

# CITY OF JACKSONVILLE

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BRIAN AULL  
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## ETHICS COMMISSION LEGISLATIVE COMMITTEE

### MINUTES

February 17, 2017  
Conference Room 2C  
City Hall

The meeting began as a workshop session at 4:11 p.m. due to a lack of quorum as a result of existing vacancies on the Ethics Commission. Quorum for the meeting was established at 4:35 p.m. Attendees: Brian Aull, Chair; Leslie Jean-Bart, Vice-Chair, and Joe Rogan. Others in attendance: Carla Miller, Director of the Office of Ethics, Compliance and Oversight (OECO), via telephone; Kirby Oberdorfer, Deputy Director of the OECO; and Cherry Shaw Pollock, Office of General Counsel (OGC).

#### **New Business:**

Ms. Pollock advised that the meeting would begin in workshop session due to a lack of quorum for the meeting, as only two of the four committee members were present and three members were required for a quorum.

The workshop session began with a telephonic discussion with Barbara Petersen of the First Amendment Foundation regarding various proposed legislation filed in the Florida Legislature relating to amendments to the Sunshine Law and the Florida Public Records Act. Ms. Petersen summarized the amendments contained in the proposed legislation and the current status of the respective legislation. She also provided a historical perspective of Senate Bill 80 ("SB 80"), the proposed legislation that would change the mandatory award of attorney's fee provision in the Public Records Act to a permissive award of attorney's fees. Ms. Petersen advised that the First Amendment Foundation has drafted a compromise bill to present to the sponsor of SB 80 that would retain the mandatory attorney's fee provision in the Public Records Act and also addresses the filing of frivolous actions under the Act. The Legislative Committee and Ms. Petersen engaged in extensive discussion regarding SB 80 and the compromise legislation proposed by the First Amendment Foundation. Following the discussion with Ms. Petersen, the Legislative Committee members discussed their concerns and opinions regarding SB 80 and debated whether the Ethics Commission should issue a resolution regarding SB 80. The committee determined after debate that it would be premature for the Ethics Commission to adopt a position regarding SB 80 because the legislation is still being developed and the position of the First Amendment Foundation has not been finalized. The Legislative Committee also advised that it would like to obtain input from other entities, such as the Florida League of Cities, on SB 80. Ms. Oberdorfer advised that both Senator Steube, sponsor of SB 80, and Senator Garcia, sponsor of another bill


related to SB 80, declined the invitation to call into the Legislative Committee meeting regarding SB 80.

Ms. Miller then provided a summary and historical background of an issue raised by Concerned Taxpayers of Duval County member Conrad Markle at the prior Legislative Committee meeting on November 2, 2016 regarding amending the statute of limitation for Ethics Code violations. Specifically, Mr. Markle requested that the Ethics Commission sponsor legislation to amend the current two year statute of limitation to five years to mirror the statute of limitation in the state Ethics Code. Ms. Miller advised that the Ethics Commission proposed legislation in early 2016 to City Council to amend the statute of limitation from two years to five years and the Rules Committee unanimously voted against the legislation. Mr. Rogan recommended that Ms. Miller contact City Council Rules Committee members to determine if their position on amending the statute of limitation has changed.

The Legislative Committee next discussed the status of the Mayor's pending appointment to the Ethics Commission as a result of the recent resignation of Anthony Salem. Thereafter, the committee decided to try to schedule its next meeting on March 6th or March 8th, depending upon availability of the committee members.

**Adjourn:**

The meeting adjourned at 6:00 p.m.

  
Kirby Oberdorfer  
Deputy Director  
Office of Ethics, Compliance and Oversight

4/11/2017  
Date of Approval

This is a summary of the meeting and is not a verbatim transcription. A recording is available at the Ethics Commission web site at [http://www.coj.net/departments/ethics-commission/notices,-agendas---minutes-\(1\).aspx](http://www.coj.net/departments/ethics-commission/notices,-agendas---minutes-(1).aspx)

**CITY OF JACKSONVILLE**



YWANA ALLEN  
*CHAIR*

BRIAN AULL  
*VICE CHAIR*

GEORGE CANDLER  
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LESLIE JEAN-BART

**ETHICS COMMISSION**

JOSEPH ROGAN  
DAVID RYBAK

**AGENDA**

Legislative Committee  
February 17, 2017  
Conference Room 2C  
Second Floor  
City Hall  
4:00 p.m.

