February 3, 2016

The Honorable House Speaker Crisafulli
The Honorable Senate President Gardiner

Re: HB 1021/SB1220 Public Records

Dear Speaker Crisafulli and President Gardiner:

As an active participant and strong supporter of Florida’s Sunshine Law, the League of Women Voters of Florida strongly opposes HB 1021 and SB 1220.

Florida Statutes sec. 119.01(1), General State Policy on Public Records, says, “It is the policy of the State that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.”

Attorney General Pam Bondi is quoted in her department’s website, saying, “In Florida, transparency is not a whim or grace of public officials. Instead, it is an enforceable right.”

Unfortunately, our public officials, at various levels of government, sometimes fail or refuse to fulfill their legal duty to make all public records available for inspection and copying.

In those instances, the requesting party’s only remedy is to go to court to enforce his or her legal right.

You have recognized the occasional need for a civil action to enforce the Sunshine Laws by specifically providing, in F.S. sec. 119.12, that the responsible agency shall pay the requester’s reasonable expenses, including attorney’s fees, if the court finds that the agency “unlawfully refused” to permit a public record to be inspected or copied.

In fact, that payment obligation is one of the things that make our public records laws so strong. The prospect of paying the requester’s cost creates a strong incentive for an agency to obey the law.
Without recovering their costs, most citizens could not afford to enforce their legal right. The “enforceable right” stated by Ms. Bondi would disappear.

The proposed amendment contained in SB 1220, and in its House companion bill, HB 1021, would change a court’s obligation to assess the agency the costs of its “unlawful” refusal, from a mandatory “shall” to an optional “may” destroying the incentive for agencies to obey the law. Please do not make that change.

SB 1220 also contains a new requirement that the court find that the requester provide written notice, to the agency, of the public records request prior to filing a civil action for reimbursement of costs. That seems quite fair, and we have no objection to such a reasonable notice requirement. It would give the agency a last opportunity to furnish the records and avoid the civil action.

Open government is a vital tool in maintaining citizen trust in both the legislative and executive branches. This law has been a positive influence and has worked well in Florida.

The League of Women Voters of Florida encourages alternative remedies to address the current abuses of sunshine by a small cottage industry. Solutions should be sought in a methodical, broad based conversation with all impacted.

Thank you for this consideration.

Respectfully submitted,

Pamela S. Goodman
President, League of Women Voters of Florida.

CC: The Florida House of Representatives
The Florida Senate
Barbara Petersen, First Amendment Foundation