



March 14, 2024

Chair Dziedzic, Vice Chair Mitchell, and Members of the Senate State and Local Government & Veterans Committee:

The League of Minnesota Cities (LMC) appreciates the opportunity to provide comments outlining concerns about SF 4132 (Mitchell), which would amend the Open Meeting Law in Minn. Stat. Ch. 13D to require public bodies to record attorney-client privileged closed meetings, increase personal penalties for Open Meeting Law violations, change the standard for forfeiture of office, and change the cap on attorney fees in Open Meeting Law lawsuits.

LMC supports the Open Meeting Law and recognizes the important role it plays in maintaining the public trust and the accountability of elected officials. The Open Meeting Law must, however, balance the need for public information with the need for full and effective representation when a local government is seeking legal advice in certain, narrowly defined situations. Longstanding precedent in Minnesota narrows application of the attorney-client exception to situations where the public entity has a need for absolute confidentiality such as where there is pending or threatened litigation. It is here that the Minnesota Supreme Court has concluded the balancing of the purposes served by the privilege with those served by the Open Meeting Law weighs in favor of closure. Confidential settings in complex and rapidly evolving litigation situations allow public officials to have open and full communications with legal counsel. This enables the attorney to assess all facts, good and bad, to more effectively act on behalf of their government client. Mandating that attorney-client privileged meetings be recorded may unintentionally create a chilling effect on these communications and could effectively undermine the full and open communications needed between public bodies and their attorneys.

The bill also provides a different standard for bringing a cause of action claiming that a public body closed a meeting in violation of the new attorney-client privilege section in the bill. The bill states that “any person may bring an action claiming that a public body closed a meeting in violation of this paragraph or discussed public business not permitted by attorney-client privilege,” and a court may review the recording of the meeting in camera. Current law in Minn. Stat. 13D.06 provides that a cause of action to enforce available penalties “may be brought by any person in any court of competent jurisdiction where the administrative office of the governing body is located.”

We also have concerns about the changed standard for triggering a forfeiture of office for Open Meeting Law violations. Current law provides that a person will forfeit their right to serve on a governing body if they have been found to have intentionally violated the Open Meeting Law in three actions brought under the Open Meeting Law. This standard was discussed in a Minnesota Supreme Court case, which noted the public policy of a public official facing legal action and being told what they did was wrong before subsequent allegations could be counted up to three

and trigger removal from office. By changing the standard from three actions to three violations, a duly elected official, even one who relied on legal advice, could face forfeiture before finding out what they thought was proper was improper.

Thank you for your consideration of these concerns. We appreciate Senator Mitchell's willingness to engage with cities, and look forward to working with legislators and other stakeholders moving forward.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Beety', written in a cursive style.

Patricia Beety
General Counsel
League of Minnesota Cities