1. Call to Order
2. New Business:
  - Review and Revision of Strategic Plan for Legislative Committee for 2017
  - Florida Legislature HB 163, SB 80 and SB 246 Amending Mandatory Attorney Fees Provision in Florida Public Records Act
  - Campaign Finance Reform Article Previously Published in the Florida Times-Union.
3. Public Comments
4. Announcements
  - Set Date and Time for Next Meeting, if applicable
5. Adjourn

## Melvin, Deborah

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**From:** Oberdorfer, Kirby  
**Sent:** Wednesday, February 15, 2017 6:24 PM  
**To:** Brian Aull; Leslie Scott Jean-Bart (jean-bart@terrellhogan.com); Joseph Rogan  
**Cc:** Miller, Carla; Pollock, Cherry; Melvin, Deborah  
**Subject:** ETHICS COMMISSION Legislative Committee Strategic Plan 2016-2017 Updated 11-14-2016.docx  
**Attachments:** HB 163 Eliminating Mandatory Attorney Fees Provision in Fla Public Records Acty.pdf; SB 80 Eliminating Mandatory Attorney Fees Provision in Fla Public Records Acty.pdf; SB 246 Amending Mandatory Attorney Fee Provision in Fla Public Records Act.pdf; First Amendment Foundation Position Statement on SB 80 Attorneys Fees in Florida Public Records Act.docx; Letter from First Amendment Foundation to Senator Steube Re Opposition to SB 80.pdf; 2-01-2016 EC Meeting Mintues Draft.doc; 3-07-2016 EC Meeting Mintues FINAL APPROVED.doc; Resolution re Proposed Amendment to Public Records Act 2-02-2016.doc; ETHICS COMMISSION Legislative Committee Strategic Plan 2016-2017 Updated 11-14-2016.docx

Dear Legislative Committee Members,

Per the discussion at the Ethics Commission meeting Monday night, the Legislative Committee will meet this Friday, February 17, 2017 at 4:00 p.m. in Conference Room 2C to review and revise the committee's Strategic Plan for this year and to discuss whether the committee desires to address two issues: (1) Florida Legislature SB 80 and SB 246 Amending Mandatory Attorney's Fee Provision in the Florida Public Records Act and (2) campaign finance reform article previously published in the Florida Times-Union.

Attached please find a copy of the following documents:

1. Strategic Plan for the Ethics Commission and Legislative Committee;
2. The three bills (HB 163, SB 80, and SB 246) currently pending in the Florida Legislature amending or eliminating the mandatory attorney's fee provision in the Florida Public Records Act;
3. The First Amendment Foundation's position statement in opposition to SB 80 and the First Amendment Foundation's letter to Senator Steube, sponsor of SB 80, opposing his bill and urging him to support SB 246 filed by Senator Garcia;
4. Minutes from the February and March 2016 Ethics Commission meetings that summarize the discussion of the proposed amendments to the attorney's fee provision in the Public Records Act filed last year by Senator Steube and Senator Garcia; and
5. The Resolution issued by the Ethics Commission in opposition to the amendments filed by Senator Steube last year.

We have invited Barbara Peterson of the First Amendment Foundation, Senator Steube and Senator Garcia to appear at the meeting this Friday via telephone to explain their respective positions and/or bills on this issue. Ms. Peterson has agreed to call into the meeting around 4:15 p.m. We are awaiting a response from Senator Steube and Senator Garcia.

Please let me know if you have any questions regarding these documents or the meeting on Friday. We look forward to seeing you then.

Kirby G. Oberdorfer  
Deputy Director

City of Jacksonville Ethics, Compliance & Oversight Office  
117 W. Duval Street  
Suite 225  
Jacksonville, FL 32202  
(904) 630-4747  
[koberdorfer@coj.net](mailto:koberdorfer@coj.net)

## **ETHICS COMMISSION**

### **STRATEGIC GOALS—2016-2017 Update**

#### **Update Procedures:**

1. Eliminate outdated goals, add new goals
2. Prioritize updated list, by committee
3. Establish timing of each goal (current year, next year, following year)
4. Review annual calendar
5. IO or committees to determine how to integrate annual calendar and current year goals
6. Committees to review/validate
7. Performance against goals to be included in Commission evaluation

#### **Prior goals:**

#### **Overall Goals of the Commission:**

1. Enhance and strengthen the ethics and compliance culture of the City and its agencies.
2. Build public trust.
3. Stay apprised of ethics and compliance best practices and research, especially in local governments.

