

**SB 994** by **Thrasher**; (Identical to H 7077) Florida Statutes

**CS/SB 50** by **GO, Negron (CO-INTRODUCERS) Evers**; (Similar to H 0023) Public Meetings

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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**RULES**  
**Senator Thrasher, Chair**  
**Senator Smith, Vice Chair**

**MEETING DATE:** Wednesday, March 6, 2013  
**TIME:** 4:30 —5:30 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

**MEMBERS:** Senator Thrasher, Chair; Senator Smith, Vice Chair; Senators Benacquisto, Diaz de la Portilla, Galvano, Gardiner, Latvala, Lee, Margolis, Montford, Negron, Richter, Ring, Simmons, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 994</b> Thrasher	Florida Statutes; Amending and repealing provisions to conform to the directive of the Legislature in section 9 of chapter 2012-116, Laws of Florida, to prepare a reviser's bill to omit all statutes and laws, or parts thereof, which grant duplicative, redundant, or unused rulemaking authority; amending provisions to conform to the changes made in this act, etc.  RC     03/06/2013 Favorable	Favorable Yeas 14 Nays 0
2	<b>CS/SB 50</b> Governmental Oversight and Accountability / Negron (Similar H 23)	Public Meetings; Requiring that a member of the public be given a reasonable opportunity to be heard by a board or commission before it takes official action on a proposition; providing that compliance with the requirements of this section is deemed to have occurred under certain circumstances; providing that a circuit court has jurisdiction to issue an injunction under certain circumstances; providing that an action taken by a board or commission which is found in violation of this section is not void, etc.  GO     02/06/2013 Fav/CS AP     02/21/2013 Favorable RC     03/06/2013 Fav/CS	Fav/CS Yeas 13 Nays 0

Other Related Meeting Documents

**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 Rules

BILL: SB 994

INTRODUCER: Senator Thrasher

SUBJECT: Florida Statutes

DATE: February 25, 2013      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Plante	Phelps	RC	<b>Favorable</b>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB 994 amends the following sections of the Florida Statutes: 17.28, 23.1231, 43.291, 110.118, 112.361, 119.0712, 120.65, 201.165, 202.37, 207.021, 207.0281, 212.097, 212.098, 215.61, 238.03, 258.0165, 288.1045, 288.108, 288.706, 288.816, 316.0747, 316.525, 317.0005, 320.0657, 320.0848, 322.161, 324.0221, 339.2817, 339.55, 376.121, 376.317, 379.245, 380.0666, 391.304, 391.305, 393.0641, 395.0185, 395.605, 397.99, 397.998, 400.063, 400.176, 400.801, 402.22, 402.3025, 402.81, 403.7191, 409.2576, 409.2578, 409.441, 409.9101, 411.224, 414.158, 414.1585, 414.35, 415.1105, 420.5091, 430.708, 430.902, 443.1312, 443.1313, 455.2255, 456.053, 472.017, 489.146, 496.414, 497.381, 501.0583, 509.036, 548.024, 559.10, 561.41, 578.26, 582.055, 601.74, 601.76, 607.193, 624.487, 627.096, 627.212, 627.917, 633.445, 641.316, 655.922, 658.995, 668.704, 713.78, 713.785, 744.7021, 744.713, 766.304, 865.09, 943.0543, 943.0544, 944.095, 945.73, 946.525, 949.08, 985.66, 1011.48, 1011.51, 1011.765, 1012.467, and 1012.965; repeals the following sections: 112.358, 199.1851, 220.1501, 328.44, 328.50, 403.0861, 409.14511, 409.2675, 411.205, 553.897, 563.04, 564.04, 601.75, 601.77, 601.78, 627.793, 634.289, 663.319, and 984.05; and amends sections 213.053, 400.518, 556.116, 564.06, and 601.80 to conform to the changes made in the act.

**II. Present Situation:**

Section 11.242, Florida Statutes, as amended by s. 9, chapter 2012-116, Laws of Florida (CSHB 7055), directs the Office of Legislative Services to prepare reviser’s bills omitting “[a]ll statutes and laws, or parts thereof, which grant duplicative, redundant, or unused rulemaking authority . . . . Rulemaking authority shall be deemed unused if the provision has been in effect for more than 5 years and no rule has been provided thereon.”

The statutes included in the bill are based on a list of statutory grants of rulemaking authority identified by the House Rulemaking & Regulation Subcommittee (the predecessor of the present

Rulemaking Oversight & Repeal Subcommittee) that initially appeared to meet the requirements for omission under CSHB 7055, in that the rulemaking authority had been in effect for more than five years and no rule had been adopted citing the statutory provision. The list of statutes was reviewed by staff of the Division of Law Revision and Information within the Office of Legislative Services and the Joint Administrative Procedures Committee to confirm whether the sections identified had been cited as rulemaking authority by the individual agencies. The list was then forwarded to the House Rulemaking & Regulation Subcommittee for review and comment. House staff coordinated the review by staff of other standing committees and their counterparts in the Senate, which in turn consulted with the various administrative agencies affected by the proposed revisions. The present bill is the results of those discussions.

