

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 Rules Subcommittee on Ethics and Elections

BILL: SB 206

INTRODUCER: Senator Negron

SUBJECT: Public Meetings

DATE: December 20, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	Pre-meeting
2.			RC	
3.			GO	
4.				
5.				
6.				

I. Summary:

Senate Bill 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. Senate Bill 206 authorizes, and in some cases requires, the boards or commissions to adopt reasonable rules or policies to ensure the orderly conduct of public meetings.

This bill substantially amends s. 286.011, F.S.

II. Present Situation:

The Florida Constitution provides 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, shall be open and noticed to the public.¹ The Florida Constitution is silent concerning whether citizens who are not a party to the proceedings have a right to be heard at a meeting.

Section 286.011, F.S., also known as “the Sunshine law,” governs public meetings and records. The 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 be open to the public at all times, unless

¹ Article I, s. 24(b), Florida Constitution.

otherwise provided in the Florida Constitution.² The board or commission must provide reasonable notice of all public meetings.³ Public meetings may not be held in certain locations that discriminate on the basis of sex, age, race, creed, color, origin or economic status of which operates in a manner that unreasonably restricts the public's access to the facility.⁴ 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.⁵ The Florida Statutes are silent concerning whether citizens who are not a party to the proceedings have a right to be heard at a 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.*,⁶ 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*,⁷ 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 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.⁸

The second case, *Kennedy v. St. Johns Water Management District*,⁹ 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.

² Section 286.011(1), F.S.

³ *Id.*

⁴ Section 286.011(6), F.S.

⁵ Section 286.011(2), F.S.

⁶ 32 So.3d 659 (Fla. 1st DCA 2010)

⁷ 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 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).

⁸ *Keesler*, at 660-661.

⁹ 2011 WL 5124949 (Fla. 5th DCA 2011).

III. Effect of Proposed Changes:

Senate Bill 206 provides that members of the public shall be given a reasonable opportunity to be heard on an item that is of significant interest to the public and that is within the subject matter jurisdiction of 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 bill provides that a resolution, rule, or formal action is not binding unless the board or committee is in compliance with the opportunity to be heard.

Under the bill, 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.

Senate Bill 206 permits a committee or board to enact reasonable rules or policies to ensure the orderly conduct of public meetings. However, the bill requires boards or commissions subject to the Administrative Procedures Act to adopt rules governing the opportunity to be heard. The bill provides that the rules or policies of a board or commission may:

- 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
- Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard.

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.

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 interests. 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.)

None.

B. Amendments:

None.