#### **OECO/ETHICS COMMISSION**

1. Accomplish Section 602.921 Duties (complaints/advice/hire, support, review ethics director)
2. Director and Chair meet in beginning of the year to establish a community education plan regarding citizen outreach, including speaking to citizen groups
3. Ethics Director and Inspector General report on OECO and IG hotline and other intakes (ones that don't become EC cases) two times a year to Chair of EC or Hotline Chair
4. Internal Operating Procedures updated with new EC committees (to revisit in early 2017)
5. Review yearly update of Strategic Plan (Internal Ops Chair and Director) by October each year (to be reviewed by full Ethics Commission in November or December)

## **TRANSPARENCY AND OPEN GOVERNMENT COMMITTEE**

Goal: Promote transparency; support and enhance City education (employees and officials) and citizen education/interaction.

1. Define role, responsibilities and goals of Transparency and Open Government Committee for year and time period for completion of each goal (1st quarter 2017—to be completed and presented to full EC in March 2017)
2. Develop a plan to educate citizens on City Council procedures and City ethics laws:
  - Recommended tasks: Review “It’s our Government Course”—produce basic course for citizens to complete online to educate them on ethics and City Council procedures. (use Council Member Lori Boyer’s modules too. Work with League of Women Voters.) Create a “green room orientation” for citizens that EC members can deliver. Have course be online—Supervisor of Elections has agreed to get out info on it to registered voters.
3. Review role of EC regarding ethics training of City employees and officials and update Ethics Code (proposed resolution date of 5/01/2017)
4. Develop an EC resolution to get sole source contracts to remain online indefinitely (now they are only kept up 7 days) Greg Pease briefed EC on 4/8/2015---needs to be changed by Transparency and Open Government Committee

**LEGISLATIVE COMMITTEE** Goal: Enhance ethical culture and citizen trust through legislation and legislative enhancements

1. Define role, responsibilities and goals of Legislative Committee for year and time period for completion of each goal (1st quarter 2017—to be completed and presented to full EC in March 2017)
2. Identify local ethics laws that need to be changed/added. (recurring)
3. Rewrite Part 4 of the Ethics Code on Conflicts of Interest. (Joe J. have “right to recuse” language in future legislation.) (Really, project of OECO director) (2016/2017 goal)
4. Consider whether Ethics Code should have potential campaign ethics violations. (move Chapter 350 back to Ethics Code?)
5. Revise Lobbying section of Ethics Code. Decriminalize lobbying violations (make civil penalty).
6. Whistleblower section; revise update with IG office?
7. Monitor and comment on State of Florida legislation pertaining to ethics. (recurring)

**COMPLAINTS COMMITTEE** Goal: Handle complaints, enhance comfort in speaking up

1. Define role, responsibilities and goals of Complaints Committee for year and time period for completion of each goal (1st quarter 2017—to be completed and presented to full EC in March 2017)
2. Handle complaints as they come in.
3. Promote a healthy “speak up” culture (a culture of reporting non-optimal situations without fear of retaliation).
4. Determine how to measure employees’ awareness and comfort reporting even non-optimal situations. Establish plan to evaluate regularly.

**NOMINATING SUBCOMMITTEE** (ad-hoc committee formed when needed) Goal: \_\_\_\_\_

1. Handle vacancies in Ethics Commission (succession planning)
2. Coordinate and manage nominations for Chair/Vice Chair, as needed

**INTERNAL OPS (formerly RULES AND PLANNING)** Goal: \_\_\_\_\_

1. Define role, responsibilities and goals of Internal Ops Committee for year and time period for completion of each goal (1st quarter 2017—to be completed and presented to full EC in March 2017)
2. Update Strategic Plan and annual planning calendar once a year.
3. Every 3 years, plan for the entire EC to do a strategic planning session.
4. Ensure Chair evaluates performance of EC and Director annually
5. Define Commission success and set measures; metrics/goals
6. Determine how to evaluate the health of the ethics and compliance program.
  - Establish plan to identify gaps and needs to drive the direction of the OECO office and EC. [Carla – We can do this periodically, likely as a lead in to strategic planning, with continuous updates as needed based on events that significantly impact our risk assessment. This should be a feedback loop providing an ongoing risk assessment to drive the work of OECO and EC.]
7. Develop metrics to evaluate citizen trust
  - UNF annual survey?



# The Florida Senate

## 2016 Florida Statutes

<u>Title X</u> PUBLIC OFFICERS, EMPLOYEES, AND RECORDS	<u>Chapter 119</u> PUBLIC RECORDS  <u>Entire Chapter</u>	<b>SECTION 12</b> <b>Attorney's fees.</b>
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**119.12 Attorney's fees.** — If a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees.

**History.** — s. 5, ch. 75-225; s. 7, ch. 84-298; s. 13, ch. 2004-335.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes.

