financing vary.<sup>6</sup>

##### **Effect of Bill**

The bill creates a public record exemption for the identity of a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center who desires to remain anonymous. Information that would identify the name, address, or telephone number of the donor or prospective donor is confidential and exempt<sup>7</sup> from public records requirements.

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Section 265.605(2), F.S.

<sup>4</sup> Section 570.903(6), F.S.

<sup>5</sup> Section 1004.45(2)(h), F.S.

<sup>6</sup> See <http://funandsun.com/1toctf/artf/perfs.html> for an unofficial list.

<sup>7</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by

The bill defines "publicly owned performing arts center" to mean

[A] facility consisting of at least 200 seats, owned and operated by a county, municipality, or special district, which is used and occupied to promote development of any or all of the performing, visual, or fine arts or any or all matters relating thereto and to encourage and cultivate public and professional knowledge and appreciation of the arts.

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>8</sup>

**B. SECTION DIRECTORY:**

Section 1 creates an unnumbered section law to create a public record exemption for publicly owned performing arts centers.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of October 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**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:**

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the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985).

<sup>8</sup> Section 24(c), Art. I of the State Constitution.



1. Applicability of Municipality/County Mandates Provision:

Not applicable. This 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:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

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A bill to be entitled  
 An act relating to public records; defining the term  
 "publicly owned performing arts center"; creating an  
 exemption from public records requirements for  
 information that identifies a donor or prospective  
 donor of a donation made for the benefit of a publicly  
 owned performing arts center if the donor desires to  
 remain anonymous; providing for future legislative  
 review and repeal of the exemption under the Open  
 Government Sunset Review Act; providing a statement of  
 public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Confidentiality of certain donor information  
 related to a publicly owned performing arts center.-

(1) As used in this section, the term "publicly owned  
 performing arts center" means a facility consisting of at least  
 200 seats, owned and operated by a county, municipality, or  
 special district, which is used and occupied to promote  
 development of any or all of the performing, visual, or fine  
 arts or any or all matters relating thereto and to encourage and  
 cultivate public and professional knowledge and appreciation of  
 the arts.

(2) If a donor or prospective donor of a donation made for  
 the benefit of a publicly owned performing arts center desires  
 to remain anonymous, information that would identify the name,  
 address, or telephone number of that donor or prospective donor

29 is confidential and exempt from s. 119.07(1), Florida Statutes,  
 30 and s. 24(a), Article I of the State Constitution.

31 (3) This section is subject to the Open Government Sunset  
 32 Review Act in accordance with s. 119.15, Florida Statutes, and  
 33 shall stand repealed on October 2, 2017, unless reviewed and  
 34 saved from repeal through reenactment by the Legislature.

35 Section 2. The Legislature finds that it is a public  
 36 necessity that information that would identify the name,  
 37 address, or telephone number of a donor or prospective donor of  
 38 a donation made for the benefit of a publicly owned performing  
 39 arts center be made confidential and exempt from public records  
 40 requirements if such donor or prospective donor desires to  
 41 remain anonymous. In order to encourage private support for  
 42 publicly owned performing arts centers, it is a public necessity  
 43 to promote the giving of gifts to, and the raising of private  
 44 funds for, the acquisition, renovation, rehabilitation, and  
 45 operation of publicly owned performing arts centers. An  
 46 essential element of an effective plan for promoting the giving  
 47 of private gifts and the raising of private funds is the need to  
 48 protect the identity of prospective and actual donors who desire  
 49 to remain anonymous. If the identity of prospective and actual  
 50 donors who desire to remain anonymous is subject to disclosure,  
 51 there is a chilling effect on donations because donors are  
 52 concerned about disclosure of personal information leading to  
 53 theft and, in particular, identity theft, including personal  
 54 safety and security. Therefore, the Legislature finds that it is  
 55 a public necessity to make confidential and exempt from public  
 56 records requirements information that would identify a donor or

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57 | prospective donor of a donation made for the benefit of a  
58 | publicly owned performing arts center if such donor or  
59 | prospective donor wishes to remain anonymous.

60 |       Section 3. This act shall take effect October 1, 2012.