



FIRST AMENDMENT FOUNDATION

336 East College Avenue, Suite 101 Tallahassee, FL 32301

www.floridafaf.org

March 23, 2011

The Honorable Joe Negron
The Florida Senate
404 South Monroe Street
Tallahassee, FL 32399-1100

RE: Senate Bill 310 The Right to Speak at Public Meetings

Dear Senator Negron:

We are in receipt of the information forwarded to us by Holly Demers regarding potential amendments to Senate Bill 310. Quite frankly, we are concerned about both options.

Of particular concern is the provision that would limit the right of the public to be heard to an "item of significant interest to the public." Under this language, a collegial body could decide which items are of significant issue to the public, in opposition to what the public actually thinks are items of significance, and that body could prohibit public comment on those items. We would suggest that if members of the public want to speak on an item within the subject matter jurisdiction of a collegial body, then that issue is one of significant interest to the public regardless of whether a collegial body thinks it is or should be an item of interest. If an item is not in fact one of significant interest, then no one from the public will speak about it. If only one or two people want to speak on an issue, the collegial body can impose limits on their comments through the use of reasonable rules and regulations to ensure order and decorum at the meeting. As such, we do not see the problem that this language is intended to solve. Further, we have forwarded this amendment to a number of our members and they consistently oppose the language as well. We cannot support an amendment that has the potential to permit a collegial body manipulate or prohibit when the public can comment on items that are of significant interest to the public.

Further, we are opposed to those provisions that provide that the opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action. Even though the amendment requires public comment to occur at a meeting that is during the decision-making process and within reasonable proximity before the board or commission takes official action, a collegial body that is not interested in getting public input could easily use these provisions to avoid taking public comment at those meetings closest to when the decision is made. Further, what if important information comes to light right before the meeting at which the decision is made and the collegial body refuses to take comment to hear it? Additionally, it is unclear what "during the decision-making process" and "reasonable proximity" before official action is taken means and who gets to decide this. Once again, we would suggest that these

provisions are solutions in search of a problem, are unnecessary and, at worse, would provide opportunity for abuse by collegial bodies.

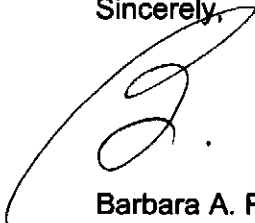
In our opinion, the provisions of the original bill that authorize the adoption of reasonable rules and regulations provide enough latitude to ensure that meetings are orderly and conducted with decorum without permitting elected or appointed members of collegial bodies to avoid public input.

As we discussed when we met with you, we think the original bill could be improved if it were amended to state that the public also has the right to be heard on any non-agendaed item that is within the jurisdiction of the agency. Once again, without this amendment, an agency or local government could avoid putting issues on the agenda that it does not want the public to have the opportunity to discuss. The amendment would help to ensure that agencies cannot avoid public participation by not placing an issue on the agenda.

As we stated in our original letter to you on Senate Bill 310, we think that the public has an inalienable right to be present *and* to be heard at public meetings under Article I, s. 24 of the State Constitution and that the 1st DCA in the *Keesler* case wrongly overturned 40 years of case law interpreting the Sunshine law most favorably to the public it was enacted to protect. We suspect that most members of the public feel similarly. While we appreciate your attempt to ensure that the public has the opportunity to speak at public meetings, we feel that the most recent options forwarded to us are a step backward and could be used to unreasonably restrict the public's right to speak.

We would be happy to work with you, your staff or anyone else you recommend to help solve any problems with Senate Bill 310. Please do not hesitate to contact us if you need any input or assistance.

Sincerely,



Barbara A. Petersen, President

cc: The Honorable Will Weatherford
The Honorable Eric Eisnaugle
Jon Kaney, FAF Senior Counsel, Cobb & Cole, P.A.
Sandy D'Alemberte, Palmer and D'Alemberte, P.A.
Sam Morley, General Counsel, Florida Press Association
Carol LoCicero, Thomas and LoCicero, P.A.