

By Senator Pizzo

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1                   A bill to be entitled  
2       An act relating to public records requests; amending  
3       s. 119.07, F.S.; prohibiting an agency from charging a  
4       certain fee under a specified circumstance; providing  
5       that custodians of public records may rely solely on  
6       certain required safeguards to determine whether  
7       records are partly or wholly exempt from disclosure;  
8       making technical changes; amending s. 119.10, F.S.;  
9       increasing the maximum civil penalty allowed for  
10      certain violations related to public records;  
11      prohibiting a public officer from knowingly deterring  
12      a resident from enforcing specified provisions or  
13      retaliating against a resident for making a certain  
14      request; providing administrative and criminal  
15      penalties; providing that any agency that violates  
16      specified provisions must be assessed a daily civil  
17      penalty that must be paid to the impacted public  
18      records requestor under specified conditions; amending  
19      s. 119.11, F.S.; requiring that courts set immediate  
20      hearings on certain actions and give such hearings  
21      priority over all other pending cases until specified  
22      conditions are satisfied; prohibiting the termination  
23      of certain civil actions without an evidentiary  
24      hearing; revising the timeframe in which an agency  
25      must comply with certain court orders; making  
26      technical changes; amending s. 119.12, F.S.; providing  
27      that a complainant is not required to provide a  
28      certain written notice to an agency when the initial  
29      public records request was furnished to the agency's

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30 custodian in written form, by e-mail, or through the  
31 agency's website; requiring a court to make a certain  
32 determination after the merits of the case have been  
33 decided; providing for retroactive application;  
34 reenacting ss. 39.00145(2)(c) and 119.0701(3)(c),  
35 F.S., relating to failing to make available certain  
36 records that concern specified children and  
37 contractors who fail to provide certain records to a  
38 public agency, respectively, to incorporate the  
39 amendment made to s. 119.10, F.S., in references  
40 thereto; reenacting s. 213.732(7), F.S., relating to  
41 priority of specified civil actions, to incorporate  
42 the amendment made to s. 119.11, F.S., in a reference  
43 thereto; providing an effective date.  
44

45 Be It Enacted by the Legislature of the State of Florida:  
46

47 Section 1. Paragraph (d) of subsection (4) of section  
48 119.07, Florida Statutes, is amended to read:

49 119.07 Inspection and copying of records; photographing  
50 public records; fees; exemptions.—

51 (4) The custodian of public records shall furnish a copy or  
52 a certified copy of the record upon payment of the fee  
53 prescribed by law. If a fee is not prescribed by law, the  
54 following fees are authorized:

55 (d) If the nature or volume of public records requested to  
56 be inspected or copied pursuant to this subsection is such as to  
57 require extensive use of information technology resources or  
58 extensive clerical or supervisory assistance by personnel of the

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59 agency involved, or both, the agency may charge, in addition to  
60 the actual cost of duplication, a special service charge, which  
61 must ~~shall~~ be reasonable and ~~shall be~~ based on the cost incurred  
62 for such extensive use of information technology resources or  
63 the labor cost of the personnel providing the service that is  
64 actually incurred by the agency or attributable to the agency  
65 for the clerical and supervisory assistance required, or both.  
66 An agency may not charge a fee under this paragraph once the  
67 agency has received a request to produce records for inspection  
68 or to be copied. An agency's custodian of records may rely  
69 solely on the safeguards required in paragraph (2) (b) to  
70 determine whether the requested records are partly or wholly  
71 exempt from disclosure.

72 Section 2. Paragraph (a) of subsection (1) of section  
73 119.10, Florida Statutes, is amended, paragraph (c) is added to  
74 that subsection, and subsection (3) is added to that section, to  
75 read:

76 119.10 Violation of chapter; penalties.—

77 (1) Any public officer who:

78 (a) Violates any provision of this chapter commits a  
79 noncriminal infraction, punishable by fine not exceeding \$5,000  
80 ~~\$500~~.

81 (c) Knowingly deters any resident from enforcing s.  
82 119.07(1) or s. 119.12(1) or retaliates against any resident for  
83 making a public records request is subject to suspension and  
84 removal or impeachment and, in addition, commits a misdemeanor  
85 of the first degree, punishable as provided in s. 775.082 or s.  
86 775.083.

87 (3) An agency that violates this chapter must be assessed a

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88 civil penalty of \$100 per day that the records are unlawfully  
89 withheld, which must be paid to the impacted public records  
90 requestor after a judge issues a final judgment in a civil  
91 action to enforce this chapter.

92 Section 3. Section 119.11, Florida Statutes, is amended to  
93 read:

94 119.11 Accelerated hearing; priority civil action;  
95 immediate compliance.—

96 (1) Whenever an action is filed to enforce the provisions  
97 of this chapter, the court shall set ~~an~~ immediate hearings and  
98 shall give hearing, giving the case priority over all other  
99 pending cases until the agency is in immediate compliance with  
100 this chapter and all requested public records subject to  
101 inspection and examination under s. 119.07(1) have been provided  
102 to the requestor. A civil action filed under this chapter may  
103 not be terminated without an evidentiary hearing.

104 (2) Whenever a court orders an agency to open its records  
105 for inspection in accordance with this chapter, the agency shall  
106 comply with such order within 24 ~~48~~ hours, unless otherwise  
107 provided by the court issuing such order, or unless the  
108 appellate court issues a stay order within such 24-hour ~~48-hour~~  
109 period.

110 (3) A stay order may ~~shall~~ not be issued unless the court  
111 determines that there is a substantial probability that opening  
112 the records for inspection will result in significant damage.

