

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

This bill requires local governments to adopt new written policies allowing for citizen participation at board meetings.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Sunshine Law

The Sunshine Law, s. 286.011, F.S., requires that meetings of a public board or commission be "open to the public." 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. Also, the boards or commissions must provide reasonable notice of these meetings.¹

The Florida Supreme Court has recognized the importance of public participation in open meetings, stating that "specified boards and commissions...should not be allowed to deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made."²

While the right of citizens to attend such meetings has been acknowledged by the courts of this state, the question of the extent to which a citizen must be allowed to speak has not been expressly addressed. Thus, although the importance of public participation in governmental proceedings has been recognized in judicial decisions, the courts have not articulated clear standards regarding the extent of an agency's obligation to provide a meaningful opportunity for participation at board meetings.

Florida Local Governments

Florida local governments commonly adopt rules and/or policies to ensure the orderly conduct of public meetings and which require orderly behavior on the part of persons attending those meeting. These rules/policies are not uniform, and may limit public comment in some instances.

Effect of Proposed Changes

HB 991 creates the "Vox Populi – Voice of the People Act." The purpose of the act is to prescribe uniform requirements with respect to opportunities for citizen input and participation at official meetings of governing bodies of local government authorities. "Local government authority" is defined by the bill as a regional, county, or municipal governmental entity, special district, community college district, or school district, or any elected or appointed political subdivision thereof. The act applies to all meetings of local governing bodies, whether designated as a regular meeting, special meeting, or emergency meeting, not otherwise exempt from public meeting requirements.

¹ Section 286.011(1), F.S.

² Board of Public Instruction of Broward County v. Doran, 224 So.2d 693, 699 (Fla. 1969).

The bill requires local governments to adopt policies which incorporate the following:

Meeting Decorum

In conducting the public's business, a local governing body is required to maintain a commitment to the principles of civility, honor and dignity. Individuals appearing before the governing body are required to observe these principles when making comments on issues before the governing body for consideration.

Individuals appearing before the governing body may, but will not be required to, state their name and address for the public record. All comments must be made from an easily accessible central location or by other reasonable accommodations and must address the subject of the agenda item.

Members of the governing body, staff members, and citizens are required to use civil and appropriate language when addressing the governing body or the audience and must refrain from using profanity, cursing, or exhibiting aggressive or threatening behavior when addressing the governing body or other participants. All comments must be directed to the presiding officer and not to individual members of the governing body or to the audience. No personal verbal attacks toward any individual by the governing body, staff or citizens are allowed.

Participants are required to adhere to their allotted time and may submit written documents in order to fully address their concerns with the governing body.

Citizen Participation Entitlement; Requirements

The governing body of a local government authority must provide opportunities for citizens to address issues at official meetings during each order of business:

- Non-agenda or citizen-participation order of business

The governing body must allocate, at a minimum, 15 minutes at the beginning of each meeting for citizens who wish to make a request, voice a complaint or concern, express an opinion, or express recognition. The presiding officer is required to divide the allotted time equally among all who have registered to speak. However, in no case may a citizen be allotted less than three minutes to speak. An extension of time may be granted by the presiding officer at his or her discretion or upon a majority vote of the governing body. If an item requires a longer presentation by the citizen or requires staff research or materials, the item must be rescheduled for a future meeting.

The non-agenda or citizen-participation order of business must be scheduled near the beginning of the meeting and in no event may be the final item on the order of business, unless provision is made for more than one non-agenda or citizen-participation order of business per meeting.

- Agenda order of business

An item brought before the governing body under the citizen-participation or non-agenda order of business which cannot be presented within the prescribed three-minute timeframe or which requires additional research or materials in order for the governing body to properly respond may be placed on the governing body's agenda by either of the following means:

- a. The presiding officer will schedule the item for a future meeting of the governing body under the citizen-participation portion of the agenda; or
- b. The citizen will submit a request in writing to appear on the governing body's agenda and file such request with the office of the appropriate official designated by the governing body for the filing of such request a minimum of two weeks in advance of the meeting of the governing body. The written request is required to state the nature of the item and request that the item be placed on an upcoming agenda of the governing body. A copy of the letter must be provided to the governing body on the day that it is received by the designated official's office so that research may be conducted and information provided to the governing body as part of the

agenda and to allow staff an appropriate amount of time to prepare a staff report and provide additional data to the governing body that will assist in making a decision.

The individual making the request and the staff of the governing body are to be granted sufficient time to make the presentation. Any other individual who wishes to address the governing body in either support of or opposition to the agenda item must be allotted no less than three minutes. An extension of time may be granted by the presiding officer at his or her discretion or upon a majority vote of the governing body. The presiding officer may rule an individual out of order if he or she begins repeating information that has already been presented by either the individual who made the request or another individual who has already spoken either in favor of or in opposition to the agenda item.

- Submission of petitions

With respect to the order of business devoted to petitions to the governing body that are not part of another agenda item or that are part of the citizen-participation portion of the non-agenda order of business, the allotment of time for the presentation must be no less than three minutes. An extension of time may be granted by the presiding officer at the discretion of the presiding officer or upon a majority vote of the governing body. If the extension is not granted, the citizen may request that the item be scheduled as an agenda item.

- Public hearings

For purposes of the act, "public hearings" are formal hearings conducted by the governing body of a local government authority pursuant to state or federal law which may: (a) be legally noticed; (b) be advertised hearings for specific items scheduled on the agenda of the governing body; (c) be quasi-judicial or legislative in nature; (d) have specific formats that must be followed and that are established by law.

