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DEPARTMENT OF JUSTICE

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December 12, 2006

Senator Scott Fitzgerald, Chair
Room 317 East
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Dear Chairpersons and Members of the Committee:

Thank you for providing the Department of Justice with the opportunity to give you some feedback regarding proposed legislation related to open government and quasi-governmental corporations. I have asked Assistant Attorney General Monica Burkert-Brist to testify on the Department's behalf today. She will also attempt to answer any questions you may have about the Department's position. I provide you with the following over-all comments and suggestions for your consideration.

First, do not throw out the baby with the bath water. The answer to the problem of how the open meetings and public records law applies to entities which may be private in their organization and creation but which carry out very public functions with public monies is NOT to exempt them wholesale from the only state laws which ensure accountability and public oversight. One must assume that the earlier sessions of the Legislature which created these laws had a good public purpose in mind and knew that there are entities which, though they may appear private in character, operate with the taxpayer's money and carry out duties the public cares very much about. There should be a way to, if necessary, amend the statute to clarify under what circumstances such entities should be subject to the law without removing them from any oversight.

Second, look to the current exemptions in the law before creating new ones. Have you been given a compelling set of facts and legal authority which establishes that the exemptions currently provided under the open meetings law are not sufficient to protect a quasi-governmental corporation when confidentiality is in the public interest? There are numerous exceptions now in the law which enable confidential deliberations for competitive and bargaining purposes. *See*, for example, the exemption in Wis. Stat. § 19.85(1)(e) which allows a governmental body to meet in closed session "whenever competitive or bargaining reasons require a closed session." Local governments, state agencies, and quasi-governmental corporations that have chosen to follow the law operate quite effectively under the open meetings law and use those exceptions regularly. At least when matters are held in closed session under the open meetings law, the public gets notice that a meeting is occurring and a general sense of

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the topic area and applicable exemption claimed by the entity. If an entity is completely exempt, the citizenry has no idea as to what the entity is doing, or where and when it is doing it.

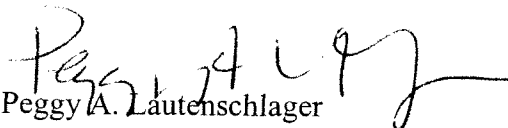
Third, widen your vision so that whatever you adopt is consistent for quasi-governmental corporations of all types, regardless of their underlying mission. Economic development should not be treated more favorably than housing, job training, legal services, or other public purposes which quasi-governmental entities are created to address.

Fourth, if you are going to change the law, pick a standard which is as clear-cut as possible and provides the least room for confusion and misinterpretation. The public records law may have some guidance for us in this regard. Wis. Stat. § 19.32, the definition of "authority" specifically includes among those entities covered by the public records law "a nonprofit corporation which receives 50% or more of its funding from a county or municipality as defined in s. 59.001(3) and which provides services related to public health or safety to the county or municipality." This statutory section was used to apply the public records law to the records of the Legal Aid Society in *Cavey v. Walrath*, 229 Wis. 2d 105, 598 N.W.2d 240 (Ct. App. 1999). It could be modified and adapted in the form of an amendment to both the public records and open meetings laws in order to ensure consistency in enforcement.

Adopting a bright line test based on source of funding would serve the public well. It gives the entity notice of when it must comply with the open meetings and public records laws. It also would appear to address the one issue about which the Department of Justice receives its majority of complaints: the spending of public monies without accountability or oversight by citizens.

Finally, I again urge you to invite members of the public who have complained of being shut out of the process to provide you with testimony about their experiences in their communities. At your first meeting, your invited speaker was from the Beaver Dam Area Economic Development Corporation. Please do not finish your proceedings without at least inviting citizens who complained about this corporation's practices to give you their perspective and side of the story. Whatever decisions you make, they should be made after giving both sides of this debate a chance to convince you of the merits of their respective positions.

Very truly yours,


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