### **III. Effect of Proposed Changes:**

Section 1 amends s. 17.28, F.S., to remove an unused grant of rulemaking authority.  
[Note: The Department of Financial Services prefers to retain this rulemaking authority.]

Section 2 repeals s. 23.1231(3)(c), F.S., an unused grant of rulemaking authority.

Section 3 amends s. 43.291(7), F.S., to remove an unused grant of rulemaking authority.

Section 4 repeals s. 110.118(3), F.S., an unused grant of rulemaking authority.

Section 5 repeals s. 112.358, F.S., an unused grant of rulemaking authority.

Section 6 repeals s. 112.361(8), F.S., an unused grant of rulemaking authority.

Section 7 repeals s. 119.0712(2)(d), F.S., an unused grant of rulemaking authority.

Section 8 repeals s. 120.65(6) and (8), F.S., unused grants of rulemaking authority.

Section 9 repeals s. 199.1851, F.S., an unused grant of rulemaking authority.

Section 10 amends s. 201.165(1), F.S., to remove an unused grant of rulemaking authority.

Section 11 amends s. 202.37(1)(c), F.S., to remove an unused grant of rulemaking authority.

Section 12 amends s. 207.021(1), F.S., to remove an unused grant of rulemaking authority and make conforming changes to the remaining text.

Section 13 repeals s. 207.0281(6), F.S., an unused grant of rulemaking authority.

Section 14 repeals s. 212.097(16), F.S., an unused grant of rulemaking authority.

Section 15 repeals s. 212.098(12), F.S., an unused grant of rulemaking authority.

Section 16 repeals s. 215.61(5), F.S., an unused grant of rulemaking authority.

Section 17 repeals s. 220.1501, F.S., an unused grant of rulemaking authority.

Section 18 amends s. 238.03(1), F.S., to remove an unused grant of rulemaking authority.

Section 19 repeals s. 258.0165(5), F.S., an unused grant of rulemaking authority.

Section 20 repeals s. 288.1045(6)(a), F.S., an unused grant of rulemaking authority.

Section 21 repeals s. 288.108(7), F.S., an unused grant of rulemaking authority.

Section 22 repeals s. 288.706(10), F.S., an unused grant of rulemaking authority.

Section 23 amends s. 288.816(2), F.S., to remove an unused grant of rulemaking authority.

Section 24 amends s. 316.0747(2), F.S., to remove an unused grant of rulemaking authority.

Section 25 repeals s. 316.525(2), F.S., an unused grant of rulemaking authority.

Section 26 repeals s. 317.0005(1), F.S., an unused grant of rulemaking authority.

Section 27 repeals s. 320.0657(5), F.S., an unused grant of rulemaking authority.

Section 28 repeals s. 320.0848(12), F.S., an unused grant of rulemaking authority.

Section 29 repeals s. 322.161(3), F.S., an unused grant of rulemaking authority.

Section 30 amends s. 324.0221(1)(a), F.S., to remove an unused grant of rulemaking authority and make conforming changes to the remaining text.

Section 31 repeals s. 328.44, F.S., an unused grant of rulemaking authority.

Section 32 repeals s. 328.50, F.S., an unused grant of rulemaking authority.

Section 33 repeals s. 339.2817(5), F.S., an unused grant of rulemaking authority.

Section 34 repeals s. 339.55(9), F.S., an unused grant of rulemaking authority.

Section 35 amends s. 376.121(2)(b), F.S., to remove an unused grant of rulemaking authority and repeals s. 376.121(14), F.S., an unused grant of rulemaking authority.

Section 36 amends s. 376.317(5), F.S., to remove an unused grant of rulemaking authority and make conforming changes to the remaining text.

Section 37 repeals s. 379.245(6), F.S., an unused grant of rulemaking authority.

Section 38 repeals s. 380.0666(9), F.S., an unused grant of rulemaking authority.

Section 39 amends s. 391.304(1)(b), F.S., to remove an unused grant of rulemaking authority.

Section 40 amends s. 391.305, F.S., to remove an unused grant of rulemaking authority and make conforming changes to the remaining text.

Section 41 amends s. 393.0641(5), F.S., to remove an unused grant of rulemaking authority.

Section 42 amends s. 395.0185(2), F.S., to remove an unused grant of rulemaking authority and make conforming changes to the remaining text.

Section 43 amends s. 395.605(8) and (9), F.S., to remove unused grants of rulemaking authority and make conforming changes to the remaining text.

Section 44 repeals s. 397.99(5), F.S., an unused grant of rulemaking authority.

Section 45 repeals s. 397.998(6), F.S., an unused grant of rulemaking authority.

Section 46 repeals s. 400.063(4), F.S., an unused grant of rulemaking authority.

Section 47 amends s. 400.176(2), F.S., to remove an unused grant of rulemaking authority and make conforming changes to the remaining text.

Section 48 repeals s. 400.801(4), F.S., an unused grant of rulemaking authority.

