

Submission

By

**THE
NEW ZEALAND
INITIATIVE**

To the

Governance and Administration Committee

on the

**Local Government (Management of Local Authorities)
Amendment Bill**

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Prepared by:
Nick Clark, Senior Fellow

The New Zealand Initiative
PO Box 10147
Wellington 6143
nick.clark@nzinitiative.org.nz

SUBMISSION ON THE LOCAL GOVERNMENT (MANAGEMENT OF LOCAL AUTHORITIES) AMENDMENT BILL

1. INTRODUCTION

- 1.1 The New Zealand Initiative welcomes the opportunity to submit on the Local Government (Management of Local Authorities) Amendment Bill.
- 1.2 The Initiative is a Wellington-based think tank supported primarily by major New Zealand businesses. In combination, our members employ more than 150,000 people. We undertake research that contributes to the development of sound public policies in New Zealand, and we advocate for the creation of a competitive, open and dynamic economy, as well as a free, prosperous, fair and cohesive society.
- 1.3 This submission draws on the Initiative's extensive research on local government, including its 2024 report *Making Local Government Work* and its 2025 submission on the Local Government (System Improvements) Amendment Bill.
- 1.4 The Initiative supports the Local Government (Management of Local Authorities) Amendment Bill. We commend Stuart Smith MP for introducing this Members' Bill. The Initiative recommends that it proceed, with amendments to sharpen its drafting and to complement and strengthen the elected-member information entitlement inserted by Amendment Paper 755 to the Government's (now passed) Local Government (System Improvements) Amendment Bill.
- 1.5 The Bill states a principle we regard as correct and overdue, that elected members govern and the officials they employ answer to them. The first reading debate showed that this principle commands cross-party support. The task at select committee is to build on the Bill and ensure its provisions deliver it.

- 1.6 The Initiative requests to appear before the committee to speak to this submission.

2. GENERAL COMMENT

- 2.1 The Bill responds to an important defect. The Local Government Act 2002 tells councils that the governing body is responsible and democratically accountable for the council's decisions, yet it never confers on that body an express power to direct the management of the council's activities. The Companies Act 1993 does not leave this to inference. It places the company's business under the board's supervision and gives the board the powers to match. Local government has been left with the accountability but not the stated authority.
- 2.2 The first reading debate put a series of examples on the record, cited by members across several parties. Members said councillors were denied the legal advice they needed to vote on the sale of Wellington's airport shares, that a Queenstown Lakes councillor was refused information about a \$2 billion development, and that members in Napier, Nelson, Auckland and Hawke's Bay had to use the Local Government Official

Information and Meetings Act, the same tool available to any member of the public, to obtain information about their own councils. Members also described cases where the Ombudsman had to intervene and councillors were made to sign deeds of confidentiality to see material their ratepayers paid for. Hansard establishes that these statements were made, not that every underlying allegation has been independently proven, but together they describe a pattern the Bill is right to address.

- 2.3 When elected members must fight their own organisations for information, governance is not working. The Bill's core provisions, new section 41B and new section 42(3A), answer that failure directly, and the Initiative supports them.
- 2.4 The debate also exposed three drafting issues that will decide whether the Bill changes anything: the boundary between governance and independent statutory decision-making, access to external advice, and access to the information needed to govern effectively. Amendment Paper 755 to the System Improvements Bill materially improved the third of these but leaves important procedural and enforcement questions unresolved. We address and recommend a fix for each.

