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Hon. Rene Garcia
The Florida Senate
310 Senate Office Building
404 South Monroe Street
Tallahassee, Fl. 32399-1100

Re: SB 1220, Public Records/ Attorney Fees

Dear Senator Garcia:

I write as a concerned citizen to express my opposition to SB 1220 that amends §119.12, F.S., to make the award of reasonable attorney fees and costs permissive rather than mandatory in lawsuits involving violations of our public records laws. In my opinion adoption of this proposal would substantially weaken Florida's public records law and make it more difficult for citizens to gain access to public records.

My concern about the impact of SB 1220 arises out of my experience as a practicing attorney and government official. A member of the Florida Bar since 1971, I have been in the private practice of law for more than 30 years. My clientele has included both private and public sector clients, including local governments, and my practice has frequently involved requests for public records pursuant to Chapter 119. For eight years, I served as the Secretary of the Florida Department of Community Affairs (from 1987-91 and 2007-11). Like other state agencies, the Department was subject to the state's public records laws, and as agency head, I had ultimate responsibility for ensuring the agency's compliance with those laws.

Based on my experience, I offer the following observations about SB 1220.

There is no compelling need or justification for this proposed legislation which eviscerates the only remedy for violation of Chapter 119. Attorney's fees are available under §119.12, F.S., **only** if a court first determines that a governmental agency has violated Chapter 119 by failing to promptly produce public records as required by law. To avoid payment of attorneys' fees, a governmental agency need only comply with the law, that is, produce the requested public records as required by Chapter 119.

The instances in which Chapter 119 is abused by bad faith requests for public records are relatively few and are far outnumbered by cases in which governmental agencies comply with Chapter 119 **only** upon threat of litigation and imposition of attorney's fees. The evisceration of the statutory attorneys' fee provision is not a reasonable or balanced response to those relatively rare cases of abuse. It will discourage aggrieved citizens from filing meritorious lawsuits to enforce compliance with our public records law and will reward those who oppose and abuse those laws.

The attorney's fee provision has been an effective deterrent to violation of the public records law. Government agencies are much more inclined to settle disputes and lawsuits over public records requests because of the mandatory monetary penalty that will be imposed if they lose the lawsuit.

If it becomes law, SB 1220 will inject more uncertainty and complexity into the litigation of public records cases. Current law establishes a bright line test regarding the award of attorney's fees: If the court determines that an agency has violated Chapter 119, "the court **shall** assess and award against the agency responsible...reasonable attorneys' fees." By changing "shall" to "**may**", SB 1220 makes award of attorneys' fees a matter within the unfettered discretion of the court. It provides no standards or criteria to guide the court's exercise of its discretion. How, then, is the court to determine whether attorneys' fees should be awarded in each public records case? What are the mitigating factors that will shield a governmental agency from an award of attorneys' fees even though it has wrongfully withheld public records? These and other questions will have to be answered by the judge in each case, leading to a patchwork quilt of rules that vary from judge to judge and court to court.

SB 11220 guts the only existing remedy for a violation of Chapter 119. I respectfully urge you to consider other approaches that are less destructive to our public records law.

Thank you for your consideration of my concerns.

Sincerely yours,

Thomas G. Pelham