Lashway, Lisa

From: NJLM to Municipal Officials [njlm-clerks@cityconnections.com]
Sent: Wednesday, March 07, 2012 12:15 PM
To: Lashway, Lisa
Subject: OPRA & OPMA Reforms

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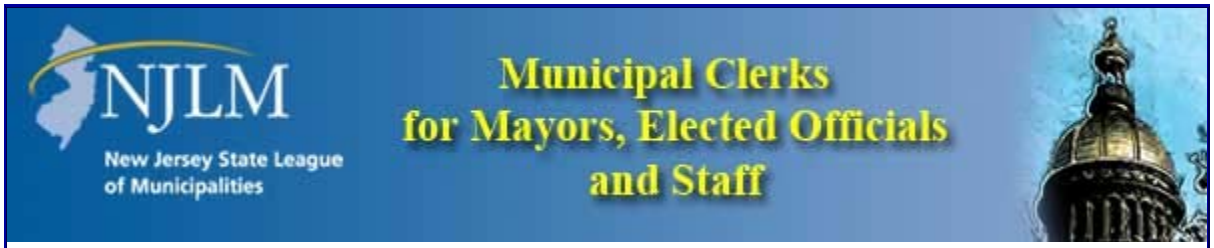

March 7, 2012

Re: OPRA and OPMA Reforms
Bills Released from Committee

Dear Mayor:

On Monday, the Senate State Government Committee considered S-1451, which revises the Open Public Meetings Act, and S-1452, which revises the Open Public Records Act. Both bills were amended, released from committee and second-referenced to the Senate Budget Committee.

Evesham Mayor and Executive Board Member Randy Brown, League General Counsel William Kearns and Wantage Administrator/Clerk Jim Doherty, on behalf of the Municipal Clerks Association, testified in opposition to the bills. Mayor Brown raised the issue of electronic communication and questioned the definitions and parameters surrounding electronic meetings. Senator Weinberg agreed to work

with Mayor Brown on addressing this issue.

Bill Kearns raised concerns over the "reasonable expectation of privacy" of citizens. That is not adequately addressed in the pending legislation. Mr. Kearns referenced the December 2004 Privacy Study Commission report, which made recommendations to protect the citizens' right to know but balanced the citizen's right to privacy. Mr. Kearns noted that the recent court decision in Union County to make the home addresses of senior citizens public highlights the need to build privacy protections for our citizens into the provisions of the Open Public Records Act.

Jim Doherty noted that the Municipal Clerks Association enthusiastically supports the philosophy of open and transparent government; unfortunately they cannot support S-1451 in the current form. Mr. Doherty raised the issue of the unfunded mandates that the new requirements of the Open Public Meetings Act will create. Mr. Doherty also highlighted that the requirement that the governing body may discuss, but not act upon, an item brought up from the public at a public meeting if it was not published as an agenda item, runs contrary to the time honored tradition of holding a public meeting for the very purpose of soliciting such input and acting upon it. Mr. Doherty also suggested that bill mirror the record retention schedules of DARM for such records as recordings and e-mails as oppose to creating a new schedule.

Among the new provisions for S-1451 (OPMA) are:

- provides that notice of agendas must be transmitted to certain newspapers and to members of the public who have requested such notice;
- allows a public body, upon the affirmative vote of two-thirds of the members present at a meeting, to add an item to the agenda for that meeting provided that the minutes contain a statement of the reason therefore, except that the Legislature may add an item to its agenda at any time;
- requires meeting agendas to include a brief description of each item and to identify the names of the parties to and approximate dollar amounts of any contracts, including employment contracts to be discussed and acted upon;
- provides that individuals signing up to testify at a meeting of a public body may be required to disclose their name and town of residence but not street address;
- provides that when a public body holds an emergency meeting, notice of such meeting will be provided as soon as possible on the public body's Internet site and that the required notice to two newspapers may be provided

by fax machine or electronic mail instead of by telegraph;

- eliminates a provision of existing law that allows a public body, upon affirmative vote of three-quarters of the members present, to hold a meeting notwithstanding the failure to provide adequate notice when the public body could have reasonably foreseen the need for such a meeting at a time when adequate notice could have been provided;
- replaces a provision of existing law which allows a public body to provide electronic notice of a meeting through the Internet with a requirement that such Internet notice be given if the public body maintains an Internet site or pages on an Internet site;
- requires public bodies to keep comprehensive minutes of meetings;
- provides that grounds for holding a closed meeting will be construed strictly to minimize instances in which meetings or portions of meetings are closed to the public;
- provides that the minutes of a meeting of a public body will include any available, unedited audio or video recording of the meeting, or any portion of a meeting, made by the public body and that such unedited recording shall be available to the public on the same basis as other meeting minutes, except that all recordings of closed meetings or portions of closed meetings will be deemed confidential and not a public record until such time as the justification for holding a closed meeting no longer exists after which such recordings shall be provided when minutes of that meeting are requested, and provided that a court of competent jurisdiction may determine that disclosure is necessary or proper for the enforcement of the laws of this or another state of the United States;
- provides that an action for a second or subsequent violation brought against a public body in Superior Court to void an act of a public body taken at a meeting that was not held in conformity with the act will not be subject to dismissal on the grounds that the matter no longer presents a case or controversy;
- provides that no payment will be required of a person who requests advance written notice by electronic mail of a public body's meeting schedule;

Among the new provisions for S-1452 (OPRA) are:

- Specifies that any video or audio recordings of public meetings should be available in unedited form;
- Excludes from disclosure as a public record, e-mail addresses provided for emergency notices;
- Specifies that 501(c)(3) non-profit agencies are not subject to the open public records act unless created by, or with the approval of a public agency

solely for the purpose of assisting that public agency;

- Provides that the custodian can require the requestor to obtain the record from the agency website if it is readily available online, unless the requestor does not have access to the Internet or specifically requests copies of the documents;
- Requires a statement on an agency website that documents submitted to the agency may be a government record accessible by the public.

For more information on the bills please see our Dear Mayor Letter for S-1451 and S-1452. If you have any questions or need additional information do not hesitate to contact Lori Buckelew at lbuckelew@njslom.com or 609-695-3481 x112.

Very truly yours,

William G. Dressel, Jr.
Executive Director

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