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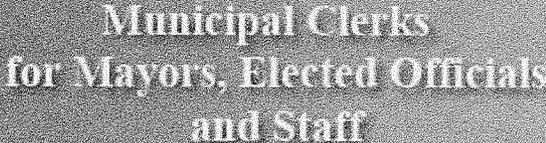
Masser, Michelle

From: Lashway, Lisa
Sent: Wednesday, December 19, 2012 10:46 AM
To: Canning, Sean; Masser, Michelle
Subject: FW: Urge Your State Senator to Vote "NO" on amended OPRA & OPMA Bills on Thursday

Lisa Lashway
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From: NJLM to Municipal Officials [mailto:njlm-clerks@cityconnections.com]
Sent: Tuesday, December 18, 2012 4:32 PM
To: Lashway, Lisa
Subject: Urge Your State Senator to Vote "NO" on amended OPRA & OPMA Bills on Thursday

To view an online version of this email, click [here](#).



December 18, 2012

Re: Urge Your State Senator to Vote "NO" on amended OPRA

and OPMA Bills on Thursday

Dear Mayor:

At their last voting Session, the Senate amended S-1451, which amends the Open Public Meetings Act, and S-1452, which amends the Open Public Records Act. The amended bills are now scheduled for a final vote before the Senate on Thursday.

Despite the sponsor's willingness to consider our concerns, we must still oppose S-1451 and S-1452. Please contact your State Senator, urging a "NO" vote on these bills.

S-1451 amendments included:

- Definition of subcommittee was changed to mean "any subordinate committee of a public body, except the Legislature, regardless of label, that is formally created by that body and comprised of two or more of its members and collectively empowered as a voting body to perform a public governmental function affecting the rights, duties, obligations, privileges, benefits, or other legal relations of any person, or collectively authorized to spend public funds."
- Changes the public comment period by limiting comments solely to items listed on the agenda as long as there an additional comment period, for only items that "may be of concern and within the authority of the public body", and 3 minutes per person. The governing body is permitted to determine a reasonable length of time for public comment period.
- Personnel closed session exemption changed to be for any matter involving the employment, appointment, termination of employment, evaluation of the performance of, promotion or disciplining of any public officer or employee, prospective or current, employed or appointed by the public body
- Permits any party, other than the public body, that prevails in an OPMA violation to receive reasonable attorney fees in the

amount incurred in bringing the action.

- If the public body possesses sound recording devices that are available and functioning shall record only the public portions of the meeting. Such recordings must be maintained for a period of time determined by the State Records Committee. Unedited recordings shall be promptly made available to the public, but no later than the 5th business day following the meeting, to the extent of making such matters public is not inconsistent with section 7 of this act.
- Requires the Secretary of State to post municipal information on the electronic public bulletin board
- Requires a public body that does not maintain a website to send their annual meeting notice, minutes, resolutions, and ordinances promptly to the Secretary of State to post on the State's electronic public bulletin board. Permits a public body that does maintain a website to send the Secretary of State a link to their website to post on the State's electronic public bulletin board
- Requires the information posted on the public body's website to be posted for a period of time determined by the Government Records Council

S-1452 amendments included:

- Definition of "government record" or "record" changed to include electronic, video or audio recordings. Also, excludes close session video and audio recordings from release.
- Excludes from release e-mail addresses provided to the government entity for the sole purpose of receiving official public notifications
- Excludes from release that portion of any document that requires and would disclose personal identifying information of persons under the age of 18 years
- Definition of "quasi-governmental agency" to exclude any labor organization or any contractor providing goods or services to a public agency except as otherwise provided by this

subsection”.

