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 Governmental Oversight and Accountability Committee

BILL: CS/CS/CS/SB 206

INTRODUCER: Governmental Oversight and Accountability Committee, Rules Committee, Rules Subcommittee on Ethics and Elections, Senator Negron and others

SUBJECT: Public Meetings

DATE: January 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	**Fav/CS**
2.	Carlton	Phelps	RC	**Fav/CS**
3.	Seay	Roberts	GO	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS........................		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/CS/CS/SB 206 requires boards or commissions of state executive agencies or authorities and local agencies or authorities to provide members of the public a reasonable opportunity to be heard on items of significant interest at, or proximately before, meetings where official action is taken, with certain exceptions. It provides that it is presumed that boards or commissions are in compliance with this section if they adopt and follow rules providing members of the public to be heard. The bill provides that a court shall assess attorney's fees against an agency or authority in violation of the "right to speak" requirement. The bill allows courts to assess attorney's fees against an individual who has filed such an action in bad faith. The bill provides that an action by a board or commission is not void if members of the public are not afforded the right to speak on a proposition. It authorizes, and in some cases requires, boards or commissions to adopt rules or policies to ensure the orderly conduct of public meetings.

This bill creates section 286.0114 of the Florida Statutes.

II. Present Situation:

State Constitution: Open Meetings

Article I, s. 24(b) of the State Constitution establishes the state's public policy regarding access to government meetings. The section requires that 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, be open and noticed to the public.

Government in the Sunshine Law

Public policy regarding access to government meetings is also addressed in the Florida Statutes. Section 286.011, F.S., also known as the "Government in the Sunshine Law" or "Sunshine Law", requires that 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 must be open to the public at all times. The board or commission must provide reasonable notice of all public meetings. Public meetings may not be held in certain locations that discriminate 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.[1] Minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded and be open to public inspection.[2]

Right to Speak at Meetings

The State Constitution and the Florida Statutes are both silent concerning whether citizens have a right to be heard at a public meeting. To date, Florida courts have heard two cases concerning whether a member of the public has a right to be heard at a meeting when he or she is not a party to the proceedings.

In *Keesler v. Community Maritime Park Associates, Inc.*,[3] the plaintiffs sued the Community Maritime Park Associates, Inc., ("CMPA") alleging that the CMPA violated the Sunshine law by not providing them the opportunity to speak at a meeting concerning the development of certain waterfront property. The plaintiffs argued that the phrase "open to the public" granted citizens the right to speak at public meetings. The First District Court of Appeal held:

> Relying on the language in *Marston*[4], the trial court determined that, although the Sunshine Law requires that meetings be open to the public, the law does not give the public the right to speak at the meetings. Appellants have failed to point to any case construing the phrase "open to the public" to grant the public the right to speak, and in

[1] Section 286.011(6), F.S.
[2] Section 286.011(2), F.S.
[3] 32 So.3d 659 (Fla. 1st DCA 2010).
[4] In *Wood v. Marston*, the Florida Supreme Court held that the University of Florida improperly closed meetings of a committee charged with soliciting and screening applicants for the deanship of the university's college of law. However, the *Marston* court noted "nothing in this decision gives the public the right to be more than spectators. The public has no authority to participate in or to interfere with the decision-making process." *Wood v. Marston*, 442 So.2d 934, 941 (Fla. 1983).

> light of the clear and unambiguous language in *Marston* (albeit dicta), we are not inclined to broadly construe the phrase as granting such a right here.[5]

The second case, *Kennedy v. St. Johns Water Management District*,[6] was argued before Florida's Fifth District Court of Appeal on October 13, 2011. At a particularly large meeting of the St. Johns Water Management District ("the District"), the overflow crowd was put in other rooms and provided a video feed of the meeting. Additionally, the District limited participation in the meeting by members of a group called "The St. Johns Riverkeeper." Only the St. Johns Riverkeeper representative and attorney were allowed to address the District board. Mr. Kennedy, who wanted to participate in the discussion, sued arguing that the Sunshine law requires that citizens be given the opportunity to be heard. Mr. Kennedy also alleged that the St. Johns Water Management District violated the Sunshine law by failing to have a large enough facility to allow all who were interested in attending the meeting to be present in the meeting room. On October 25, 2011, the Fifth District Court of Appeal affirmed the trial court's ruling that the District did not violate the Sunshine law as alleged.

III. Effect of Proposed Changes:

Section 1 creates s. 286.0114, F.S., providing that members of the public shall be given a reasonable opportunity to be heard on a proposition before the board or commission. The opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action if the opportunity occurs at a meeting that is during the decision-making process and within reasonable proximity before the board or commission takes official action.

The opportunity to be heard is not required when a board or commission is considering:

- An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, when compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;
- An official act involving no more than a ministerial act; or
- A meeting in which the board or commission is acting in a quasi-judicial capacity with respect to the rights or interests of a person, except as otherwise provided in law.

The bill permits a board or commission to adopt reasonable rules or policies to ensure the orderly conduct of public meetings. Boards and commissions subject to the Administrative Procedure Act (APA) in Chapter 120, F.S. are required to adopt rules governing the opportunity to be heard. Rules or policies of a board or commission that is subject to the APA must be limited to rules or policies that:

- Limit the time that an individual has to address the board or commission;
- Require, at meetings in which a large number of individuals wish to be heard, that a representative of a group or faction on an item, rather than all of the members of the group or faction, address the board or commission; or

[5] *Keesler, supra* note 3, at 660-61.
[6] 2011 WL 5124949 (Fla. 5th DCA 2011).

- Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard, to indicate his or her support, opposition, or neutrality on a proposition, and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses.

If a board or commission adopts rules or policies in compliance with the law and follows the rules or policies when providing an opportunity for the public to be heard, it is presumed that the board or commission is acting in compliance with the requirement that citizens be given the opportunity to be heard.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Governmental entities may incur additional meeting related expenses because longer meetings may be required when considering items of great public interest. The amount of those potential expenses is indeterminate and will vary depending on the magnitude of each issue and the specific associated meeting requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on February 1, 2012:
The CS by Governmental Oversight and Accountability differs from the earlier version of the bill in that it specifically provides that a commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision must allow members of the public a reasonable opportunity to be heard on a proposition. The CS also provides that: there is a presumption that a board or commission is in compliance with this section if they adopt and follow rules providing an opportunity for members of the public to be heard; providing that a court shall assess attorney's fees against an agency or authority that violates this section; providing that a court may assess attorney's fees against an individual filing such an action in bad faith; exempting state attorneys from the attorney's fees provision; providing that an action taken by a board or commission in violation of this section is not void, and providing that circuit courts have jurisdiction to issue injunctions to enforce this section upon the filing of an application for such injunction by any citizen of Florida.

CS by Rules on January 23, 2012:
The CS by Rules differs from CS/SB 206 in that it requires a reasonable opportunity to be heard; clarifies that the opportunity to be heard must occur before the agency takes action; and clarifies that there are no civil or criminal penalties for denying the opportunity to be heard on a proposition.

CS by Ethics and Elections on January 11, 2012:
The CS differs from the original bill in that it: requires only an opportunity to be heard; clarifies that the opportunity to be heard must occur at a meeting that meets the same notice requirements as the meeting at which the board or commission will be taking action; provides that a board or commission that is subject to the APA must promulgate only rules or policies that limit the amount of time an individual has to address the board or commission, require designation of a representative of groups or factions to address the board or commission, and allow the board or commission to adopt forms or procedures by which a member of the public can indicate his desire to be heard, to indicate his position on the proposition, and to designate a representative for himself or his group.

B. Amendments:

None.