

HB 355

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1 A bill to be entitled
2 An act relating to public meetings; amending s.
3 112.3215, F.S.; conforming a cross-reference; amending
4 s. 286.011, F.S.; requiring that members of the public
5 be given a reasonable opportunity to be heard before a
6 board or commission takes official action on an item
7 of significant interest to the public under certain
8 circumstances; providing exceptions; requiring that a
9 board or commission adopt rules; providing an
10 effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Paragraph (b) of subsection (8) of section
15 112.3215, Florida Statutes, is amended to read:

16 112.3215 Lobbying before the executive branch or the
17 Constitution Revision Commission; registration and reporting;
18 investigation by commission.—

19 (8)

20 (b) All proceedings, the complaint, and other records
21 relating to the investigation are confidential and exempt from
22 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State
23 Constitution, and any meetings held pursuant to an investigation
24 are exempt from the provisions of s. 286.011~~(1)~~ and s. 24(b),
25 Art. I of the State Constitution either until the alleged
26 violinator requests in writing that such investigation and
27 associated records and meetings be made public or until the
28 commission determines, based on the investigation, whether

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probable cause exists to believe that a violation has occurred.

Section 2. Section 286.011, Florida Statutes, is amended to read:

286.011 Public meetings and records; opportunity to be heard; public inspection; criminal and civil penalties.—

(1)(a) 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, except as otherwise provided in the 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 shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(b)1. 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 need not occur at the same meeting at which the board or commission takes official action on the item, if the opportunity occurs at a meeting that is during the decisionmaking process and within reasonable proximity before the board or commission takes the official action. The opportunity to be heard is subject to reasonable rules or policies adopted by the board or commission to ensure the orderly conduct of a public meeting, as provided in subparagraph 3. A resolution, rule, or formal action is not binding unless taken or made in compliance with this paragraph.

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57 2. The requirements in subparagraph 1. do not apply to:

58 a. An official act that must be taken to deal with an
59 emergency situation affecting the public health, welfare, or
60 safety, when compliance with the requirements would cause an
61 unreasonable delay in the ability of the board or commission to
62 act;

63 b. An official act involving no more than a ministerial
64 act; or

65 c. A meeting in which the board or commission is acting in
66 a quasi-judicial capacity with respect to the rights or
67 interests of a person. This sub-subparagraph does not affect the
68 right of a person to be heard as otherwise provided by law.

69 3. Rules or policies of a board or commission adopted
70 under subparagraph 5. may:

71 a. Limit the time an individual has to address the board
72 or commission;

73 b. Require, at meetings in which a large number of
74 individuals wish to be heard, that a representative of a group
75 or faction on an item, rather than all of the members of the
76 group or faction, address the board or commission; or

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

80 4. If a board or commission adopts rules or policies in
81 compliance with this paragraph and follows such rules or
82 policies when providing an opportunity for members of the public
83 to be heard, it is presumed that the board or commission is
84 acting in compliance with this paragraph.

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85 5. Each board or commission that is subject to chapter 120
86 shall adopt rules under ss. 120.536(1) and 120.54 to administer
87 this paragraph.

88 (2) The minutes of a meeting of any such board or
89 commission of any such state agency or authority shall be
90 promptly recorded, and such records shall be open to public
91 inspection. The circuit courts of this state ~~shall~~ have
92 jurisdiction to issue injunctions to enforce the purposes of
93 this section upon application by any citizen of this state.

94 (3) (a) Any public officer who violates any provision of
95 this section commits ~~is guilty of~~ a noncriminal infraction,
96 punishable by fine not exceeding \$500.

97 (b) Any person who is a member of a board or commission or
98 of any state agency or authority of any county, municipal
99 corporation, or political subdivision who knowingly violates the
100 provisions of this section by attending a meeting not held in
101 accordance with the provisions of this section commits ~~hereof is~~
102 ~~guilty of~~ a misdemeanor of the second degree, punishable as
103 provided in s. 775.082 or s. 775.083.