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A bill to be entitled  
An act relating to public records; amending s. 119.12,  
F.S.; revising the circumstances under which a court  
must assess and award the reasonable costs of  
enforcement against an agency in a civil action to  
enforce ch. 119, F.S.; prohibiting a court from  
assessing and awarding the reasonable costs of  
enforcement against an agency if certain conditions  
exist; specifying circumstances under which a  
complainant is not required to provide certain written  
notice of a public record request; providing an  
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 119.12, Florida Statutes, is amended to  
read:

119.12 Attorney ~~Attorney's~~ fees.—

(1) If a civil action is filed against an agency to  
enforce the provisions of this chapter ~~and if the court~~  
~~determines that such agency unlawfully refused to permit a~~  
~~public record to be inspected or copied,~~ the court shall assess  
and award, ~~against the agency responsible,~~ the reasonable costs  
of enforcement, including reasonable attorney ~~attorneys'~~ fees,  
against the responsible agency if the court determines that:

26        (a) The agency unlawfully refused to permit a public  
 27 record to be inspected or copied; and

28        (b) The complainant provided written notice identifying  
 29 the public record request to the agency's custodian of public  
 30 records at least 5 business days before filing the civil action,  
 31 except as provided under subsection (3).

32        (2) The court may not assess and award any reasonable  
 33 costs of enforcement, including reasonable attorney fees,  
 34 against the responsible agency if the court determines that the  
 35 request to inspect or copy the public record was made primarily  
 36 to harass the agency or cause a violation of this chapter.

37        (3) The complainant is not required to provide written  
 38 notice of the public record request to the agency's custodian of  
 39 public records as provided in paragraph (1)(b) if the agency  
 40 does not prominently post the contact information for the  
 41 agency's custodian of public records in the agency's primary  
 42 administrative building in which public records are routinely  
 43 created, sent, received, maintained, and requested and on the  
 44 agency's website, if the agency has a website.

45        Section 2. This act shall take effect upon becoming a law.

By Senator Steube

23-00206-17

201780\_\_

A bill to be entitled

An act relating to public records; amending s. 119.12, F.S.; requiring a complainant to timely provide certain written notice in order to be entitled to attorney fees in certain civil actions for enforcement of ch. 119, F.S.; providing that the award of such attorney fees is within the discretion of the court; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 119.12, Florida Statutes, is amended to read:

119.12 Attorney ~~Attorney's~~ fees.—If a civil action is filed against an agency to enforce ~~the provisions of~~ this chapter and ~~if~~ the court determines that the complainant provided written notice of the public records request to the agency's custodian of public records at least 5 business days before filing the civil action and the ~~such~~ agency unlawfully refused to permit a public record listed in the notice to be inspected or copied, the court may ~~shall~~ assess and award, against the responsible ~~agency responsible,~~ the reasonable costs of enforcement, including reasonable attorney ~~attorneys'~~ fees.

Section 2. This act shall take effect July 1, 2017.

By Senator Garcia

36-00258-17

2017246\_\_

A bill to be entitled

An act relating to public records; amending s. 119.12, F.S.; revising the circumstances under which a court must assess and award the reasonable costs of enforcement against an agency in a civil action to enforce ch. 119, F.S.; prohibiting a court from assessing and awarding the reasonable costs of enforcement against an agency if certain conditions exist; specifying circumstances under which a complainant is not required to provide certain written notice of a public records request; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 119.12, Florida Statutes, is amended to read:

119.12 Attorney ~~Attorney's~~ fees.—

(1) If a civil action is filed against an agency to enforce the provisions of this chapter ~~and if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied~~, the court shall assess and award, ~~against the agency responsible~~, the reasonable costs of enforcement, including reasonable attorney attorneys' fees, against the responsible agency if the court determines that:

(a) The agency unlawfully refused to permit a public record to be inspected or copied; and

(b) The complainant provided written notice identifying the public records request to the agency's custodian of public records at least 5 business days before filing the civil action, except as provided under subsection (3).

(2) The court may not assess or award any reasonable costs

36-00258-17

2017246\_\_

33 of enforcement, including reasonable attorney fees, against the  
34 responsible agency if the court determines that the request to  
35 inspect or copy the public record was made primarily to harass  
36 the agency or cause a violation of this chapter.

37 (3) The complainant is not required to provide written  
38 notice of the public records request to the agency's custodian  
39 of public records as provided in paragraph (1)(b) if the agency  
40 does not prominently post the contact information for the  
41 agency's custodian of public records in the agency's primary  
42 administrative building in which public records are routinely  
43 created, sent, received, maintained, and requested and on the  
44 agency's website, if the agency has a website.