Section 49 amends s. 402.22(5), F.S., to remove an unused grant of rulemaking authority and repeals s. 402.22(6), F.S., which contains an unused grant of rulemaking authority.

Section 50. repeals s. 402.3025(1)(c), F.S., an unused grant of rulemaking authority and amends s. 402.3025(3), F.S., to make conforming changes to the remaining text.

Section 51 repeals s. 402.81(4)(a), F.S., an unused grant of rulemaking authority.

Section 52 repeals s. 403.0861, F.S., an unused grant of rulemaking authority.

Section 53 repeals s. 403.7191(8), F.S., an unused grant of rulemaking authority.

Section 54 repeals s. 409.14511, F.S., an unused grant of rulemaking authority.

Section 55 repeals s. 409.2576(10), F.S., an unused grant of rulemaking authority.

Section 56 repeals s. 409.2578(4), F.S., an unused grant of rulemaking authority.

Section 57 repeals s. 409.2675, F.S., an unused grant of rulemaking authority.

Section 58 repeals s. 409.441(3)(a), F.S., an unused grant of rulemaking authority and makes conforming changes to the remaining text.

Section 59 repeals s. 409.9101(11), F.S., an unused grant of rulemaking authority.

Section 60 repeals s. 411.205, F.S., an unused grant of rulemaking authority.

Section 61 repeals s. 411.224(10), F.S., an unused grant of rulemaking authority.

Section 62 amends s. 414.158(4), F.S., to remove an unused grant of rulemaking authority.

Section 63 amends s. 414.1585(4), F.S., to remove an unused grant of rulemaking authority and make conforming changes to the remaining text.

Section 64 repeals s. 414.35(1) and (2), F.S., unused grants of rulemaking authority.

Section 65 amends s. 415.1105(1), F.S., to remove an unused grant of rulemaking authority and make conforming changes to the remaining text.

Section 66 amends s. 420.5091(1), F.S., to remove an unused grant of rulemaking authority.

Section 67 repeals s. 430.708(3), F.S., an unused grant of rulemaking authority.

Section 68 repeals s. 430.902(4), F.S., an unused grant of rulemaking authority.

Section 69 amends s. 443.1312(6), F.S., to remove an unused grant of rulemaking authority.

Section 70 amends s. 443.1313(3), F.S., to remove an unused grant of rulemaking authority.

Section 71 amends s. 455.2255(2), F.S., to remove an unused grant of rulemaking authority.

Section 72 amends s. 456.053(5), F.S., to remove an unused grant of rulemaking authority and make conforming changes to the remaining text.

Section 73 repeals s. 472.017(2), F.S., an unused grant of rulemaking authority.

Section 74 amends s. 489.146, F.S., to remove an unused grant of rulemaking authority.

Section 75 repeals s. 496.414(2), F.S., an unused grant of rulemaking authority.

Section 76 repeals s. 497.381(1), F.S., and amends s. 497.381(2), F.S., to remove unused grants of rulemaking authority.

Section 77 repeals s. 501.0583(4), F.S., an unused grant of rulemaking authority.

Section 78 amends s. 509.036(3), F.S., to remove an unused grant of rulemaking authority.

Section 79 repeals s. 548.024(1), F.S., an unused grant of rulemaking authority.

Section 80 repeals s. 553.897, F.S., an unused and obsolete grant of rulemaking authority.

Section 81 repeals s. 559.10(3), F.S., an unused grant of rulemaking authority.

Section 82 amends s. 561.41, F.S., to remove an unused grant of rulemaking authority.

Section 83 repeals s. 563.04, F.S., an unused grant of rulemaking authority.

Section 84 repeals s. 564.04, F.S., an unused grant of rulemaking authority.

Section 85 amends s. 578.26(4), F.S., to remove an unused grant of rulemaking authority.

Section 86 repeals s. 582.055(2), F.S., an unused grant of rulemaking authority.

Section 87 amends s. 601.74, F.S., to remove an unused grant of rulemaking authority and make conforming changes to the remaining text.

Section 88 repeals s. 601.75, F.S., an unused grant of rulemaking authority.

Section 89 amends s. 601.76, F.S., to remove an unused grant of rulemaking authority.

Section 90 repeals s. 601.77, F.S., an unused grant of rulemaking authority.

Section 91 repeals s. 601.78, F.S., an unused grant of rulemaking authority.

Section 92 repeals s. 607.193(3), F.S., an unused grant of rulemaking authority.

Section 93 amends s. 624.487, F.S., to remove an unused grant of rulemaking authority.

Section 94 amends s. 627.096(1), F.S., to remove an unused grant of rulemaking authority.

Section 95 amends s. 627.212, F.S., to remove an unused grant of rulemaking authority.

Section 96 repeals s. 627.793, F.S., an unused grant of rulemaking authority.

Section 97 repeals s. 627.917(3), F.S., an unused grant of rulemaking authority.

Section 98 repeals s. 633.445(8), F.S., an unused grant of rulemaking authority.

Section 99 repeals s. 634.289, F.S., an unused grant of rulemaking authority.