- Definition of “criminal investigatory record” changed to means a record which is not required by law, statute, rule, regulation, or directive, general operating procedure of the New Jersey Attorney General or from the law enforcement agency in which the record is sought, or general order of the New Jersey Attorney General or from the law enforcement agency in which the record is sought”.
- For redacted copies, the custodian must provide the requestor with a redacted version of the document and 1 affidavit for the entire request that states the date of the record, the originator or author of the record, the subject matter or title of the record, the number of redacted words, lines or pages and the specific statutory provision or other lawful basis for each such redaction.
- If the record is in electronic format or available on the public agency’s website the custodian shall notify the requestor of same and the requestor shall have 7 business days to respond to the custodian, otherwise the request is deemed fulfilled.
- If there is a special service charge, the public agency must provide a detailed breakdown of how the special service charge was assessed including, at a minimum, reasonable estimates categorizing the hours needed to identify, copy or prepare for inspection, and to produce and return the requested documents, the rate of pay of the public employee preparing the response to the request, and the number of pages to be produced.
- Immediate access is for current fiscal year, those records currently in effect and any other document that is currently and generally readily available.
- Prevailing attorney fees changed to be permissive instead of mandatory.
- Removes the informal mediation program
- Permits both the records custodian and the requestor to have the opportunity to provide the GRC any documents or information necessary for the adjudication of the case. Provides that the custodian shall have an opportunity to answer

the complaint by presenting the board with a signed and dated affidavit and the complainant shall have an opportunity to offer a brief reply affidavit that addresses any claims or defenses in the custodian's answer. The complainant cannot set forth any new allegations that do not address the custodian's claims or defense.

- For records regarding disciplinary actions exempts specific factual details of incidents involving sexual harassment, sexual assault, domestic violence or rape by or against a public employee, and the identity of the victim of the misconduct alleged, may be deleted or excised if disclosure would violate any individual's reasonable expectation of privacy so long as the agency provides a statement that such records are being redacted pursuant to this particular exception.
- For settlements or lawsuits or claims exempts that specific factual details of incidents involving sexual harassment, sexual assault, domestic violence or rape by or against a public employee, and the identity of the victim of the misconduct alleged, may be deleted or excised if disclosure would violate any individual's reasonable expectation of privacy so long as the agency provides a statement that such records are being withheld pursuant to this particular exception. In addition, removes the public agency's liability for releasing settlements or claims, which were deemed confidential, that were enter into prior to the enactment of the bill. In addition, it requires the public agency to make reasonable effort to notify the affected parties of the release of the documents.
- Permits a public agency to receive a protective order in exceptional circumstances that may limit the number and scope of requests a requestor may make or other relief the courts deem appropriate.
- Permits both the requestor and custodian to request mediation through the Office of Dispute Settlement
- Requires the State Treasurer to maintain a searchable website that includes: State agency expenditures including disbursements, bond debt services, salary and wages, current contracts, purchases, amounts paid to vendors, commodity

purchases, capital outlays and improvements, and aid to local governments. As well as State revenues, state bonded indebtedness, state liabilities for pension and post retirement, and any other data or information determined by the State Treasurer necessary and appropriate.

- Establishes a Local Public Finance website to provide advice and technical assistance to local governments that elect to design and develop, maintain and operate a single, searchable local public finance website that includes annual expenditures, annual revenue, total bonded indebtedness and outstanding liabilities. Requires the State Treasurer to publish guidelines identifying the best practices, procure and make available to local governments a template and any prewritten software. Requires the State Treasurer to prepare an annual report. Appropriates \$100,000 for this purpose.

The League appreciates some of the changes that Senator Weinberg has made to the bills. However, we are concerned with the real world impact of S-1451 and S-1452 on municipal governments. For example, we strongly oppose the continued inclusion of subcommittees. The purposes of subcommittees are to make recommendations to the governing body for the governing body to take action. Subcommittees do not expend public funds nor make binding decisions. That power remains with the governing body.

While well-intended, these bills add a number of requirements and responsibilities to local governments, which are under-staffed and under-funded already. While Senator Weinberg has been thorough in her discussions with stakeholders, including the League, ultimately these bills will not lead to more transparency, but more bureaucracy.

We urge you to contact your State Senator expressing your concerns with S-1451 and S-1452 and urge them to vote no on Thursday.

If you have any questions or need additional information please contact Lori Buckelew at lbuckelew@nsjlom.org or 609-695-3481 x 112.

Very truly yours,

William G. Dressel, Jr.
Executive Director

*If you would like to be removed from receiving faxed advisories please contact Shirley Cade at scade@njslom.com or 609-695-3481 ext. 114 with the name of your municipality and fax number. Thank you.

Please be advised that the information you receive is not legal advice. You must consult your town attorney to make sure that any of the material you receive is in accordance with current state law and your particular facts and situation.

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