3. SPECIFIC COMMENT

- 3.1 The first issue is **the boundary around regulatory and statutory functions**. Clause 4, inserting new section 41B, applies broadly to the management of "the activities of the local authority". Clause 5, inserting new sections 42(3A) and (3B), is narrower, biting only on the chief executive's responsibilities and powers "under this Act". Section 41B is therefore potentially broader than section 42(3A). Its saving provision compounds the problem. New section 41B(2) preserves exceptions only "to the extent that this Act provides otherwise", which recognises limits in the Local Government Act but not the independent functions and statutory constraints that arise under other enactments. Councils exercise many such powers, resource consenting under the Resource Management Act, enforcement under the Building Act, licensing under the Sale and Supply of Alcohol Act and decision-making under the official information regime.
- 3.2 The right line here is not "regulatory against non-regulatory". It is policy against adjudication. Setting the framework within which a regulatory function operates, the district plan, the bylaws, the local alcohol policy, the fees and the service levels, is governance, and the elected body should be able to direct it. Applying that framework to an individual case may involve a function conferred directly on an officer or an independent decision-maker, or a function delegated by the local authority under clause 32 of Schedule 7. Some such decisions must be made independently, impartially or in accordance with procedural fairness, and the governing body should not be able to direct their outcome. The precise legal position nevertheless varies between enactments and functions, and not every policy instrument is beyond delegation, so the amendment should be framed with care rather than by excluding every individual case.

- 3.3 One qualification belongs alongside it. Where elected members both set the policy and sit on the panel that decides individual applications, the predetermination rules still apply, and members cannot come to a hearing with a closed mind. That is a constraint on the individual decision rather than on the policy, so it fits the distinction rather than cutting against it.
- 3.4 The second issue is **the power to obtain external advice**. New section 42(3B) provides only that section 42(2)(b), which makes the chief executive responsible for advising members, does not prevent a member obtaining advice from any other person. It does not require the council to pay, authorise a member to commit council funds, override procurement requirements, confer access to confidential information, or settle whether legal privilege belongs to the member or the council. Members from the Green Party and Te Pāti Māori pressed the practical questions the provision leaves open, who the other person is, who pays, and what stops a member who dislikes the staff advice from commissioning a rival opinion at ratepayers' expense. The provision is sound in principle, because a governing body cannot properly test advice if every piece of it is filtered through the management it oversees. But the gaps are best closed through a council policy and budget rather than by writing spending rules into the section itself. Nor does it ensure that an external adviser can obtain the council information needed to provide informed advice. That question must be addressed alongside the member's own right of access.
- 3.5 The third issue is **access to information**. As introduced, this Bill lets members seek advice from outside the council but does not guarantee their access to information held inside it. The Government has separately moved to address that omission through Amendment Paper 755 to the Local Government (System Improvements) Amendment Bill. The System Improvements Bill, as passed on 16 September 2026, inserts new clause 26A into Schedule 7 of the Local Government Act. It entitles each member to access information held by the local authority that is reasonably necessary to enable the member to perform their functions and duties, and exercise their powers, effectively. It also amends section 42(2)(i) to make the chief executive responsible for ensuring that members have access to that information.
- 3.6 The Initiative welcomes this development. The change from "documents", as proposed in the reported-back Bill, to "information" is important. It avoids confining the right to material already recorded in a particular documentary form. The provision also gives the entitlement to each member individually. It should therefore protect a member in a political minority or a member pursuing an issue that does not command the support of the governing-body majority. Requiring the member to state that the request is made under the Local Government Act should also help distinguish the request from an ordinary request under the Local Government Official Information and Meetings Act 1987.
- 3.7 The provision, now enacted, states an entitlement without providing a complete procedure for enforcing it. It sets no response time, does not identify the grounds on which information may be withheld, does not require written reasons and provides no express review process. The reported-back System Improvements Bill allowed a

member refused access by the chief executive to put the request to the governing body for a final decision (clause 26A(3) and (4)). Amendment Paper 755 removed that mechanism deliberately, to give councils, in its own words, more discretion to structure their internal processes. That is a reason to engage the choice, not to treat the gap as an oversight. Completing a deliberately bare provision with a workable floor is what a governance Bill is for and is a fair reason to revisit the provision so soon after it was enacted. There are understandable reasons not to make a political majority the final arbiter of an individual member's statutory right, but the absence of any accessible review mechanism leaves judicial review as the most authoritative remedy. That will usually be too slow, expensive and disruptive.