45 Section 2. This act shall take effect upon becoming a law.

# **FIRST AMENDMENT FOUNDATION**

317 E. Park Avenue, Suite 101, Tallahassee, FL 32301-1513

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

[www.floridafaf.org](http://www.floridafaf.org)

## **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](mailto: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 refilled the compromise language agreed to by the FAF 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**

Senator Dennis Baxley, Chair	<a href="mailto:baxley.dennis@flsenate.gov">baxley.dennis@flsenate.gov</a>	850/487-5012
Senator Frank Artiles, Vice Chair	<a href="mailto:artiles.frank@flsenate.gov">artiles.frank@flsenate.gov</a>	850/487/5040
Senator Bill Galvano	<a href="mailto:galvano.bill@flsenate.gov">galvano.bill@flsenate.gov</a>	850/487-5021
Senator Denise Grimsley	<a href="mailto:grimsley.denise@flsenate.gov">grimsley.denise@flsenate.gov</a>	850/487-5026
Senator Kevin Rader	<a href="mailto:rader.kevin@flsenate.gov">rader.kevin@flsenate.gov</a>	850/487-5029
Senator Darryl Ervin Rouson	<a href="mailto:rouson.darryl@flsenate.gov">rouson.darryl@flsenate.gov</a>	850/487-5019
Senator Linda Stewart	<a href="mailto:stewart.linda@flsenate.gov">stewart.linda@flsenate.gov</a>	850/487-5013



# First Amendment Foundation

Protecting Your Right to Know for 30 Years!

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Past Statewide Voter Services Chair

League of Women Voters

Business Development Director

Geotechnical and Environmental

Consultants, Inc.

February 1, 2017

The Honorable Greg Steube

The Florida Senate

326 Senate Office Building

404 South Monroe Street

Tallahassee, FL 32399-1100

Re: SB 80, Public Records/Attorney Fees

Dear Senator Steube:

We are writing to express our opposition to your bill, HB 80, amending the attorney fee provision in s. 119.12, F.S., to make the award of reasonable attorney fees and costs permissive rather than mandatory in lawsuits seeking public records' access. This mandatory requirement is a tool for enforcing the Public Records statute, and has always been accorded a liberal construction. The constitutional scheme aims to preserve and protect public record access by reimbursing any Floridian for all legal expenses incurred in attempting to force compliance with ch. 119, F.S., and Article I, s. 24, of the Florida Constitution. In other words, the current mandatory fee provision allows those seeking access to public records to enforce their constitutional right of access through court action. Without a guarantee of reasonable attorney fees for successful suits challenging a wrongful denial of access, requestors will be less likely to challenge wrongful denials of public record requests.

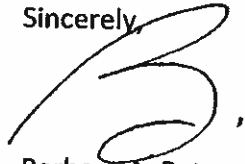
Even though Florida has one of the strongest public records laws in the nation, there is no enforcement mechanism in the law, forcing an aggrieved citizen to file a civil suit to guarantee compliance with the constitutional right to access public records. This, in itself, significantly bars public record access for most citizens. In making the attorney fee provision permissive, SB 80 reduces the mandatory attorney fee safeguard to a mere permissive redundancy, an insurmountable barrier to most, and erodes the public's ability to oversee their own government and hold it accountable for its actions.

The Florida Supreme Court recently explained the indispensable role of the mandatory fee provision in our constitutional scheme. [*Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120 (Fla. 2016)] By making the attorney fee provision permissive rather than mandatory, SB 80 effectively eviscerates the constitutional right of access to public records and we respectfully request that it be withdrawn from further consideration.

We're mindful of the harmful impact of those who are filing public record requests for the sole purpose of forcing settlement and collecting fees, Senator Steube. We worked hard with Senator Garcia, sponsor of last year's SB 1220, and the League of Cities to fashion a compromise that would preserve the right of access and protect government agencies from predatory public record requests. The bill didn't pass last year, but Senator Garcia has filed an identical bill – SB 246 – for consideration during the 2017 session and we urge your support for the legislation.

Thank you for your attention to our concerns, Senator.

Sincerely,

A handwritten signature in black ink, appearing to be 'B. Petersen', with a large, stylized 'B' and a smaller 'P'.