104 (c) Conduct occurring ~~which occurs~~ outside the state which
105 would constitute a knowing violation of this section is a
106 misdemeanor of the second degree, punishable as provided in s.
107 775.082 or s. 775.083.

108 (4) Whenever an action has been filed against any board or
109 commission of any state agency or authority or any agency or
110 authority of any county, municipal corporation, or political
111 subdivision to enforce the provisions of this section or to
112 invalidate the actions of any such board, commission, agency, or

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113 authority, which action was taken in violation of this section,
114 and the court determines that the defendant or defendants to
115 such action acted in violation of this section, the court shall
116 assess a reasonable attorney's fee against such agency, and may
117 assess a reasonable attorney's fee against the individual filing
118 such an action if the court finds it was filed in bad faith or
119 was frivolous. Any fees so assessed may be assessed against the
120 individual member or members of such board or commission;
121 provided, that in any case where the board or commission seeks
122 the advice of its attorney and such advice is followed, no such
123 fees shall be assessed against the individual member or members
124 of the board or commission. However, this subsection does ~~shall~~
125 not apply to a state attorney or his or her duly authorized
126 assistants or any officer charged with enforcing the provisions
127 of this section.

128 (5) Whenever any board or commission of any state agency
129 or authority or any agency or authority of any county, municipal
130 corporation, or political subdivision appeals any court order
131 that ~~which~~ has found the ~~said~~ board, commission, agency, or
132 authority to have violated this section, and such order is
133 affirmed, the court shall assess a reasonable attorney's fee for
134 the appeal against such board, commission, agency, or authority.
135 Any fees so assessed may be assessed against the individual
136 member or members of such board or commission; provided, that in
137 any case where the board or commission seeks the advice of its
138 attorney and such advice is followed, no such fees shall be
139 assessed against the individual member or members of the board
140 or commission.

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141 (6) All persons subject to paragraph (1)(a) ~~subsection (1)~~
142 are prohibited from holding meetings at any facility or location
143 that ~~which~~ discriminates on the basis of sex, age, race, creed,
144 color, origin, or economic status or that ~~which~~ operates in such
145 a manner as to unreasonably restrict public access to such a
146 facility.

147 (7) Whenever any member of any board or commission of any
148 state agency or authority or any agency or authority of any
149 county, municipal corporation, or political subdivision is
150 charged with a violation of this section and is subsequently
151 acquitted, the board or commission is authorized to reimburse
152 the ~~said~~ member for any portion of his or her reasonable
153 attorney's fees.

154 (8) Notwithstanding the provisions of paragraph (1)(a)
155 ~~subsection (1)~~, any board or commission of any state agency or
156 authority or any agency or authority of any county, municipal
157 corporation, or political subdivision, and the chief
158 administrative or executive officer of the governmental entity,
159 may meet in private with the entity's attorney to discuss
160 pending litigation to which the entity is presently a party
161 before a court or administrative agency, provided that the
162 following conditions are met:

163 (a) The entity's attorney shall advise the entity at a
164 public meeting that he or she desires advice concerning the
165 litigation.

166 (b) The subject matter of the meeting shall be confined to
167 settlement negotiations or strategy sessions related to
168 litigation expenditures.

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169 (c) The entire session shall be recorded by a certified
170 court reporter. The reporter shall record the times of
171 commencement and termination of the session, all discussion and
172 proceedings, the names of all persons present at any time, and
173 the names of all persons speaking. No portion of the session
174 shall be off the record. The court reporter's notes shall be
175 fully transcribed and filed with the entity's clerk within a
176 reasonable time after the meeting.

177 (d) The entity shall give reasonable public notice of the
178 time and date of the attorney-client session and the names of
179 persons who will be attending the session. The session shall
180 commence at an open meeting at which the persons chairing the
181 meeting shall announce the commencement and estimated length of
182 the attorney-client session and the names of the persons
183 attending. At the conclusion of the attorney-client session, the
184 meeting shall be reopened, and the person chairing the meeting
185 shall announce the termination of the session.

186 (e) The transcript shall be made part of the public record
187 upon conclusion of the litigation.

188 Section 3. This act shall take effect July 1, 2012.