- 3.8 The phrase "reasonably necessary" also requires clarification. It should not oblige a member to prove in advance that particular information will determine a vote or expose wrongdoing. Oversight often begins with a question whose significance cannot be known until the information is obtained. Information connected with a member's governance, representative, decision-making or oversight role should therefore be presumed reasonably necessary unless the local authority establishes otherwise.
- 3.9 Legitimate confidentiality interests should be addressed by conditions on access wherever possible, rather than outright refusal. Members may need access to personal, commercially sensitive or legally privileged information to perform their functions. Providing such information internally should not, by itself, waive legal professional privilege or authorise public disclosure. Information should be withheld only where access would contravene another enactment, the member has a material conflict, or an identified harm cannot reasonably be managed through redaction or confidentiality conditions.
- 3.10 Mr Smith's Bill provides a timely vehicle for completing that framework. With the System Improvements Bill having passed its third reading on 16 September 2026, this Bill is now the only remaining vehicle to complete it. The System Improvements Bill, as passed, establishes the substantive entitlement. This Bill can add the procedures needed to make it effective and connect the information right with the freedom to obtain independent advice. An external adviser engaged in accordance with council policy should be able to receive information to which the commissioning member or governing body is entitled, subject to the same confidentiality and use restrictions.
- 3.11 We also address two further points from the first reading debate.
- 3.12 First, the Green Party observed that the corporate model the Bill invokes comes with a developed framework of directors' duties and potential personal liability. Councillors are subject to a different accountability regime, including the potential liabilities in sections 44 to 47 of the Local Government Act, but the analogy raises a legitimate question. If Parliament strengthens governing-body authority, it should also consider clarifying the duties and accountability that accompany it. Our answer is to pair greater power for elected members with greater accountability to the voters who elect them. *Making Local Government Work* set out how, through direct community votes on major projects; clearer mayoral responsibility over the executive and to the

elected council; and reform of the codes of conduct and conflict rules that too often silence individual elected members.

- 3.13 Second, New Zealand First identified an incoherence. The System Improvements Bill would lengthen chief executive tenure, through clause 25(14) amending clause 34(4) of Schedule 7 to raise the second term from two years to five, at the same time as this Bill tries to shift power towards the council. A chief executive appointed for five years and re-appointable cannot be rebalanced against a governing body elected for a three-year term by a clause that merely restates who directs whom. The committee should reconcile the two Bills rather than let them pull in opposite directions. More broadly, the case for a first-principles review of the Local Government Act, which New Zealand First also raised, is strong.

4. RECOMMENDATIONS

1. Enact the core governance provisions.

Adopt the Bill's new section 41B and new section 42(3A), which affirm that the chief executive manages the council's activities subject to the direction and supervision of the elected governing body.

2. Protect regulatory decisions while preserving policy direction.

Provide that nothing in sections 41B or 42(3A) authorises the governing body to direct the chief executive or another decision-maker to act inconsistently with an enactment, to interfere with a function that an enactment requires to be exercised independently or impartially, or to determine the outcome of an individual adjudicative or quasi-judicial proceeding.

Preserve the governing body's authority over policies, priorities, delegations and service standards to the extent permitted by the enactment governing the function.

Widen the saving words in section 41B(2) so they recognise requirements imposed by or under this Act or any other enactment, not only this Act.

Add new section 41B(3): "Nothing in this section authorises the governing body to prevent or restrict a member from exercising the member's rights under clause 26A of Schedule 7."

3. Set boundaries on the external advice power, in policy rather than the section.

Confirm that new section 42(3B) allows a member to seek advice from outside the council without requiring approval merely because the advice comes from outside, subject to other applicable law on confidentiality, privacy, conflicts of interest and the use of council information.

Require each local authority to adopt a policy governing members' commissioning of external advice, providing a reasonable individual or collective budget, proportionate approval for expenditure above it, and safeguards for confidentiality, conflicts of interest and legal professional privilege.

Provide that an adviser properly engaged by a member or the governing body may, with the member's or governing body's authority, receive information available under clause 26A where reasonably necessary to provide the advice. The adviser should be bound by the same confidentiality, privilege and use restrictions that apply to the member.