Section 100 repeals s. 641.316(7), F.S., an unused grant of rulemaking authority.

Section 101 repeals s. 655.922(6), F.S., an unused grant of rulemaking authority.

Section 102 repeals s. 658.995(6), F.S., an unused grant of rulemaking authority.

Section 103 repeals s. 663.319, F.S., an unused grant of rulemaking authority.

Section 104 repeals s. 668.704(12), F.S., an unused grant of rulemaking authority.

Section 105 repeals s. 713.78(11)(c) and (13)(g), F.S., unused grants of rulemaking authority.

Section 106 repeals s. 713.785(7)(c) and (8)(f), F.S., unused grants of rulemaking authority.

Section 107 repeals s. 744.7021(4), F.S., an unused grant of rulemaking authority.

Section 108 repeals s. 744.713(7), F.S., an unused grant of rulemaking authority.

Section 109 amends s. 766.304, F.S., to remove an unused grant of rulemaking authority.

Section 110 amends s. 865.09(10), F.S., to remove an unused grant of rulemaking authority.

Section 111 amends s. 943.0543(3), F.S., to remove an unused grant of rulemaking authority.

Section 112 amends s. 943.0544(6), F.S., to remove an unused grant of rulemaking authority.

Section 113 repeals s. 944.095(8), F.S., an unused grant of rulemaking authority.

Section 114 amends s. 945.73(2), F.S., to remove an unused grant of rulemaking authority and make conforming changes to the remaining text.

Section 115 repeals s. 946.525(5), F.S., an unused grant of rulemaking authority.

Section 116 amends s. 949.08, F.S., to remove an unused grant of rulemaking authority and make conforming changes to the remaining text.

Section 117 repeals s. 984.05, F.S., an unused grant of rulemaking authority.

Section 118 amends s. 985.66(6), F.S., to remove an unused grant of rulemaking authority and make conforming changes to the remaining text, and repeals s. 985.66(7), F.S., an unused grant of rulemaking authority.

Section 119 repeals s. 1011.48(4), F.S., to remove an unused grant of rulemaking authority and make conforming changes to the remaining text.

Section 120 repeals s. 1011.51(7), F.S., an unused grant of rulemaking authority.

Section 121 repeals s. 1011.765(1)(a), F.S., an unused grant of rulemaking authority.

Section 122 amends s. 1012.467(7)(a), F.S., to remove an unused grant of rulemaking authority.

Section 123 amends s. 1012.965(2), F.S., to remove an unused grant of rulemaking authority.

Section 124 makes conforming changes to s. 213.053(8)(z), F.S.

Section 125 makes conforming changes to s. 400.518(3)(b), F.S.

Section 126 makes conforming changes to s. 556.116(3)(b), F.S.

Section 127 makes conforming changes to s. 564.06(5)(b), F.S.

Section 128 makes conforming changes to s. 601.80, F.S.

Section 129 provides for an effective date of 60 days after adjournment sine die.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3 1 6 12013

Meeting Date

Topic \_\_\_\_\_

Bill Number 994  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

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Zip

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/20/11)

**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 Rules

**BILL:** CS/CS/SB 50

**INTRODUCER:** Rules Committee; Governmental Oversight and Accountability Committee; and Senators Negrón and Evers

**SUBJECT:** Public Meetings

**DATE:** March 8, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	McVaney	GO	Fav/CS
2.	McSwain	Hansen	AP	Favorable
3.	Naf	Phelps	RC	Fav/CS
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/CS/SB 50 requires that members of the public be given a reasonable opportunity to be heard on a proposition before a board or commission of a state agency or local government. Such opportunity does not have to occur at the same meeting at which the board or commission takes official action if certain requirements are met. The bill excludes specified meetings and acts from the “right to speak” requirement.

The bill specifies that the section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. It authorizes a board or commission to adopt certain reasonable rules or policies governing the opportunity to be heard. If a board or commission adopts such rules or policies and thereafter complies with them, it is deemed to be acting in compliance with the section.

The bill authorizes a circuit court to issue injunctions for the purpose of enforcing the section upon the filing of an application for such injunction by any citizen of Florida. If an action is filed against a board or commission to enforce the provisions of the section and the court determines that the board or commission violated the section, the bill requires the court to assess reasonable

attorney fees against the appropriate state agency or local government board or commission. However, the bill also authorizes the court to assess reasonable attorney fees against the individual filing the action if the court finds that the action was filed in bad faith or was frivolous. The bill excludes specified public officers from its attorney fee provisions. A court is required by the bill to assess reasonable attorney fees if a board or commission appeals a court order finding that such board or commission violated the section and the order is affirmed.

The bill provides that any action taken by a board or commission that is found to be in violation of the section is not void as a result of such violation.

This bill creates section 286.0114, Florida Statutes.