Barbara A. Petersen, President

Cc: The Honorable Joe Negron, President, The Florida Senate  
The Honorable Oscar Branyon, Minority Leader, The Florida Senate  
Jon Kaney, General Counsel, First Amendment Foundation  
Samuel Morley, General Counsel, Florida Press Association  
Gil Thelen, Executive Director, Florida Society of News Editors

# CITY OF JACKSONVILLE

JOE JACQUOT  
CHAIR

YWANA ALLEN  
BRIAN AULL  
RICHARD A. BROWN  
GEORGE CANDLER



TOM PAUL  
VICE CHAIR

JOHN HARTLEY  
DAVID RYBAK  
ANTHONY SALEM

## ETHICS COMMISSION

### MINUTES

February 1, 2016  
Don Davis Room  
City Hall

The meeting was called to order by Joe Jacquot, Chair, at 5:02 p.m. A quorum was present.

Attendees: Ywana Allen, Brian Aull, Richard Brown, Dr. George Candler, John Hartley, Tom Paul, David Rybak, and Anthony Salem. Other attendees: Carla Miller, Director Office of Ethics, Compliance and Oversight ("OECO"); Kirby Oberdorfer, Deputy Director OECO; Cherry Shaw Pollock, Assistant General Counsel, Office of General Counsel; Ali Korman Shelton, Director of Intergovernmental Affairs for Mayor Curry; Jessica Baker, Mayor Curry's Office; and Dr. Johnny Gaffney, Boards & Commissions Liaison for Mayor Curry.

Public in Attendance: James J. Breland, Dan Carr, Dan Evans, Jr., Conrad Markle, John Nooney, Lynne Price, John S. Winkler, and Marshall M. Wood (Note: only individuals who signed the attendance sheet and noted their election to be recognized are included in the minutes).

Chair Jacquot opened with the Pledge of Allegiance. Ms. Miller then provided the Ethics Thought. Next, the Ethics Commission reviewed the minutes from the prior Ethics Commission meeting on January 11, 2016. Mr. Paul made a motion to approve the minutes from the January Ethics Commission meeting. Ms. Allen seconded the motion. Minutes were approved by vote of 8-0 (Mr. Brown had not yet arrived at the meeting).

### Reports

Ms. Miller advised that the OECO report would be covered in the items on the Agenda.

Ms. Shaw Pollock advised that she did not have a report from the Office of General Counsel.

### New Business

Chair Jacquot then recognized Council Member Bill Gulliford for his presentation on proposed Substitute Ordinance 2015-697 limiting texting by Council Members during City Council meetings. Council Member Gulliford advised he was speaking to the Ethics Commission to garner support for Substitute Ordinance 2015-697. Following his presentation of 2015-697, Council Member Gulliford and the Ethics Commission members engaged in a detailed discussion of the legislation. Mr. Paul subsequently made a motion for a resolution from the Ethics Commission supporting the Substitute Ordinance 2015-697. Chair Jacquot made an amendment to include the Ethics Commission being in support of discussion with the Ethics

Office, Council Member Gulliford and the Council President regarding enforcement of Council rules. Mr. Paul advised he supported the amendment by Chair Jacquot. Motion seconded by Mr. Brown. Motion passed 9-0.

Chair Jacquot next recognized Ms. Korman Shelton to present on Florida Legislature HB 1021 and SB 1220 amending the mandatory attorney fees provision in the Florida Public Records Act. Ms. Korman Shelton summarized the current law and explained how HB 1021 and SB 1220 would change the law to make attorney fees awards discretionary rather than mandatory. Ms. Korman Shelton also advised as to the status of HB 1021 and SB 1220. Ms. Miller then provided background information on the impetus for HB 1021 and SB 1220, and summarized the concerns of citizens and the First Amendment Foundation regarding this legislation. The Ethics Commission then discussed and debated various amendments proposed by citizen groups to the current Florida Public Records Act. Chair Jacquot and Ms. Miller recommended that the Ethics Commission issue a resolution on HB 1021 and SB 1220.

Chair Jacquot then requested public comment on HB 1021 and SB 1220. Bob Dees spoke first, providing his experience in litigating public records lawsuits under the Florida Public Records Act, and advising of his opposition to the current language of HB 1021 and SB 1220 due to the potential adverse impact on legitimate requests by the public to access government records and likely increased litigation and expense. Frank Denton spoke next in opposition to HB 1021 and SB 1220. Mr. Denton shared his experience in the difficulty of obtaining public records. Mr. Denton also explained that under the current Public Records Act, judges do not always award attorney fees despite the mandatory provision of fees in the statute.