All ordinance considerations are to be conducted as formal public hearings and are normally considered as a normal agenda item. In cases of ordinance consideration, the presiding officer is required to announce that the hearing is a public hearing.

During a public hearing, a citizen other than an applicant who wishes to address the governing body may do so by either completing a citizen-participation form prior to the commencement of the meeting or by raising his or her hand at the time the presiding officer inquires as to the presence of citizens wishing to address the issue. Persons who have completed a citizen-participation form prior to the beginning of the meeting will be allowed to speak first. All individuals addressing the governing body must clearly state their name and address for the record. Citizens will be allotted no less than three minutes per person to address the governing body. An extension of time may be granted by the presiding officer at his or her discretion or upon a majority vote of the governing body. The presiding officer may rule an individual out of order if he or she begins to repeat information or present material that has already been presented by other speakers.

- Regular agenda

The governing body must provide an opportunity for citizens to address all other agenda items, allowing citizens to speak in favor of or in opposition to a normal agenda item or to ask questions about such item. If the item is on the governing body's consent agenda and a citizen expresses a desire to speak to or ask questions regarding the item, the governing body must withdraw the item from the consent agenda. Citizens must be allowed no less than three minutes to comment or ask questions regarding the item. An extension of time may be granted by the presiding officer at his or her discretion or upon a majority vote of the governing body. If the citizen's questions cannot be answered in a reasonably brief amount of time, the governing body may table the item and schedule it at a regular meeting of the governing body or take final action on the item. The presiding officer must recognize all who wish to speak. The presiding officer may rule an individual out of order if he or she begins to repeat information or present materials presented by other speakers.

If the item is on the non-consent agenda, citizens must be given no less than three minutes to comment or ask questions about the agenda item, with an extension of time to be granted by the presiding officer at his or her discretion or upon a majority vote of the governing body. The presiding officer must recognize all who wish to speak. The presiding officer may rule an individual out of order if he or she begins to repeat information or present materials presented by other speakers.

- Governing body reports and comments

At the conclusion of each meeting, the governing body must schedule an order of business during which the governing body reports with respect to various boards, committees and groups on which the local government authority is represented. The governing body must allocate time to make general comments during which citizens who desire additional information concerning such boards, committees and groups and the actions thereof may try to obtain information and during which citizens can address or seek clarification on general comments made by the governing body. The presiding officer must allow citizens no less than three minutes to comment on or ask questions regarding reports or comments made by the governing body members. An extension of time may be granted by the presiding officer at his or her discretion or upon a majority vote of the governing body. The questions or comments must address the item that is being presented to the governing body by the other governing body members. The presiding officer must recognize an individual who indicates a desire to speak on the item. The presiding officer may rule an individual out of order if he or she is not addressing the issue that is being discussed or is repeating information or presenting materials that have been presented by others.

Adoption of Written Policy

The bill provides that each local government authority must adopt a written policy that implements the requirements of the Voice of the People Act by October 1, 2008. The policy must be prominently displayed at the site of all meetings of the local government authority that are subject to the provisions of the act. If the local government authority maintains a website, the policy or a link thereto must be prominently displayed on the home page of the website within 30 days after the adoption of the policy.

Optional Exemption from Requirements

Each local government authority may opt out of the requirements of the act by adopting a written policy which sets forth the local government authority's policies with regard to public participation in meetings. The deadline for adopting such a written policy is October 1, 2008.

A local government authority choosing to opt out of the requirements of the act must conduct at least one advertised public workshop to solicit public input.

If the local government authority maintains a website, the written policy or a link thereto must be available on its homepage within 30 days after the adoption of the policy.

Construction

The bill provides that nothing in the act precludes a local government authority from adopting a policy that provides for greater rights or opportunities for citizens to comment on or participate in public meetings of its governing body.

The bill provides an effective date of July 1, 2008.

C. SECTION DIRECTORY:

Section 1: Creates s. 286.0114, F.S., the "Vox Populi – Voice of the People Act," relating to meetings of governing bodies of local government authorities, and citizen participation entitlement.

Section 2: Provides an effective date.

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:

This bill will require local governments to adopt written policies that implement the requirements of the act, and to make such available on any maintained website, thus incurring possible administrative costs. These amounts should be minimal as it is anticipated that they would be absorbed as part of day-to-day responsibilities.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The First Amendment Foundation is a proponent of the bill, and has indicated that the proposal addresses concerns raised by citizens regarding the need for government policies on public meetings that clearly provide for public participation.

1000 Friends of Florida also is a proponent of the bill.

The Florida League of Cities opposes the bill, believing it to require an unnecessary, uniform public participation process for all cities, counties, school boards and other forms of local government. Setting the order of business and citizen participation standards is a function properly left with each locally elected body.

D. STATEMENT OF THE SPONSOR

An amendment has been filed providing for an opt out provision to address the concerns of the Florida League of Cities.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 8, 2008, the Government Efficiency & Accountability Council adopted an amendment which provides an "opt out" provision for local governments from the requirements of the Voice of the People Act. In order to qualify for this exemption, a local government must adopt a written policy with regard to public participation in meetings by October 1, 2008. The local government is required to conduct at least one public workshop and to consider suggestions from the public.

The Council reported HB 991, as amended, as a Council Substitute. This analysis has been updated to reflect the Council Substitute.