

Law Offices

Christiansen & Dehner, P.A.

63 Sarasota Center Blvd. Suite 107 Sarasota, Florida 34240 • 941-377-2200 • Fax 941-377-4848

MEMORANDUM

TO: All Pension Boards

FROM: Christiansen & Dehner, P.A. *MC*

DATE: June 23, 2017

RE: **LEGISLATIVE UPDATE AND ACTION PLAN -**
Senate Bill 80 (Amendment to F.S. Ch. 119)

Senate Bill 80 - Amendments to the Public Records Act

On May 23, 2017, Governor Rick Scott signed into law, Senate Bill 80 – a bill intended to curb what some consider abuses of Florida’s broad public records law. This law responds to the practice of filing so-called “gotcha” lawsuits in which members of the public file frivolous public records requests intended primarily to cause a violation of the law and result in an attorney fee award. This law applies to all public records requests made after May 23, 2017.

The public records law states that when a member of the public sues a public agency to obtain public records because those records were not produced, the person suing the agency is entitled to an award of attorney fees and costs associated with the lawsuit. Each local retirement system is an “agency” for purposes of this law. Senate Bill 80 creates a new requirement that a member of the public who seeks an award of attorney fees and costs must provide written notice to the agency’s custodian of public records no less than five business days before filing the lawsuit. The five-day notice is not required if the agency does not prominently post contact information for the agency’s custodian of public records in the agency’s primary administrative building and on the agency’s website. The new law also permits a court to award attorney fees and costs to the public agency if the court determines that a public records lawsuit was initiated for an “improper purpose.” An improper purpose is defined as a frivolous request to inspect or copy a public record or a public record request initiated for the purpose of causing a violation of the public records law.

As noted above, the new law provides a means of reducing the risk of an adverse attorney fee award by prominently posting contact information for the custodian of public records. This notice must be prominently posted both in the agency’s primary administrative building and on the agency’s website, if the agency has a website. “Primary administrative building” is defined as the place where public records are routinely created, sent, received, maintained, and requested. For a local law retirement system, this will be wherever most retirement system business is conducted, such as a pension fund office, a municipal building, a special district office, or the offices of a third party administrator.

Action Plan

To take advantage of the five-day notice requirement, we recommend all clients take the following actions:

1. Identify who will serve as the custodian of public records or Records Management Liaison Officer (RMLO). This should be the person who routinely deals with public records and regularly interfaces with plan participants and the public, such as an administrator or trustee, or has been designated as the RMLO for the plan.
2. Identify the "primary administrative building". This may be the retirement system's own office, if it has any. Otherwise, this will be wherever the retirement system conducts most of its business, whether it be a municipal building, a special district office, or the offices of a third party administrator.
3. Prepare a notice. The notice must describe how to contact the custodian of public records. A sample notice is enclosed with this Legislative Update.
4. Post the notice. This notice should be posted in the primary administrative building in a prominent place, such as a bulletin board. If the Board or City has a website, the notice must be posted on the website as well. Some third party administrators maintain websites for their clients. We recommend that the notice be posted on those websites as well.

Thank you to Robert A. Sugarman Esq., with Sugarman & Susskind, P.A., for the above legislative update and action plan.

**EAST LAKE TARPON SPECIAL FIRE CONTROL DISTRICT
FIREFIGHTERS' PENSION FUND**

ALL NOTICES AND REQUESTS UNDER THE
PUBLIC RECORDS LAW, CHAPTER 119, FLORIDA STATUTE,
SHOULD BE DIRECTED TO THE CUSTODIAN OF
PUBLIC RECORDS AS FOLLOWS.

BY MAIL:

Custodian of Public Records

**EAST LAKE TARPON SPECIAL FIRE CONTROL DISTRICT
FIREFIGHTERS' PENSION FUND**

c/o Foster & Foster

2503 Del Prado Blvd. S., Suite 502

Cape Coral, FL 33904

BY EMAIL:

reports@foster-foster.com

FOR INQUIRIES, PLEASE CALL:

(239) 333-4872