The Ethics Commission then discussed a motion for a resolution opposing HB 1021 and SB 1220 due to concerns about the possible adverse impact on citizen access to public records and the need for the citizens to provide input into the pending legislation. Motion passed 8-1. Mr. Aull explained his reasoning for not supporting the motion for a resolution opposing HB 1021 and SB 1220 because of the need to address the abuse of the mandatory attorney fees provision by frivolous litigants. Ms. Miller agreed that the Ethics Commission resolution should recognize the problem with abuses and a need to balance the abuses with the right of the public to access government records. Mr. Paul made a motion to reconsider the previous motion for a resolution opposing HB 1021 and SB 1220 and Mr. Salem and Mr. Aull seconded the motion to reconsider. Motion to reconsider passed 9-0. Mr. Paul then made another motion for a resolution opposing HB 1021 and SB 1220 and including recognition of the need to balance abuses by frivolous litigants with the legitimate need to access government records. Motion approved 9-0.

### **Unfinished Business**

Ms. Miller then summarized the status of the ethics education bill and statute of limitations bill, Ordinances 2016-006 and 2015-765, respectively. Ms. Miller advised that the ethics education bill (Ordinance 2016-006), Council Member Gulliford's texting bill (2015-697), and the nominations of Mr. Hartley and Mr. Rybak were scheduled to be heard by the City Council Rules Committee tomorrow.

The Ethics Training for Boards & Commissions—Part III, Training for New Ethics Commission Members and Committee Assignments were deferred to the next Ethics Commission meeting.

**Public Comments:**

Mr. Wood, Mr. Breland, and Mr. Nooney provided public comment. Their comments are on file with the OECO.

There being no further business, the meeting adjourned at 7:05 p.m.

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Kirby Oberdorfer, Ethics Deputy Director

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Date of Approval

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# CITY OF JACKSONVILLE

JOE JACQUOT  
CHAIR

YWANA ALLEN  
BRIAN AULL  
RICHARD A. BROWN  
GEORGE CANDLER



TOM PAUL  
VICE CHAIR

JOHN HARTLEY  
DAVID RYBAK  
ANTHONY SALEM

## ETHICS COMMISSION

### MINUTES

March 7, 2016  
Don Davis Room  
City Hall

The meeting was called to order by Tom Paul, Vice-Chair, at 5:15 p.m. A quorum was present.

Attendees: Ywana Allen, Brian Aull, Richard Brown, John Hartley, and David Rybak. Excused absent: Dr. George Candler, Joe Jacquot, Chair, and Anthony Salem. Other attendees: Carla Miller, Director Office of Ethics, Compliance and Oversight ("OECO"); Kirby Oberdorfer, Deputy Director OECO; Cherry Shaw Pollock, Assistant General Counsel, Office of General Counsel.

Public in Attendance: John Nooney (Note: only individuals who signed the attendance sheet and noted their election to be recognized are included in the minutes).

Chair Paul opened with the Pledge of Allegiance. Ms. Miller then provided the Ethics Thought. Next, the Ethics Commission reviewed the minutes from the prior Ethics Commission meeting on February 1, 2016. Mr. Rybak made a motion to approve the minutes from the February Ethics Commission meeting. Ms. Allen seconded the motion. Minutes were approved by vote of 6-0.

### Reports

Ms. Miller provided the report for the OECO. She advised that she and Vice-Chair Paul provided training on government and corporate accountability to a European Delegation visiting the United States through the State Department. Ms. Miller requested a volunteer from the Ethics Commission to assist in amending and updating the Internal Operating Procedures of the Ethics Commission. Mr. Rybak volunteered to assist Ms. Miller with the updating the Internal Operating Procedures, which will be presented to the Ethics Commission for consideration at a later meeting.

Ms. Shaw Pollock then provided the report from the Office of General Counsel. Ms. Pollock requested that Ethics Commission members advise others who may have access to their respective e-mails that the members may receive confidential information related to the Ethics Commission by e-mail and this information should remain confidential. Ms. Pollock further requested that the Ethics Commission members provide input on their preferred method of distribution for confidential information. The Ethics Commission members provided feedback on the best method to distribute and receive confidential information.

## **Unfinished Business**

Ms. Miller provided an update on the proposed ordinance 2015-697 filed by Council Member Gulliford regarding use of texting and electronic communications by City Council members. Ms. Miller advised that Council President Anderson had instituted a new policy on texting at the Rules Committee meeting on March 1, 2016. Ms. Miller summarized the similarities and differences between proposed ordinance 2015-697 and the new policy enacted by Council President Anderson. Ms. Miller advised of several potential courses of action for the Ethics Commission to take regarding this issue. The Ethics Commission members discussed the potential courses of action and their concerns regarding the new policy by Council President Anderson. Mr. Brown made a motion for the Ethics Commission to issue a recommendation to City Council re-endorsing proposed ordinance 2015-697 and encouraging City Council to pass this proposed ordinance in lieu of the policy issued by Council President Anderson on March 1, 2016 due to the limitations in Council President Anderson's policy. Motion by seconded by Mr. Rybak. Mr. Nooney then provided public comment on this issue in favor of proposed ordinance 2015-697. Motion passed by vote of 6-0 following public comment.

