

Date

Re: S-379 and S-380, Amendments to the Open Public Meetings Act and Open Public Records Act

Dear :

The League of Municipalities opposes S-379 and S-380, which make amendments to both the Open Public Meetings Act (OPMA) and the Open Public Records Act (OPRA). Over the past several years the League has met with the sponsors to discuss our concerns with the proposed amendments. We appreciate the strides the sponsors have taken to address issues through the proposed amendments, such as addressing both the privacy issues surrounding OPRA and the issue of commercial request for records.

However, as discussed in more detail below, we still have major concerns with the bills and must continue to oppose S-379 and S-380.

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 at least quarterly reports of their meetings that must include; the number of meetings held since the last report, the names of members of the subcommittee, 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. If the subcommittee has given an oral report at a meeting of the public body then they are not required to submit the written report for that quarter. 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 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. Release of Minutes (OPMA): The bill would require that minutes be made available as soon as possible but no later than 15 days after the next meeting of the public body occurring after the meeting for which the minutes were prepared. **The League appreciates the intent of this provision, however, this mandated requirement will be challenging in smaller municipalities and in municipalities with limited resources.**
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 (e.g. an old municipal budget) but they are unable to locate the archived record. The bill does provide protections to limit the Record Custodian's liability but the Records Custodian will still be in violation of OPRA.

4. Municipal Clerks as Volunteer Fire Company Records Custodian (OPRA): The bill would permit a municipality to enter into an agreement with their volunteer fire company/department where the municipal clerk would serve as the Records Custodian for the volunteer fire company/department. **The League is concerned with the implementation and practical issues that would arise from this well intended provision. By their very definition, most volunteer fire companies/departments are independent from the municipality. They have their own headquarters, leadership, and policies and procedures. How will the records custodian be able to ascertain if a record exist or access the records?**
5. Expand definition of public employee (OPRA): The bill would expand the definition of public employee to include interns and volunteers. **The League is concerned that this provision is too broad, unnecessary, and otherwise ambiguous. Currently, any work product of an intern is subject to OPRA under the definition of a government record. However, we question who will fall under the definition of volunteer. For example, is it the member of the volunteer first aid squad that is a non-profit or the Little League football coach?**
6. Prevailing Attorney Fees (OPMA & OPRA): The OPRA bill continues to mandate prevailing attorney fees for violation of OPRA, and the OPMA bill is changing prevailing attorney fees from permissive to mandatory. **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.**
7. 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.**

Accordingly we oppose S-379 and S-380.

Very truly yours,

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Assistant Executive Director

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