

June 9, 2015

URGENT LEGISLATIVE ALERT

**Re: S-781 and S-782
Amendments to the Open Public Meetings Act and Open Public Records Act**

Dear Mayor:

Yesterday, the Senate Budget Committee took testimony on but **held** S-781 and S-782, which make amendments to both the Open Public Meetings Act (OPMA) and the Open Public Records Act (OPRA). Senate Budget Chairman Sarlo did make the commitment to bring both bills back for a vote at the next Senate Budget Committee meeting which could be scheduled as early as Monday, June 15. **We respectfully request you contact your State Senator expressing the concerns outlined below.**

The League testified in **opposition** to the bills raising the following issues.

1. Subcommittees (OPMA): The definition of subcommittees has been changed to “any subordinate committee of a public body, except the Legislature, regardless of label, that is formally created by that body, comprised of two or more members, but less than a quorum, of the public body, and recognized by the public body as a subcommittee thereof.” Subcommittees would be required to prepare quarterly reports of their meetings that must include number of meetings, names of members of the committee and a concise statement of the matters discussed. Every subcommittee must file at least one report with the public body. A subcommittee report is available for public access in the same manner as minutes of a meeting of the public body. The public body must determine if a subcommittee meeting is open to the public. If the meeting is open to the public, adequate notice must be provided.

The League has long argued that the purpose of subcommittees is to make recommendations to the governing body for the governing body to take action. Subcommittees are designed by nature to digest and vet information informally. Subcommittees do not expend public funds nor make binding decisions. That power remains with the governing body. Therefore, they should not be subject to the provisions of the Open Public Meetings Act.

2. Video Recordings (OPMA): The bill would require a public body that possesses a video recording system to record the public portion of all meetings, including any emergency meeting held and to maintain possession of the recordings for a period determined by the State Records Committee.

If a municipality has video recording equipment, they will now be required to video record every public meeting, such as Planning Board, Board of Adjustment, Environmental Commission, Recreation Commission, regardless of the municipality’s policy. Currently, if a municipality chooses to video record their public meetings, it varies municipality to municipality on who records the governing body meetings. It could be staff member, a high school student, or a

volunteer. Depending on how meetings are currently video recorded this requirement could lead to increased costs and possible unfunded mandate.

3. Expands the definition of Government Records (OPRA): The bill expands the definition of government record to include a record that is “required by law to be made, maintained or kept on file”. Currently, if an OPRA request is received for a document that does not exist, the OPRA request is denied and there is no violation of OPRA.

By expanding the definition, a Records Custodian will be in violation of OPRA if the record was required to be made (i.e. old municipal budget) but they are unable to locate the archived record. The bill does provide protections to limit the record custodian liability but the Records Custodian will still be in violation of OPRA.

4. Prevailing Attorney Fees (OPMA & OPRA): The OPRA bill continues to mandate prevailing attorney fees for requestors only if there was a violation of OPRA. The OPMA bill is adding mandatory prevailing attorney fees for any party, other than a public body, that prevails in an action brought in violation of OPMA.

The League strongly believes that the Courts and the Government Records Council need the flexibility to award reasonable attorney’s fees based on the given circumstances of a particular case. We are also concern that by creating prevailing attorney fees for OPMA violations will lead to undue litigation and will divert tax dollars from municipal services to attorney fees.

5. Exemption of the Legislature (OPMA & OPRA): Both bills continue to exempt the Legislature from many requirements of the Open Public Meetings Act and all of the requirements of the Open Public Records Act.

The League has strongly argued that in the interest of transparency and openness, the various exceptions in the Open Public Meetings Act and Open Public Records Act that apply to the legislature and the legislators should be removed. The rules that the legislation makes applicable to other governmental bodies should apply equally to all governmental levels and officials.

We have a tentative meeting scheduled on Friday with Senator Weinberg and various stakeholders to further discuss our concerns. While we appreciate the strides the Senator has taken to address our issues with the proposed amendments, such as addressing both the privacy issues surrounding OPRA and the issue of commercial request for records and look forward to further discussions, the League continues to have major concerns with S-781 and S-782 and opposes both bills.

We will continue to keep you apprised of any developments on the bills. If you have any questions or need additional information please contact Lori Buckelew, Senior Legislative Analyst, at 609-695-3481 ext. 112 or lbuckelew@njslom.org.

Very truly yours,

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