## II. Present Situation:

### **Florida Constitution: Public Meetings**

The Florida Constitution requires 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, to be open and noticed to the public.<sup>1</sup>

### **Government in the Sunshine Law**

Access to government meetings is also governed by the Florida Statutes. Section 286.011, F.S., also known as the “Government in the Sunshine Law” or “Sunshine Law,” requires 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 to 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.<sup>2</sup> 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.<sup>3</sup>

### **Right to Speak at Public Meetings**

The Florida Constitution and the Florida Statutes are silent concerning whether citizens have a right to be heard at a public meeting. To date, Florida courts have heard two cases directly addressing 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.*,<sup>4</sup> the plaintiffs alleged that the Community Maritime Park Associates, Inc., (CMPA)<sup>5</sup> violated the Sunshine Law by not

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<sup>1</sup> Article I, s. 24(b) of the Florida Constitution.

<sup>2</sup> Section 286.011(6), F.S.

<sup>3</sup> Section 286.011(2), F.S.

<sup>4</sup> 32 So.3d 659 (Fla. 1<sup>st</sup> DCA 2010).

providing them the opportunity to speak at a public meeting concerning the development of certain waterfront property. The plaintiffs argued that the Sunshine Law phrase “open to the public” grants citizens the right to speak at public meetings, but the First District Court of Appeal held that no such right exists:

Relying on the language in *Marston*<sup>6</sup>, 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.<sup>7</sup>

In the second case, *Kennedy v. St. Johns Water Management District*, the plaintiffs alleged, in part, that the St. Johns Water Management District violated the Sunshine Law by preventing certain people from speaking at a public meeting concerning the proposed approval of a water use permit.<sup>8</sup> There, the trial court held that, “Because, as clearly articulated in *Keesler*, the Sunshine Law does not require the public be allowed to speak, plaintiffs’ claim ... fails as a matter of law.”<sup>9</sup> The Fifth District Court of Appeal affirmed the trial court’s ruling.<sup>10</sup>

### III. Effect of Proposed Changes:

The bill creates s. 286.0114, F.S., providing that members of the public must be given a reasonable opportunity to be heard on a proposition before a board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision. The opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action on the proposition if such opportunity:

- Occurs at a meeting that is during the decision-making process; and

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<sup>5</sup> The CMPA is a not-for-profit corporation charged by the City of Pensacola with overseeing the development of a parcel of public waterfront property. The CMPA did not dispute that it was subject to the requirements of the Sunshine Law. *Id.* at 660. A private entity is generally subject to public records and open meetings laws when 1) there has been a delegation of the public agency’s governmental functions; or 2) the private entity plays an integral part in the decision-making process of the public agency or has a significant level of involvement with the public agency’s performance of its duties. *See* Ops. Att’y Gen. Fla. 92-53 (1992) (direct support organization created for purpose of assisting public museum subject to s. 286.011, F.S.); 83-95 (1983) (where county accepted services of nongovernmental committee to recodify and amend county’s zoning laws, committee subject to Sunshine Law).

<sup>6</sup> 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).

<sup>7</sup> *Keesler*, *supra* note 3, at 660-61.

<sup>8</sup> The trial court was the Circuit Court of the Seventh Judicial Circuit, in and for Putnam County, Florida. *See* the trial court’s “Order Granting Motion for Summary Judgment,” September 28, 2010, at 1-3 (on file with the Governmental Oversight and Accountability Committee).

<sup>9</sup> *Id.* at 6.

<sup>10</sup> 2011 WL 5124949 (Fla. 5th DCA 2011).

- Is within reasonable proximity in time before the meeting at which the board or commission takes the official action.

The bill specifies that the section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting.

The opportunity to be heard does not apply to:

- 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, including, but not limited to, approval of minutes and ceremonial proclamations;
- A meeting that is exempt from open meetings requirements; or
- Meetings in which the board or commission is acting in a quasi-judicial capacity. The bill specifies that this exclusion does not affect the right of a person to be heard as otherwise provided by law.

The bill authorizes a board or commission to adopt reasonable rules or policies governing the opportunity to be heard.<sup>11</sup> Such rules or policies must be limited to those that:

- Provide guidelines regarding the time an individual has to address the board or commission;
- Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;
- 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; or
- Designate a specified period of time for public comment.

The bill provides that a board or commission is deemed to be acting in compliance with the new section if the board or commission adopts rules or policies in compliance with the section and follows such rules or policies when providing an opportunity to be heard.

The bill authorizes a circuit court to issue injunctions for the purpose of enforcing the new section upon the filing of an application for such injunction by any citizen of Florida.

Whenever an action is filed against a board or commission to enforce the provisions of this section, the bill requires the court to assess reasonable attorney fees against the appropriate state agency or local government board or commission if the court determines that the defendant to

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<sup>11</sup> Executive branch agencies that are subject to the Florida Administrative Procedure Act (ch. 120, F.S.) *must* adopt through the rulemaking process (s. 120.54, F.S.) any agency statement defined as a rule by s. 120.52, F.S. Section 120.52(16), F.S., defines “rule” to mean each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.

such action acted in violation of the section. The bill also authorizes the court to assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. These attorney fee provisions do not apply to a state attorney, to his or her duly authorized assistants, or to an officer charged with enforcing the provisions of the act. The bill also requires a court to assess reasonable appellate attorney fees if a board or commission appeals any court order which has found such board or commission to have violated the section and the order is affirmed.

