



REPLY TO: TALLAHASSEE

## MEMORANDUM

TO: Municipal and Special District Clients

FROM: James W. Linn and Glenn E. Thomas

DATE: September 18, 2013

RE: SB 50 -- Public Participation in Open Meetings

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SB 50 passed the legislature and was signed into law earlier this year by Governor Scott. This bill creates a new section 286.0114, Florida Statutes, which is intended to provide the general public with a reasonable opportunity to be heard in meetings subject to the Sunshine Law. While the Sunshine Law has long required meetings of boards or commissions to be open to the public, the law has not heretofore guaranteed a right to participate. Except for a few limited exceptions, the law expands the Sunshine Law in a manner that guarantees the right of the public to be heard at meetings of governmental bodies. The law takes effect October 1, 2013.

Section 286.0114 applies to any “board or commission.” The term is defined broadly in a manner that encompasses most government entities, including public pension boards. It specifically provides:

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 a 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...

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### *See Things Differently*

BRADENTON  
101 Riverfront Boulevard  
Suite 620  
Bradenton, Florida 34205

JACKSONVILLE  
245 Riverside Avenue  
Suite 150  
Jacksonville, Florida 32202

TALLAHASSEE  
315 South Calhoun Street  
Suite 830  
Tallahassee, Florida 32301

WEST PALM BEACH  
515 North Flagler Drive  
Suite 1500  
West Palm Beach, Florida 33401

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The requirements under section 286.0114 do not apply to:

- Emergency situations;
- ministerial acts (i.e. approval of minutes);
- exempt meetings under 286.011 (executive session re: litigation); or
- quasi-judicial proceedings (i.e. disability hearings, forfeitures).

A board or commission may adopt rules or policies to implement the new law. If the board or commission does so and complies with those rules or policies, it will be deemed to be acting in compliance with the law. Rules adopted by a board or commission can regulate the following:

- The amount of time an individual has to address the board or commission;
- Procedures for allowing representatives to address the board or commission rather than all members of a group, in meetings in which a large number of people wish to be heard;
- Procedures or forms for an individual to use to inform the board or commission of a desire to be heard, to indicate support, opposition or neutrality and to indicate his or her designation of a representative to speak on his or her behalf; and
- Designation of a specific period of time for public comment.

The law is enforceable by injunction in circuit court and if a court determines that a board or commission took any action in violation of section 286.0114, the court will assess attorney's fees against the board or commission. Conversely, if the court determines that an individual filed an action under section 286.0114 that was frivolous or in bad faith, the court may assess reasonable attorney's fees against that individual. Any action taken by a board or commission in violation of section 286.0114 is not void as a result of such violation.