



## LEGISLATIVE VIEWPOINT

New Jersey State League  
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October 15, 2018

Re: S-106 and S-107, Amendments to the Open  
Public Meetings Act and Open Public  
Records Act

Dear Members of the Senate Budget and Appropriations Committee:

The League of Municipalities opposes S-106 and S-107, 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-106 and S-107.

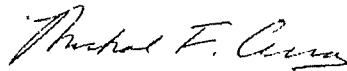
1. Subcommittees (OPMA): The definition of subcommittees has been changed to “any subordinate committee of a public body, except the Legislature, regardless of label, that is formally created by that body, comprised of two or more members, but less than a quorum, of the public body, and recognized by 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 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. By their very nature, subcommittees are advisory, deliberative, and consultative. Just as advisory, deliberative and consultative material is exempted from the Open Public Records Act so should subcommittees remain not subject to the provisions of the Open Public Meetings Act.**

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2. 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. We strongly believe this should be addressed in the legislation and not by the courts.**
3. 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.**
4. 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-106 and S-107.

Very truly yours,



Michael F. Cerra  
Assistant Executive Director

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