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FIRST AMENDMENT FOUNDATION

317 E. Park Avenue Tallahassee, FL 32301

(800) 337-3518 or (850) 222-3518

www.floridafaf.org

LEGISLATIVE ALERT

March 21, 2017

UPDATE ON THE ATTORNEY FEE BILLS

Last week, the Senate Judiciary Committee, chaired by Sen. Greg Steube, was scheduled to hear CS/SB 80, Steube's attorney fee bill. If you remember, we didn't like the bill and had offered a compromise amendment based on comments made by Sen. Simmons at a previous committee hearing. Much to our surprise, Sen. Steube filed a version of our compromise amendment and that amendment, after a bit of tweaking, was adopted and CS/SB 80, as amended, unanimously passed the committee.

CS/CS/SB 80 is on the Senate Special Order Calendar for Thursday, March 23.

The good news is that the mandatory fee provision remains in place; the semi-bad news is that you will have to provide the records custodian with written notice of your public record request five days before you file a lawsuit to force compliance with the public records law.

Here's a brief analysis of CS/CS/SB 80:

1. Amends s. s. 119.12, F.S., requiring a court to award reasonable costs of enforcement, including attorney fees, to the requestor in lawsuits brought to enforce the public records law *if* a court
 - (a) determines that the agency violated the law; *and*
 - (b) the requestor notified the agency's custodian of records of the public record request in writing five days prior to filing the lawsuit.

NOTE: Notice is not required if the custodial agency doesn't provide contact information for the records custodian on its website and in the administrative building where public records are routinely requested.

2. Requires a court to determine whether the public record request was for an "improper purpose," and, if so, requires the court to award reasonable costs of enforcement against the

requestor. “Improper purpose” is defined as the filing of a request or lawsuit for the primary purpose of harassing the agency, causing a violation of the law, or for a frivolous purpose.

3. Stipulates that the public records law does not allow monetary damages and limits costs paid by an agency to the reasonable costs of enforcement, including attorney fees, directly attributable to the lawsuit.

Until today, the Steube bill did not have a companion in the House – a companion bill is necessary for final passage by both the Senate and the House.

But the House Civil Justice and Claims Subcommittee amended HB 163 by Rep. Danny Burgess to conform to CS/CS/SB 80 this morning, and now the two bills are now identical. The House bill has one more committee of reference, the House Government Accountability Committee, before it goes to the House floor.

We will continue to report on these bills as they make their way through the legislative process.

On another note, some of you have been asking that we update our website to include the names and email addresses of all Senate and House members. Rachel was able to get that done today – thank you, Rachel! Here’s the link: <http://floridafaf.org/legislature/contact-your-legislator/>

As always, let us know if you have any questions.