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MEMORANDUM

TO: Public Bodies (as defined by La. R.S. 42:13)

FROM: Jeff Landry, Attorney General

DATE: March 19, 2020

RE: Additional Open Meetings Guidance in light of COVID-19

The following guidance on the Open Meetings Law is to assist public bodies during the current Public Health Emergency.¹

Louisiana Constitution Article XII, § 3 establishes a general constitutional right to observe the deliberations of public bodies. The Open Meetings Law, La. R.S. 42:11, *et seq.*, describes and defines this constitutional right. However, this constitutional right is expressly qualified and subordinate to legislative exception.²

Can a law be suspended in an emergency?

Yes. The Louisiana Constitution vests the legislature with the authority to suspend laws via joint resolution, and the information provided herein could change upon the exercise of that authority.

Have attendance and quorum requirements changed in light of COVID-19?

Yes and No. Quorum requirements are still applicable, and a quorum of members must be present to conduct business. Normally, the law does not allow a member to attend a meeting remotely via teleconference or video conference. However, in light of the spread of COVID-19, Governor John Bel Edwards issued Proclamation Number JBE 2020-30 on March 16, 2020 that provided for all state agencies, boards, commissions, and local political subdivisions of the state to allow attendance at essential governmental meetings via teleconference or video conference during the pendency of this emergency. A public body that conducts a meeting via telephone conference or video conference shall provide a written certification that the public body was otherwise unable to operate due to quorum requirement in compliance with La. R.S. 42:19. For a public body convening a meeting via teleconference or video conference, the quorum requirement has not changed; typically, the quorum requirement is provided for by statute and is a simple majority of the total membership of the public body. Thus, a simple majority of the total membership of the public body must still be engaged in the meeting in order to conduct business. Similarly, public bodies are still required to prepare written minutes of the proceedings, which will be public record and shall be available to the public in a reasonable time after the meeting. La. R.S. 42:20.

Are notice requirements applicable in an emergency?

No, unless the public body is conducting a meeting via teleconference or video conference. In cases of extraordinary emergency, written public notice shall not be required. La. R.S. 42:19(A)(1)(b)(iv). However, the public body shall give notice as it deems appropriate and circumstances permit. *Id.* Under usual circumstances, reasonable public notice includes the agenda, date, time, and place of meeting. During this public health emergency, all public bodies that convene a meeting via teleconference or video conference, pursuant to Section 4 of Proclamation JBE 2020-30, the public body *shall* provide reasonable notice in the form of a written certification that public body will otherwise be unable to operate due to quorum requirements. All public bodies shall post the certification in the same manner, place, and time as it would a normal agenda, in compliance with La. R.S. 42:19.

Can a public body enter executive session and restrict attendance?

Yes. Louisiana Revised Statutes 42:16-17 allows a public body to hold an executive session upon an affirmative vote of two-thirds of the constituent members present. The reasons a public body may hold an executive session are enumerated in La. R.S. 42:17 and include matters of extraordinary emergencies such as the threat of an epidemic. During an executive session, the public body can restrict who is allowed in the executive session.

The vote to hold executive session must be taken at an open meeting for which notice has been given pursuant to La. R.S. 42:19.³ No final or binding action may be taken during an executive session and the public comment period requirement is still applicable.⁴

Note, the public body should still give notice, as circumstances permit, to allow the public an opportunity to comment prior to any action, including deliberations and discussions, on an agenda item upon which a vote is to be taken. To the extent possible, the agenda should list each item separately and describe each item with reasonable specificity.⁵

Do the public comment requirements change during an emergency?

No. Louisiana Revised Statute 42:14 requires public bodies to allow a public comment period before acting on an agenda item upon which a vote is to be taken. School boards are additionally required to have a public comment period preceding each agenda item.⁶ Reasonable rules and restrictions are allowed regarding such comment periods.⁷

Reasonable rules and restrictions might include:

- Limiting the amount of time for each speaker;
- Limiting the number of people in a meeting room to comply with Public Health Emergency Proclamation Number JBE 2020-30 or guidance from the Centers for Disease Control and Prevention.⁸ However, the public body must provide a

mechanism for the persons to simultaneously observe the meeting and allow them to participate in the public comment period;

- Requiring persons present for public comment to maintain an appropriate distance from others;
- Establishing procedures to receive public comments via video, email, facsimile, telephone or other means for a certain period preceding the meeting and having an administrator read the comments to the members during the public comment period of the meeting. This will serve to adhere to the public comment requirement in La. R.S. 42:14, and allow interested persons to socially distance themselves while still having a mechanism to participate;
- If broadcasting live or holding a meeting through a telephone conference, at the start of the meeting, read aloud the items on the agenda with reasonable specificity, including the matter to be discussed and potential action to be taken. Pause the proceeding for 30 minutes or a reasonable time to allow for public comments to be submitted to the public body by way of phone calls, emails, or comments on the live stream, etc.; and
- Any other rules or restrictions that are reasonable and in keeping with Open Meetings Laws and the spirit of those laws.

These rules and restrictions should be made available to the public, which may include posting on a website electronically, posting outside of the meeting room, providing copies to attendees, or other means of public communications.

¹ The Governor declared a Public Health Emergency in Proclamation Number 25 JBE 2020. In Proclamation Number JBE 2020-30 the Governor ordered that all gatherings of 50 people or more must be postponed or canceled between Tuesday, March 17, 2020, and Monday, April 13, 2020. La. R.S. 29:274(D)(1) provides that the Governor may suspend the provisions of any regulatory statute prescribing the procedures for the conduct of state business or orders, rules, or regulations of any state agency if strict compliance with the statute, order, rule or regulation would in any ways prevent, hinder, or delay necessary action in coping with the emergency.

² *St. Mary Anesthesia Assocs., Inc. v. Hosp. Serv. Distr. No. 2 of Par. of St. Mary*, 01-2852 (La. App. 1 Cir. 12/20/02), 836 So. 2d 379, 383, writ denied sub nom., *St. Mary Anesthesia Assocs., Inc. v. Hosp. Servs. Dist. No. 2 of Par. of St. Mary*, 03-0220 (La. 3/28/03), 840 So. 2d 577; *Ortega v. Recreation & Parks Comm'n for Par. of E. Baton Rouge*, 17-1502 (La. App. 1 Cir. 7/18/18), 255 So. 3d 6, 15.

³ La. R.S. 42:16.

⁴ La. R.S. 42:16.

⁵ La. R.S. 42:19.

⁶ La. R.S. 42:15.

⁷ La. R.S. 42:14; La. R.S. 17:81; La. Atty. Gen. Op. No. 04-0107.

⁸ On March 15, 2020, the Centers for Disease Control and Prevention issued interim guidance recommending that for the next 8 weeks in-person events that consist of 50 or more should be canceled. CDC "Interim Guidance: Get your Mass Gatherings or Large Community Events Ready for Coronavirus Disease 2019" (COVID-19): March 2020. Available from: https://www.cdc.gov/coronavirus/2019-ncov/downloads/Mass-Gatherings-Document_FINAL.pdf (accessed 3/16/2020).