The bill specifies that any action taken by a board or commission that is found to be in violation of the section is not void as a result of such violation.

The bill's effective date is October 1, 2013.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The county/municipality mandates provision of s. 18, Art. VII of the Florida Constitution may apply because this bill could cause counties and municipalities to incur additional expenses associated with longer meetings or increased meetings due to the new requirement that the public be provided with the opportunity to speak at such meetings.<sup>12</sup> An exemption may apply, however, if the bill has an insignificant fiscal impact. If an exemption does not apply, an exception may still apply if the bill articulates a finding of serving an important state interest and applies to all persons similarly situated. The bill contains a legislative finding of important state interest and applies to boards and commissions of all state agencies and authorities and all agencies and authorities of counties, municipal corporations, and political subdivisions; therefore, it appears to apply to all persons similarly situated.

##### **B. Public Records/Open Meetings Issues:**

None.

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<sup>12</sup> Article VII, s. 18(a) of the Florida Constitution provides that no county or municipality may be bound by any general law that mandates it to spend funds or take an action requiring the expenditure of funds unless the Legislature determines that such law fulfills an important state interest *and* one of specified other requirements are met. The other specified requirements are:

- Funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure;
- The Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of each such county or municipality;
- The law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; *or*
- The law is required to either comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance. *Id.*

**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:****Rulemaking**

The constitutional separation of powers doctrine<sup>13</sup> prevents the Legislature from delegating its constitutional duties.<sup>14</sup> Because legislative power involves the exercise of policy-related discretion over the content of law,<sup>15</sup> any discretion given an executive branch agency to implement a law must be “pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.”<sup>16</sup> Although the bill authorizes, but does not require, state agency boards and commissions to adopt certain rules or policies, executive branch agencies are required to adopt as a rule a statement of general applicability that implements law or policy and that imposes a requirement not specifically required by statutes or existing rule.<sup>17</sup> The bill prescribes the items that such rules or policies may address.

Boards and commissions subject to the state Administrative Procedure Act<sup>18</sup> must comply with the rulemaking procedures set forth in that chapter. Generally, rulemaking pursuant to those procedures takes a minimum of 90 days.<sup>19</sup>

<sup>13</sup> Article II, s. 3 of the Florida Constitution.

<sup>14</sup> See *Florida State Bd. of Architecture v. Wasserman*, 377 So.2d 653 (Fla. 1979).

<sup>15</sup> See *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719 (Fla. 1937).

<sup>16</sup> See *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978).

<sup>17</sup> See note 11.

<sup>18</sup> Chapter 120, F.S. The chapter applies to any “agency” as defined in s. 120.52(1), F.S.

<sup>19</sup> See s. 120.54, F.S.

### Other Comments

The bill does not define the terms “proposition,” “reasonable proximity,” “ministerial act,” “factions,” and “groups.”

The bill does not specify what is considered an “unreasonable delay” when deciding if the public’s opportunity to be heard should be usurped.

It is unclear whether a state board’s or commission’s denial of someone’s right to speak may constitute an agency action challengeable under the Administrative Procedure Act. In cases in which an administrative remedy is available, a plaintiff may be required to exhaust all administrative remedies before pursuing a civil remedy.<sup>20</sup>

As currently drafted, each state or local board or commission is authorized to create its own rules or policies governing the right to speak. Allowing each state board or commission to create its own rules allows it to tailor its rules to its needs, but may not provide as much ease of use by the public as would uniform rules created by an entity such as the Administration Commission.

The bill specifies that a circuit court may issue injunctions to enforce the provisions of the act. It is unclear whether this could be interpreted to exclude civil remedies other than injunctions and the attorney fees also explicitly authorized by the bill.

### VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

#### **CS/CS by Rules on March 6, 2013:**

The CS/CS differs from the CS in that it:

- Does not specifically require a meeting at which a board or commission holds an opportunity to be heard that occurs before the meeting at which the official action is taken to satisfy the same notice requirements as the latter meeting, as public meetings subject to the bill are already subject to Sunshine Law notice requirements.
- Specifies that the bill’s exception to the right to speak requirements for a ministerial act includes, but is not limited to, approval of minutes and ceremonial proclamations.

#### **CS by Governmental Oversight and Accountability on February 6, 2013:**

The CS differs from the original bill in that it:

- Creates a definition for “board or commission” for drafting clarity. The substance of the definition is pulled from the original bill.
- Clarifies that an opportunity to speak must occur at a meeting that is within reasonable proximity in time to the meeting at which the board or commission takes official action on the proposition.
- Specifies that the section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting.

<sup>20</sup> See, for example, *Orange County, Fla. v. Game and Fresh Water Fish Commission*, 397 So.2d 411 (Fla. 5th DCA 1981).

