



FIRST AMENDMENT FOUNDATION

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LEGISLATIVE ALERT

February 02, 2017

A CALL TO ACTION!!!

Senator Greg Steube (R- Sarasota) has refiled the attorney fee bill for consideration during the 2017 legislative session. If you remember, Steube, then a member of the Florida House, sponsored legislation last year that would have weakened Florida's public records law and made it more difficult for citizens to gain access to public records. That bill, HB 1021, did not make it out of its final committee of reference. We worked very hard with Senator Garcia, sponsor of the Senate companion, and the League of Cities, to fashion a compromise. That bill, CS/SB 1220 passed the Senate and died in House Messages.

It's hard to believe, but Senator Steube's new bill is actually *worse* than the previous bill. Senate Bill 80 not only changes the current attorney fee provision in §119.12 from mandatory to permissive, it also requires the requestor to provide written notice of the public record request to the agency's custodian of public record at least 5 business days before filing a lawsuit to force compliance with our public records law. Here's a link to SB 80: <http://www.flsenate.gov/Session/Bill/2017/0080/BillText/Filed/PDF>

SB 80 is scheduled for consideration by the S. Governmental Oversight and Accountability Committee on Tuesday, Feb. 7, at 10:00 AM in Room 401 of the Senate Office Building

If you can find time in your busy schedules to write or call Senator Steube and the members of the committee to voice your opposition to the bill, that would be great. If you can come to Tallahassee to testify against the bill at the committee meeting, that would be even better. Send me copies of your letters and I'll make sure they get posted to our website.

Senator Greg Steube steube.greg@flsenate.gov (850) 487-5023

I've provided email addresses and telephone numbers for the committee members at the end of this alert. If you decide to come to Tallahassee, please be aware that the committee may limit testimony on the bill and you may not have an opportunity to speak for more than a couple of minutes, but the more people who show up – even if only to waive in opposition – the better as there is strength in numbers!

I should note that Senator Garcia has revised the compromise language agreed to by the FAR and the League of Cities last session. We will be contacting Senator Garcia soon to see if we can tweak the language just a bit, but the Garcia bill, which preserves the mandatory attorney fee award is far preferable. SB 246: <http://www.flsenate.gov/Session/Bill/2017/0246/BillText/Filed/PDF>

Here's a quick analysis of Steube's bill: Senate Bill 80 will amend Florida Statute §119.12 to make the award of attorney's fees discretionary even when a judge has made a finding that a public agency has wrongfully withheld public records from inspection.

The Florida Public Records Law was created in 1909 to guarantee a citizen's right to open government. The law states that "it is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person." When the government refuses to comply with a public record request, a citizen's only real recourse is to go to court. The law currently provides for a citizen's legal fees to be paid for by the government entity if it is found non-compliant. The attorney fee provision creates a level playing field for someone who can afford to pay for an attorney and those who cannot. With a simple change of one word, "shall" to "may," the public will no longer be guaranteed fair access to what is rightfully theirs.

Let us be clear: if this change is made a judge may not award a citizen attorney's fees even if the judge finds in favor of the citizen.

Public records laws are designed to provide a meaningful right of government oversight and accountability; access laws reduce the opportunity for governmental abuse and help keep public servants honest and accountable for their actions. Without a penalty provision when the government is wrong, there is no incentive to be transparent and provide citizens with access to information about governmental decision-making. The result will be fewer challenges brought by citizens, which will certainly result in less government transparency.

This proposed change in the law is a one-way street against citizens' taxpayers. If SB 80 becomes law, a citizen who successfully sues a government agency or official for an unlawful denial of public records access, *might* be awarded reasonable attorneys fees incurred in pressing his or her case. But the attorney fees incurred by the agency or official *will be* paid. By who? Florida's taxpayers. As we saw in several recent lawsuits against Governor Scott, over half a million dollars was paid in his defense in just one case that alleged he and several members of his staff violated state law when they created email accounts to hide their communications from the public. The taxpayers footed those attorney fee bills.

Rather than reforming the public records law— a specious claim made last year — SB 80 will essentially gut our right of access to government records. Who can afford to sue government for a violation of that right if not guaranteed attorney's fees if successful?

Members of the Senate Governmental Oversight and Accountability Committee

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