Add new section 42(3C): "A person from whom a member or the governing body obtains advice in accordance with a policy adopted by the local authority may be given access to information available to the member or governing body under clause 26A of Schedule 7 to the extent reasonably necessary to provide that advice, subject to any lawful and reasonable conditions concerning confidentiality, privilege, use and disclosure."

Record council-funded advice in a register showing the commissioner, provider, subject and cost, without requiring disclosure of advice that is confidential or privileged.

4. Complete the elected-member information regime.

The Initiative supports the elected-member information entitlement in the Local Government (System Improvements) Amendment Bill, which passed its third reading on 16 September 2026. Clause 26A of Schedule 7 now gives each member an express entitlement to information reasonably necessary to perform their functions and duties, and exercise their powers, effectively. Section 42(2)(i) now makes the chief executive responsible for ensuring access. Because Amendment Paper 755 deliberately stripped clause 26A back to give councils discretion over process, and the System Improvements Bill has now passed its third reading, this Bill is the remaining vehicle to give the entitlement a workable floor. This Bill should build on that entitlement and add the procedural provisions needed to make it effective. If the full regime below falls outside the scope of this Bill, the committee should at least enact a minimum floor, a response time, written reasons and an accessible review, and report any residual gap to the House.

In particular, the Bill should:

- Presume that information requested in connection with a member's governance, representative, decision-making or oversight role is reasonably necessary unless the local authority establishes otherwise;
- Require information to be provided as soon as reasonably practicable and, ordinarily, within 10 working days;
- Provide for an urgent response where the information is reasonably required for an imminent meeting or decision;
- Limit withholding to specified grounds, including compliance with another enactment, a material conflict of interest, an unreasonable administrative burden or an identified privacy, confidentiality or legal interest that cannot reasonably be protected through redaction or conditions on access;
- Require the chief executive to give written reasons for any refusal, delay, redaction or condition imposed;

- Require consideration of partial or conditional access before information is withheld;
- Provide an accessible and independent review process, preferably through the Ombudsman;
- Confirm that disclosure of legally privileged information to an elected member or authorised adviser does not, by itself, waive the local authority's privilege; and
- Require each local authority to adopt a policy giving practical effect to these requirements without limiting the statutory entitlement.

Indicative drafting is shown in the Appendix to this submission.

5. Reconcile chief executive tenure with elected control.

The System Improvements Bill, through clause 25(14) amending clause 34(4) of Schedule 7, has raised the maximum second term from two years to five. A longer term is acceptable only where the elected body's control is real and recurring, so three changes should accompany it.

- (a) **Strengthen the pre-reappointment decision.** Retain the review required by clause 35 and the affirmative resolution required by clause 34(5). If the maximum second term is extended to five years, require the council's resolution to record its assessment of the chief executive's performance, its reasons for reappointing without advertising, and why the proposed length of the second term is appropriate.
- (b) **Add a standing performance review.** The Act requires a performance agreement under clause 34(2) but mandates no regular review, because the only compulsory review, under clause 35, is triggered by the reappointment decision rather than the passage of time. Add a duty on the governing body to review the chief executive's performance each year against objectives it sets, giving the supervision principle in new section 42(3A) continuing force.
- (c) **Anchor the relationship to the electoral cycle.** Require each incoming council, within a set period after the triennial election, to review and, where appropriate, reset the chief executive's performance expectations, subject to the performance agreement and employment law, so that a long contract sits under the control of the council currently in office.

6. Support wider reform.

Treat this Bill as a first step and, through the report-back on it, signal support for the broader structural reform of the Local Government Act that durable accountability requires, in particular the governance provisions in Part 4 (sections 39 to 42), including stronger mayoral capability and clearer mayoral responsibility over the executive and to the elected council.