113 (4) Upon service of a complaint, counterclaim, or cross-  
114 claim in a civil action brought to enforce the provisions of  
115 this chapter, the custodian of the public record that is the  
116 subject matter of such civil action may ~~shall~~ not transfer

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117 custody, alter, destroy, or otherwise dispose of the public  
118 record sought to be inspected and examined, notwithstanding the  
119 applicability of an exemption or the assertion that the  
120 requested record is not a public record subject to inspection  
121 and examination under s. 119.07(1), until the court directs  
122 otherwise. The person who has custody of such public record may,  
123 however, at any time permit inspection of the requested record  
124 as provided in s. 119.07(1) and other provisions of law.

125 Section 4. Section 119.12, Florida Statutes, is amended to  
126 read:

127 119.12 Attorney fees.—

128 (1) If a civil action is filed against an agency to enforce  
129 the provisions of this chapter, the court shall assess and award  
130 the reasonable costs of enforcement, including reasonable  
131 attorney fees, against the responsible agency if the court  
132 determines that:

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

135 (b) The complainant provided written notice identifying the  
136 public record request to the agency's custodian of public  
137 records at least 5 business days before filing the civil action,  
138 except as provided under subsection (2). The notice period  
139 begins on the day the written notice of the request is received  
140 by the custodian of public records, excluding Saturday, Sunday,  
141 and legal holidays, and runs until 5 business days have elapsed.

142 (2) The complainant is not required to provide written  
143 notice of the public record request to the agency's custodian of  
144 public records as provided in paragraph (1)(b) if the agency  
145 does not prominently post the contact information for the

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146 agency's custodian of public records in the agency's primary  
147 administrative building in which public records are routinely  
148 created, sent, received, maintained, and requested and on the  
149 agency's website, if the agency has a website, or if the initial  
150 public records request was furnished to the agency's custodian  
151 in written form, by e-mail, or through a public records request  
152 option on the agency's website.

153 (3) The court shall determine whether the complainant  
154 requested to inspect or copy a public record or participated in  
155 the civil action for an improper purpose after the merits of the  
156 case have been decided. If the court determines there was an  
157 improper purpose, the court may not assess and award the  
158 reasonable costs of enforcement, including reasonable attorney  
159 fees, to the complainant, and shall assess and award against the  
160 complainant and to the agency the reasonable costs, including  
161 reasonable attorney fees, incurred by the agency in responding  
162 to the civil action. For purposes of this subsection, the term  
163 "improper purpose" means a request to inspect or copy a public  
164 record or to participate in the civil action primarily to cause  
165 a violation of this chapter or for a frivolous purpose.

166 (4) This section does not create a private right of action  
167 authorizing the award of monetary damages for a person who  
168 brings an action to enforce the provisions of this chapter.  
169 Payments by the responsible agency may include only the  
170 reasonable costs of enforcement, including reasonable attorney  
171 fees, directly attributable to a civil action brought to enforce  
172 the provisions of this chapter.

173 Section 5. The amendments made by this act to s. 119.12,  
174 Florida Statutes, are remedial in nature and apply retroactively

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175 to July 1, 2017.

176 Section 6. For the purpose of incorporating the amendment  
177 made by this act to section 119.10, Florida Statutes, in a  
178 reference thereto, paragraph (c) of subsection (2) of section  
179 39.00145, Florida Statutes, is reenacted to read:

180 39.00145 Records concerning children.—

181 (2) Notwithstanding any other provision of this chapter,  
182 all records in a child's case record must be made available for  
183 inspection, upon request, to the child who is the subject of the  
184 case record and to the child's caregiver, guardian ad litem, or  
185 attorney.

186 (c) If a child or the child's caregiver, guardian ad litem,  
187 or attorney requests access to the child's case record, any  
188 person or entity that fails to provide any record in the case  
189 record under assertion of a claim of exemption from the public  
190 records requirements of chapter 119, or fails to provide access  
191 within a reasonable time, is subject to sanctions and penalties  
192 under s. 119.10.

193 Section 7. For the purpose of incorporating the amendment  
194 made by this act to section 119.10, Florida Statutes, in a  
195 reference thereto, paragraph (c) of subsection (3) of section  
196 119.0701, Florida Statutes, is reenacted to read:

197 119.0701 Contracts; public records; request for contractor  
198 records; civil action.—

199 (3) REQUEST FOR RECORDS; NONCOMPLIANCE.—

200 (c) A contractor who fails to provide the public records to  
201 the public agency within a reasonable time may be subject to  
202 penalties under s. 119.10.

203 Section 8. For the purpose of incorporating the amendment

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204 made by this act to section 119.11, Florida Statutes, in a  
205 reference thereto, subsection (7) of section 213.732, Florida  
206 Statutes, is reenacted to read:

207 213.732 Jeopardy findings and assessments.—

208 (7) If the department proceeds to seize or freeze the  
209 assets of a taxpayer upon a determination of jeopardy, the  
210 taxpayer shall have a right to a meeting with the department, as  
211 provided by subsection (3), immediately or within 24 hours after  
212 requesting such meeting. The department shall, within 24 hours  
213 after such meeting, determine whether to release the seizure or  
214 freeze. If the department does not release such seizure or  
215 freeze of property, the taxpayer shall have a right to request a  
216 hearing within 5 days before the circuit court, at which hearing  
217 the taxpayer and the department may present evidence with  
218 respect to the issue of jeopardy. Venue in such an action shall  
219 lie in the county in which the seizure was effected or, if there  
220 are multiple seizures based upon the same assessment, venue  
221 shall also lie in Leon County. Whenever an action is filed to  
222 seek review of a jeopardy finding under this subsection, the  
223 court shall set an immediate hearing and shall give the case  
224 priority over other pending cases other than those filed  
225 pursuant to s. 119.11.

226 Section 9. This act shall take effect July 1, 2024.