Ms. Allen then provided a recommendation that the texting and electronic communications policy should be applied consistently to all of the City entities, including the independent authorities. Ms. Miller advised that the Legislative Committee or a special committee of the Ethics Commission should consider this issue. Ms. Allen agreed to chair a special committee to research the issue of the policy for use of texting and electronic communications.

Ms. Miller then provided an update on proposed Florida House Bill 1021 and Senate Bill 1220. She advised that the Jacksonville and Miami Ethics Commissions both opposed these bills that would have removed the mandatory attorney's fee provision from the Public Records Act. The First Amendment Foundation, working with other groups, successfully lobbied for changes to SB 1220, which the Senate adopted. However, the House never voted on HB 1021 or the changes to SB 1220 and the bill did not move forward during the legislative process.

## **New Business**

Ms. Miller summarized the process for Committee assignments for the Ethics Commission for 2016 and introduced the most recent Strategic Plan. Mr. Paul advised that three people on each committee was too few and made making decisions challenging. The Ethics Commission then discussed the committee structure and the possibility of consolidating some committees. The Ethics Commission members provided their preliminary interests for committee assignments for 2016.

The Ethics Commission then considered the evaluation of Ms. Miller prepared by Chair Jacquot. Ms. Miller provided background for the development of the evaluation form. The Ethics Commission adopted the evaluation prepared by Chair Jacquot.

## **Public Comments:**

Mr. Nooney provided public comment regarding filing a complaint with the Ethics Commission against the Waterways Commission. He further discussed the differing practices among boards, commissions and departments in including public comments in the meeting minutes. Mr.

Nooney's comments are on file with the OEEO.

The next meeting of the Ethics Commission was scheduled for April 4, 2016 for training for new Ethics Commission members.

Ms. Miller then provided training for the Ethics Commission members present.

Following the training, the meeting adjourned.

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Kirby Oberdorfer, Ethics Deputy Director

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Date of Approval

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CITY OF JACKSONVILLE



JOE JACQUOT  
*CHAIR*

YWANA ALLEN  
BRIAN AULL  
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GEORGE CANDLER

TOM PAUL  
*VICE CHAIR*

JOHN HARTLEY  
DAVID RYBAK  
ANTHONY SALEM

**ETHICS COMMISSION**

**RESOLUTION OF THE JACKSONVILLE ETHICS COMMISSION**

February 1, 2016

The Jacksonville Ethics Commission unanimously opposes the Florida Legislature moving forward on the current versions of House Bill 1021 and Senate Bill 1220. The current proposals, which eliminate mandatory attorney fee awards in public record cases, will have a negative impact on Florida citizens' access to government records and on government accountability. With additional input from local Florida Ethics Commissions and citizen groups, a more balanced solution can be achieved that can effectively decrease abuses of the law without adversely affecting citizen rights.

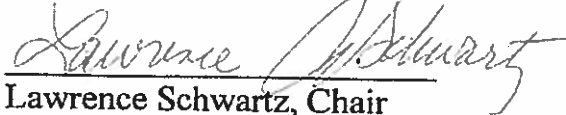
Unanimously passed 9-0

**RESOLUTION  
OF THE MIAMI-DADE COMMISSION  
ON ETHICS AND PUBLIC TRUST  
IN OPPOSITION TO HB 1021 AND SB 1220**

The Miami-Dade Commission on Ethics and Public Trust opposes passage by the Florida Legislature of the current versions of House Bill 1021 and Senate Bill 1220. The current proposals, which eliminate mandatory attorney fee awards in public records law suits, will have a negative impact on Florida citizens' access to government records and on government accountability. The Commission believes that attorney fee awards in such cases should be mandatory, but that judges should retain discretion to set the amount of the fee award based on what is reasonable in the circumstances of a particular case. The Commission believes that the Florida Legislature should find a balanced solution which effectively discourages abusive uses of the Public Records Act without adversely affecting the rights of citizens to gain access to public records.

PASSED 4-0 on this 10<sup>th</sup> day of February, 2016

THE MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

  
Lawrence Schwartz, Chair