- Changes the term “item” to “proposition” throughout the bill for conformity.
- Deletes the phrase “with respect to the rights or interests of a person” from (3)(d) to prevent confusion over whom or what constitutes a “person.”
- Clarifies that the restrictions on rules and policies apply only to those governing the opportunity to be heard.
- Rephrases (4)(a), relating to specifying a limit on the time an individual has to address a board or commission, to provide more flexibility by instead specifying that a board or commission may provide guidelines relating to the time an individual may speak.
- Rephrases (4)(b), relating to requiring a selection of a representative of a group or faction, to provide more flexibility by instead specifying that a board or commission may prescribe procedures for allowing representatives of a group or faction to address the board or commission.
- Replaces the phrase “it is presumed that” in (5) with “is deemed to be” to prevent confusion about whether the subsection is creating a rebuttable legal presumption.
- Relocates the authorization of a circuit court to issue injunctions before the attorney fee provisions for drafting clarity.
- Replaces the authorization of the circuit courts to issue injunctions with a circuit court for drafting clarity.
- Authorizes attorney fees at the appellate level in addition to at the circuit court level if a board or commission is found to have violated the section.
- Replaces references within the bill to “the act” with “the section” for clarity.
- Adds a finding of important state interest.
- Changes the bill’s effective date to from July 1, 2013 to October 1, 2013 to allow boards and commissions subject to ch. 120, F.S., to promulgate rules.

**B. Amendments:**

None.



873048

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2013	.	
	.	
	.	
	.	

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The Committee on Rules (Negron) recommended the following:

**Senate Amendment**

Delete lines 35 - 53  
and insert:  
action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

(3) The requirements in subsection (2) do not apply to:



873048

14           (a) An official act that must be taken to deal with an  
15 emergency situation affecting the public health, welfare, or  
16 safety, if compliance with the requirements would cause an  
17 unreasonable delay in the ability of the board or commission to  
18 act;

19           (b) An official act involving no more than a ministerial  
20 act, including, but not limited to, approval of minutes and  
21 ceremonial proclamations;

By the Committee on Governmental Oversight and Accountability;  
and Senators Negron and Evers

585-01573-13

201350c1

1 A bill to be entitled  
2 An act relating to public meetings; creating s.  
3 286.0114, F.S.; defining "board or commission";  
4 requiring that a member of the public be given a  
5 reasonable opportunity to be heard by a board or  
6 commission before it takes official action on a  
7 proposition; providing exceptions; establishing  
8 requirements for rules or policies adopted by the  
9 board or commission; providing that compliance with  
10 the requirements of this section is deemed to have  
11 occurred under certain circumstances; providing that a  
12 circuit court has jurisdiction to issue an injunction  
13 under certain circumstances; authorizing a court to  
14 assess reasonable attorney fees in actions filed  
15 against a board or commission; providing that an  
16 action taken by a board or commission which is found  
17 in violation of this section is not void; providing  
18 that the act fulfills an important state interest;  
19 providing an effective date.

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

22 Section 1. Section 286.0114, Florida Statutes, is created  
23 to read:

24 286.0114 Public meetings; reasonable opportunity to be  
25 heard; attorney fees.-

26 (1) For purposes of this section, "board or commission"  
27 means a board or commission of any state agency or authority or  
28 of any agency or authority of a county, municipal corporation,  
29

585-01573-13

201350c1

30 or political subdivision.  
31 (2) Members of the public shall be given a reasonable  
32 opportunity to be heard on a proposition before a board or  
33 commission. The opportunity to be heard need not occur at the  
34 same meeting at which the board or commission takes official  
35 action on the proposition if the opportunity occurs at a meeting  
36 that satisfies the same notice requirements as the meeting at  
37 which the board or commission takes official action on the  
38 proposition, occurs at a meeting that is during the  
39 decisionmaking process, and is within reasonable proximity in  
40 time before the meeting at which the board or commission takes  
41 the official action. This section does not prohibit a board or  
42 commission from maintaining orderly conduct or proper decorum in  
43 a public meeting. The opportunity to be heard is subject to  
44 rules or policies adopted by the board or commission, as  
45 provided in subsection (4).  
46 (3) The requirements in subsection (2) do not apply to:  
47 (a) An official act that must be taken to deal with an  
48 emergency situation affecting the public health, welfare, or  
49 safety, when compliance with the requirements would cause an  
50 unreasonable delay in the ability of the board or commission to  
51 act;  
52 (b) An official act involving no more than a ministerial  
53 act;  
54 (c) A meeting that is exempt from s. 286.011; or  
55 (d) A meeting during which the board or commission is  
56 acting in a quasi-judicial capacity. This paragraph does not  
57 affect the right of a person to be heard as otherwise provided  
58 by law.

