



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jose Smith, City Attorney

Jimmy L. Morales, City Manager

Rafael E. Granado, City Clerk

DATE: October 16, 2013

SUBJECT: **REFERRAL TO THE NEIGHBORHOOD/COMMUNITY AFFAIRS COMMITTEE TO REVIEW EXISTING POLICY ON PUBLIC TESTIMONY AT PUBLIC MEETINGS**

Senate Bill No. 50, which passed during the 2013 Legislative Session, and became effective October 1, 2013, requires local governments to provide members of the public with a reasonable opportunity to be heard on matters that come before it. Although Miami Beach provides many opportunities for the public to be heard at public meetings, it is recommended that the Neighborhood/Community Affairs Committee review the City's existing policy on public testimony at public meetings to ensure compliance with SB 50.

Attachments:

A copy of Senate Bill No. 50.

A copy of an article printed in the May/June 2013 Quality Cities Magazine that further explains the requirements of Senate Bill No. 50.

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CHAPTER 2013-227

Committee Substitute for Committee Substitute for Senate Bill No. 50

An act relating to public meetings; creating s. 286.0114, F.S.; defining “board or commission”; 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 exceptions; establishing requirements for rules or policies adopted by the board or commission; 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; authorizing a court to assess reasonable attorney fees in actions filed against a board or commission; providing that an action taken by a board or commission which is found in violation of this section is not void; providing that the act fulfills an important state interest; providing an effective date.

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

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

286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.—

(1) For purposes of this section, “board or commission” means a board or commission of any state agency or authority or of any agency or authority of a county, municipal corporation, or political subdivision.

(2) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official 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:

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

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

(c) A meeting that is exempt from s. 286.011; or

(d) A meeting during which the board or commission is acting in a quasi-judicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

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

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

(b) 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;

(c) 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

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

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

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

(7)(a) Whenever an action is filed against a board or commission to enforce this section, the court shall assess reasonable attorney fees against such board or commission if the court determines that the defendant to such action acted in violation of this section. The court may 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. This paragraph does not apply to a state attorney or his or her duly authorized assistants or an officer charged with enforcing this section.

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

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

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

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

Approved by the Governor June 28, 2013.

Filed in Office Secretary of State June 28, 2013.



**TO: Key Officials
FLC Board of Directors
Local & Regional Leagues**

FROM: Kraig Conn, Legislative Counsel

SUBJECT: REMINDER: City Policies on Public Testimony at Public Meetings

DATE: September 18, 2013

Prior to October 1, 2013, each city should review existing (or consider adopting) policies on public testimony at public meetings. Policies should be considered for meetings of the elected body, as well as meetings of appointed bodies. This review should be performed to ensure compliance with SB 50 from the 2013 Legislative Session, which becomes effective October 1, 2013. Attached is an article printed in the May/June 2013 Quality Cities magazine that further explains the requirements from SB 50.

If you have any questions, please contact me at kconn@flcities.com.



Bill Codifies Rules on Public Input at Local Government Meetings



BY KRAIG CONN
FLORIDA LEAGUE OF CITIES

CS/CS/SB 50 by Sen. Joe Negron, which passed during the 2013 legislative session, requires local governments, including appointed bodies, to provide members of the public with a reasonable opportunity to be heard on matters before the local government. Currently, the Florida Constitution and Florida statutes are silent concerning

whether the public has 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. Both cases held that while the public has a

right to attend a public meeting, there is no requirement that the public be given an opportunity to speak or be heard at a public meeting.

Most, if not all, cities likely provide opportunities for the public to be heard at public meetings or on matters coming before the city. If your elected city commission or other appointed city boards or commissions do not already have a policy on speaking at public meetings, you should consider adopting one under the general guidelines within the bill.

The bill creates Section 286.0114, Florida Statutes, and states that a board or commission must provide members of the public with a reasonable opportunity to be heard on a “proposition” before the board or commission. “Board or commission” is broadly defined to include any agency or authority of a county, municipal corporation or political subdivision. The bill does not define “proposition,” but it is likely intended to be broadly applied to include all matters coming before the board or commission.

While the bill requires that members of the public be given a reasonable opportunity to be heard, the opportunity does not have to occur at the same meeting where the board or commission takes official action on an item, whether by formal vote or other final action. However, the opportunity to be heard must comply with the following provisions:

- ▶ The opportunity must occur at a meeting that is during the “decision making” process; and
- ▶ The opportunity must be within reasonable proximity in time before the meeting at which the board or commission takes the official action.

The bill does not specifically state that the opportunity to be heard must occur prior to the official action being taken on an item, but it does imply that this timeframe should apply.

The bill states that nothing in the new law prohibits a board or commission from maintaining orderly conduct or proper decorum in a public meeting. It also allows a board or commission to establish rules or policies on providing testimony. However, the rules or policies can only do the following:

- ▶ Provide guidelines regarding the amount of time an individual has to address the board or commission;
- ▶ Prescribe procedures allowing representatives of groups or factions to address the board or commission, rather than all of the members of the groups or factions;
- ▶ 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 position on a proposition; or to indicate his or her designation of a representative speaker; and

- ▶ Designate a specified period of time for public comment.

The requirement to provide a reasonable opportunity to be heard does not apply under the following circumstances:

- ▶ When an official act must be taken to deal with an emergency situation affecting the public health, welfare or safety, if compliance with the speaking requirements would cause an unreasonable delay in the ability of the board or commission to act;
- ▶ For an official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;
- ▶ At a meeting during which the board or commission is acting in a quasi-judicial capacity with respect to the rights or interests of a person; and
- ▶ At a meeting that is exempt from the Sunshine or Open Meetings Law (Section 286.011, Florida Statutes).

The bill provides that if an action is filed against a board or commission to enforce the opportunity to be heard, a court is to assess reasonable attorney’s fees against the board or commission if it is determined that a violation occurred. The court can assess reasonable attorney’s fees against an individual filing an action if the court finds that the action was filed in bad faith or was frivolous. A court can also issue an injunction for the purpose of enforcing the opportunity to be heard.

CS/CS/SB 50 also provides that if a board or commission adopts rules or policies and follows such rules or policies when providing an opportunity for members of the public to be heard, the board or commission is deemed to be acting in compliance with the law. Significantly, the bill also specifically provides that any action taken by a board or commission that is found to be in violation of the opportunity to be heard is *not* void as a result of the violation.

Hopefully, CS/CS/SB 50 will not have a significant effect on the current operations of elected city commissions and city-appointed boards or commissions, as most of these bodies likely already provide opportunities for public input. If your city has not already done so, you may want to consider adopting rules or policies on public testimony that are applicable to meetings of both the elected and appointed entities. The bill is effective on October 1, 2013, and cities should use the next several months to review, and update if needed, current rules or policies on public testimony before city boards or commissions.

Kraig Conn is legislative counsel for the Florida League of Cities. ■

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