

1-D-5 | PUBLIC COMMENT

Prior to the adoption of s. 286.0114, F.S. (2013), Florida courts had determined that s. 286.011, F.S., provides a right to attend public meetings, but does not provide a right to be heard. See *Herrin v. City of Deltona*, 121 So. 3d 1094, 1097 (Fla. 5th DCA 2013) (phrase “open to the public” as used in s. 286.011, F.S., means that “meetings must be properly noticed and reasonably accessible to the public, not that the public has the right to be heard at such meetings”). See also *Keesler v. Community Maritime Park Associates, Inc.*, 32 So. 3d 659 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1289 (Fla. 2010); and *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1288 (Fla. 2010).

However, as the court observed in *Herrin*, s. 286.0114(2), F.S., now mandates that “[m]embers 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 does not have to occur at the same meeting at which the board or commission takes official action if the opportunity “occurs at a meeting that is during the decision-making process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action.” Section 286.0114(2), F.S.

The terms “proposition” or “official action” are not defined in the statute, nor is there a distinction between official action taken at a formal meeting versus an informal setting, such as a workshop. Inf. Op. to Jacquot, April 25, 2014. “In light of the purpose of the statute to allow public participation during the decision-making process on a proposition, it should be liberally construed to facilitate that purpose.” Id.

Section 286.0114(3), F.S., states that the public’s “opportunity to be heard” does not apply to:

1. 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;
2. An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;
3. A meeting that is exempt from s. 286.011; or



4. A meeting during which the board or commission is acting in a quasi-judicial capacity. See AGO 17-01 (s. 286.0114, F.S., does not require that members of the public be given a reasonable opportunity to be heard at quasi-judicial code enforcement hearings held by a special magistrate pursuant to authority delegated from the county code enforcement board).

The statute does not prohibit a board or commission from "maintaining orderly conduct or proper decorum in a public meeting." Section 286.0114(2), F.S. In addition, the opportunity to be heard is "subject to rules or policies adopted by the board or commission" as provided in s. 286.0114(4), F.S. These rules or policies are limited to those that:

1. Provide guidelines regarding the amount of time an individual has to address the board or commission;
2. 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;
3. 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
4. Designate a specified period of time for public comment.

If a board or commission adopts such rules or policies and complies with them, it is deemed to be acting in compliance with the statute. Section 286.0114(5), F.S. See *Larson v. Palm Beach County*, No. 502016CA001706 (Fla. 15th Cir. Ct. September 26, 2019), per curiam affirmed, 311 So. 3d 853 (Fla. 4th DCA 2021), available online in the Cases database at the open government site at myfloridalegal.com, upholding a board procedural rule giving members of the public three minutes to speak on all items on the consent agenda versus three minutes on each regular agenda item. And see *City of Miami v. Airbnb, Inc.*, 260 So. 3d 478, 483-484 (Fla. 3d DCA 2018) (temporary injunction prohibiting city from requiring speakers at public hearings to give their names and addresses was overbroad). Cf. *Jones v. Heyman*, 888 F.2d 1328, 1333 (11th Cir. 1989) (mayor's actions in attempting to confine the



speaker to the agenda item in the city commission meeting and having the speaker removed when the speaker appeared to become disruptive constituted a reasonable time, place and manner regulation and did not violate the speaker's First Amendment rights); and *Lozman v. City of Riviera Beach, Fla.*, 138 S.Ct. 1945 (2018), in which the U.S. Supreme Court held that the existence of probable cause for a speaker's arrest for failure to follow the city council's rules of procedure did not bar the speaker's First Amendment retaliation claim.

A circuit court is authorized to issue injunctions for the purpose of enforcing s. 286.0114, F.S. Section 286.0114(6), F.S. However, an action taken by a board or commission which is found to be in violation of that statute is not void as a result of the violation. Section 286.0114(8), F.S.

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