FTA-03 SHADE MEETING EXPANDED STAFF PARTICIPATION

STAFF ANALYSIS

PROPOSAL INFORMATION			
SUBMITTING COUNTY:	Charlotte County		
SPONSOR CONTACT:	Eve Sweeting, Legislative and Strategic Initiatives Manager; Eve.Sweeting@charlottecountyfl.gov; 941-743-1276		
FAC COMMITTEE:	Finance, Tax, & Administration	**CROSS-CLAIMS:**	None identified
FAC STAFF:	M. Black	**DATE:**	October 1, 2026

This staff analysis is based on the proposal as submitted and does not reflect an adopted position of the Florida Association of Counties.

POLICY PROPOSAL:

FAC SUPPORTS legislation that allows senior staff to participate in closed sessions ("shade meetings") as subject matter experts to provide board members with technical knowledge necessary to make informed decisions.

I. SUMMARY:

Charlotte County requests that FAC support amending s. 286.011(8), F.S., to allow senior county staff with relevant subject matter expertise to participate in closed attorney-client sessions ("shade meetings") on pending litigation. The proposal provides that these subject matter experts would provide board members with technical knowledge necessary to make informed decisions. Current law limits attendance to the board, its chief administrative or executive officer, the entity's attorney, and the court reporter. No legislation has been filed in recent sessions, though FAC has adopted this position previously in last year's Legislative Plan.

II. PRESENT SITUATION:

Open Meetings Laws

The Florida Constitution provides that the public has the right to access governmental meetings. Specifically, Article I, s. 24(b) of the State Constitution provides that "all meetings of any collegial public body …at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public … except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution." In sum, the constitutional provision sets forth the state's public policy regarding access to government meetings and requires that all meetings of the executive branch and local government be open and noticed to the public. Public policy regarding access to government meetings is also addressed in the Florida Statutes. Specifically, section 286.011(1), F.S. requires "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, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, 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."

The Legislature may, however, provide by general law for the exemption of meetings from the requirements of Article I, s. 24(b) of the State Constitution. By general law, passed by two-thirds vote of each house, the legislature may exempt any meeting from the public meetings requirement.

Shade Meetings

Notwithstanding subsection (1) of section 286.011, F.S, a board or commission and the chief administrative or executive officer of the governmental entity may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that:

(a) the attorney advises the entity at a public meeting that he or she desires advice concerning the litigation;

(b) the subject matter is confined to settlement negotiations or strategy sessions related to litigation expenditures;

(c) the entire session is recorded and transcribed by a certified court reporter, with no portion off the record;

(d) the entity gives reasonable public notice (time and date) of the session and the names of the persons attending, and announces those names when the session opens; and

(e) the transcript becomes a public record at the conclusion of the litigation.

Section 286.011(8), F.S. (provided above) is a limited exception to the open meeting law for litigation and is often referred to as a "shade meeting." In sum, a "shade meeting" refers to a private meeting of any public board or commission to discuss litigation strategy with an attorney hired by that board or commission. The exemption is narrow and strictly construed. Courts have held that only the persons named in subsection (8) may attend, and that discussions outside settlement negotiations or litigation-expenditure strategy violate the Sunshine Law. *See* School Board of Duval County v. Florida Publishing Co., 670 So. 2d 99 (Fla. 1st DCA 1996); City of Dunnellon v. Aran, 662 So. 2d 1026 (Fla. 5th DCA 1995); Zorc v. City of Vero Beach, 722 So. 2d 891 (Fla. 4th DCA 1998)). Attorney General opinions have recognized that special litigation counsel may attend as the entity's attorney, but that staff and outside consultants may not, and that a session may not be recessed so members can consult persons outside the room (see AGO 95-06; AGO 98-06).

As a result, county directors, engineers, finance officers, and risk managers with direct knowledge of a dispute must brief the board in open session, brief the attorney beforehand, or not participate. Legislation has been proposed previously to add risk managers to those allowed in closed litigation sessions but did not pass the Florida Legislature.

III. EFFECT OF THE PROPOSAL:

The proposal amends s. 286.011(8), F.S., to add senior staff to closed litigation sessions. These individuals are members of the governmental entity's staff identified by the chief administrative or executive officer with technical knowledge and subject matter expertise necessary to make informed decisions.

IV. COUNTY IMPACT:

- Boards would include identified senior staff in shade meetings; the chief administrative or executive officer would decide which staff attend for a given matter.
- Boards would name added staff in the public notice and at the opening announcement, and ensure their participation is captured in the court reporter's record.
- Counties would need to assist county attorneys as these offices update shade-meeting notice templates and staff-selection protocols; boards that do not use the option see no change.
- Counties would monitor exposure to Sunshine Law challenges if staff attending are not properly identified or if discussion strays beyond (8)(b); strict construction of the exemption would continue to apply.
- Scope: all 67 counties, along with municipalities, special districts, and state boards subject to subsection (8). The proposal imposes no preemption and restricts no county authority.

Protective of Home Rule: Yes — the proposal is permissive, expands the options available to county governing boards in managing litigation, and imposes no preemption.

V. FISCAL IMPACT:

- No effect on state or local revenues.
- Indeterminate effect on county expenditures. Counties could benefit from the potential savings associated with fewer follow-up sessions and better-informed settlement decisions; staff time in sessions and slightly longer court reporter sessions are minor offsetting costs.
- No Revenue Estimating Conference or EDR estimate exists or is expected for a public meetings amendment of this type.

DRAFT

Unfunded Mandate (Art. VII, s. 18, Fla. Const.): No, the proposal does not require a county or municipal expenditure and does not reduce revenue-raising authority.

VI. LEGISLATIVE & FAC HISTORY:

- No bill amending s. 286.011(8), F.S., to permit staff participation has been proposed in the 2024–2026 sessions. The last bill which attempted to expand 286.011(8), F.S. was CS/HB 405 (2010), which attempted to expand public meetings exemption to include risk managers and certain division heads involved in pending litigation. The bill died in the Civil Justice and Courts Policy Committee (04/30/2010).
- 2026 similar action: Last year, CS/CS/HB 655 (Duggan; Daley) was filed, substituted for companion bill, CS/CS/SB 332 (Bradley), passed both chambers, 116–0 (House) and 37–0 (Senate) and became ch. 2026-142. The bill proposed an exemption from public meeting requirements for agency-attorney sessions to discuss private property rights claims. It creates s. 70.90, F.S., a closed-session exemption for Bert Harris Act claims modeled on s. 286.011(8), with the same attendee limits, a public necessity statement, and a 2031 OGSR repeal date.
- Past FAC statements: 2024—FTA-PP-09—Shade Meeting Expanded Staff Participation (SUPPORT legislation amending s. 286.011(8), F.S., to allow designated senior county staff to participate as subject matter experts, limited to litigation settlement negotiations or strategy sessions relating to litigation expenditures). Guiding Principles: ADMINISTRATION (B. Public Notice and Procurement) FAC supports county flexibility to satisfy public notice and legal advertising requirements through available media and supports competitive, efficient procurement procedures that protect public resources and streamline delivery of county projects.
- BoCC action: the Charlotte County BoCC has voted to support the proposal, as stated in the submission.

DRAFT