5. CONCLUSION

- 5.1 This Bill passed its first reading because it is modest and its principle is sound. Stating a plain rule that elected members govern and their officials answer to them is worth doing, and the evidence aired in the House shows why it is needed. Parliament's recent recognition of an individual member's right to council information is an important advance, but that right needs timely procedures, defined grounds for restriction and an accessible review mechanism if it is to work when relationships are strained. The committee's work now is to close the drafting gaps the debate identified, to make this Bill and the (now passed) System Improvements Bill coherent with each other, and to keep sight of the larger reform that clarifying the statute begins but does not finish. We would welcome the opportunity to appear.

APPENDIX: INDICATIVE DRAFTING TO COMPLETE THE ELECTED-MEMBER INFORMATION REGIME

The Initiative suggests that clause 26A of Schedule 7, as enacted by the System Improvements Bill, be amended by inserting the additional subclauses and a new clause 26B along the following lines (subclauses (1) to (3) reproduce the enacted text for context):

26A Member entitled to information held by local authority

- (1) A member of a local authority is entitled to have access to information held by the local authority that is reasonably necessary to enable the member to effectively perform their functions and duties, and to effectively exercise their powers, as a member of the local authority.
- (2) Information requested by a member in connection with the member's governance, representative, decision-making or oversight functions is presumed to be reasonably necessary for the purposes of subclause (1), unless the local authority establishes otherwise.
- (3) Section 42(2)(i) sets out the responsibility of the chief executive to ensure that members of the local authority have access to that information.
- (4) A member who requests information under this clause must specify that the request is made under this Act.
- (5) The chief executive must provide the information as soon as reasonably practicable and no later than 10 working days after receiving the request.
- (6) The chief executive may extend the period in subclause (5) where the request is for, or requires the retrieval or collation of, a large quantity of information and meeting that period would unreasonably interfere with the operations of the local authority.
- (7) Before the expiry of the period in subclause (5), the chief executive must notify the member in writing of any extension, the reasons for it and the date by which the information will be provided.
- (8) If the member reasonably requires the information for a meeting or decision that will occur before the period in subclause (5) expires, the chief executive must take all reasonable steps to provide the information in sufficient time for the member to use it effectively.
- (9) Access may be refused or restricted only to the extent reasonably necessary to –
 - (a) comply with another enactment;
 - (b) address a material conflict of interest affecting the member;
 - (c) protect personal privacy, an obligation of confidence, commercially sensitive information or legal professional privilege, where the relevant interest cannot reasonably be protected by redaction or conditions on access; or

- (d) avoid an unreasonable interference with the efficient administration of the local authority arising from substantial collation or research.
- (10) Before refusing access, the chief executive must consider whether the information can be provided in part, in another form or subject to reasonable conditions governing its use, storage or disclosure.
- (11) If access is refused, delayed, restricted or made subject to conditions, the chief executive must give the member written notice stating –
 - (a) the decision and the reasons for it;
 - (b) the information or categories of information affected;
 - (c) why partial or conditional access would not adequately address the relevant concern; and
 - (d) the member’s right to seek review.
- (12) Providing legally privileged information to a member under this clause does not, by itself, waive the local authority’s legal professional privilege.
- (13) A member who is dissatisfied with a decision under this clause may complain to an Ombudsman.

The relationship between subclause (13), the Ombudsmen Act 1975 and the Local Government Official Information and Meetings Act 1987 should be settled by Parliamentary Counsel. If the committee intends the Ombudsman to undertake an expedited merits review, consequential amendments may be required.

26B Elected-member information policy

- (1) A local authority must adopt and maintain a policy for giving effect to clause 26A.
- (2) The policy must provide for –
 - (a) ordinary and urgent requests;
 - (b) access to appropriate officers and reasonable explanations of information;
 - (c) the secure handling of confidential and legally privileged information;
 - (d) requests involving substantial collation or research;
 - (e) written decisions and internal reconsideration; and
 - (f) access by advisers properly engaged by a member or the governing body.
- (3) A policy adopted under this clause must facilitate, and must not limit or qualify, a member’s entitlement under clause 26A.

ENDS