585-01573-13

201350c1

59 (4) Rules or policies of a board or commission which govern  
 60 the opportunity to be heard are limited to those that:

61 (a) Provide guidelines regarding the amount of time an  
 62 individual has to address the board or commission;

63 (b) Prescribe procedures for allowing representatives of  
 64 groups or factions on a proposition to address the board or  
 65 commission, rather than all members of such groups or factions,  
 66 at meetings in which a large number of individuals wish to be  
 67 heard;

68 (c) Prescribe procedures or forms for an individual to use  
 69 in order to inform the board or commission of a desire to be  
 70 heard; to indicate his or her support, opposition, or neutrality  
 71 on a proposition; and to indicate his or her designation of a  
 72 representative to speak for him or her or his or her group on a  
 73 proposition if he or she so chooses; or

74 (d) Designate a specified period of time for public  
 75 comment.

76 (5) If a board or commission adopts rules or policies in  
 77 compliance with this section and follows such rules or policies  
 78 when providing an opportunity for members of the public to be  
 79 heard, the board or commission is deemed to be acting in  
 80 compliance with this section.

81 (6) A circuit court has jurisdiction to issue an injunction  
 82 for the purpose of enforcing this section upon the filing of an  
 83 application for such injunction by a citizen of this state.

84 (7) (a) Whenever an action is filed against a board or  
 85 commission to enforce this section, the court shall assess  
 86 reasonable attorney fees against such board or commission if the  
 87 court determines that the defendant to such action acted in

585-01573-13

201350c1

88 violation of this section. The court may assess reasonable  
 89 attorney fees against the individual filing such an action if  
 90 the court finds that the action was filed in bad faith or was  
 91 frivolous. This paragraph does not apply to a state attorney or  
 92 his or her duly authorized assistants or an officer charged with  
 93 enforcing this section.

94 (b) Whenever a board or commission appeals a court order  
 95 that has found the board or commission to have violated this  
 96 section, and such order is affirmed, the court shall assess  
 97 reasonable attorney fees for the appeal against such board or  
 98 commission.

99 (8) An action taken by a board or commission which is found  
 100 to be in violation of this section is not void as a result of  
 101 that violation.

102 Section 2. The Legislature finds that a proper and  
 103 legitimate state purpose is served when members of the public  
 104 have been given a reasonable opportunity to be heard on a  
 105 proposition before a board or commission of a state agency or  
 106 authority, or of an agency or authority of a county, municipal  
 107 corporation, or political subdivision. Therefore, the  
 108 Legislature determines and declares that this act fulfills an  
 109 important state interest.

110 Section 3. This act shall take effect October 1, 2013.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3 / 6 / 2013

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 50  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

6 Mar 13

*Meeting Date*

Topic Public Meetings

Bill Number 50  
*(if applicable)*

Name Charles Milsted

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Associate State Director

Address 200 West College Avenue

Phone 850-577-5190

*Street*

Tallahassee

E-mail cmilsted@aarporg

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Representing AARP

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/20/11)

# CourtSmart Tag Report

**Room:** EL 110

**Caption:** Senate Rules Committee

**Case:**

**Judge:**

**Type:**

**Started:** 3/6/2013 4:30:51 PM

**Ends:** 3/6/2013 4:44:12 PM **Length:** 00:13:22

4:30:54 PM Senator Thrasher calls the meeting to order  
4:30:59 PM roll call  
4:31:08 PM quorum present  
4:31:36 PM Senator Smith takes the chair  
4:31:53 PM SB 994 by Senator Thrasher  
4:32:09 PM Senator Thrasher explains the bill  
4:32:30 PM Senator Smith asks for questions  
4:32:36 PM Brian Pitts, Justice-2-Jesus waives in support  
4:32:52 PM Senator Thrasher waives his close  
4:33:02 PM roll call  
4:33:14 PM SB 994 passes  
4:33:28 PM Senator Thrasher has the chair  
4:33:35 PM Take up SB 50 by Senator Negrón  
4:33:48 PM Senator Negrón explains the bill  
4:34:13 PM Amendment 873048 by Senator Negrón  
4:34:29 PM Senator Negrón explains the amendment  
4:35:18 PM Amendment 873048 adopted without objection  
4:35:31 PM Charles Milsted, AARP waives in support  
4:35:43 PM Brian Pitts, Justice-2-Jesus speaks  
4:41:31 PM Senator Negrón moves to CS and closes on the bill  
4:42:44 PM roll call  
4:42:58 PM SB 50 passes  
4:43:37 PM Senator Smith moves we rise



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Ethics and Elections, *Chair*  
Appropriations  
Appropriations Subcommittee on General  
Government  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Community Affairs  
Environmental Preservation and Conservation  
Gaming  
Judiciary  
Rules

**SENATOR JACK LATVALA**

20th District

March 6, 2013

The Honorable John Thrasher  
Senate Committee on Rules  
404 S. Monroe St. 402 S  
Tallahassee, FL 32399-1100

Dear Chairman Thrasher:

I respectfully request that I be excused from the Committee on Rules meeting scheduled for 4 p.m. on Wednesday, March 6, 2013.

I will not be in the capitol during the time of the meeting. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, consisting of a large loop on the left and a long horizontal line extending to the right.

Jack Latvala  
State Senator  
District 20

JL:tc

**REPLY TO:**

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore