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## State of Louisiana

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### MEMORANDUM

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

FROM: Jeff Landry, Attorney General

DATE: March 16, 2020

RE: Open Meetings Guidance in light of COVID-19

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

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.<sup>2</sup>

#### **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.

#### **Do attendance and quorum requirements change in an emergency?**

No. Quorum requirements are still applicable, and a quorum of members must be physically present to conduct business. The law does not allow a member to attend a meeting remotely via video conference or speakerphone. Although a member may listen to the meeting through these electronic means, the member does not count as present for purposes of establishing a quorum and may not vote.<sup>3</sup> Louisiana Revised Statute 42:14 requires that all votes shall be made by live voice. Unless the legislature has excepted the public body, the live voice requirement means members must be physically present to vote and cannot participate in a meeting remotely.<sup>4</sup>

#### **Are notice requirements applicable in an emergency?**

No. In cases of extraordinary emergency, the notice required by La. R.S. 42:19 shall not be required. However, the public body must give notice as it deems appropriate and circumstances permit. Under usual circumstances, reasonable public notice includes the agenda, date, time, and place of meeting.

### **Can a public body enter executive session and restrict attendance?**

Yes. Louisiana Revised Statutes 42:16-17 allow 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.<sup>5</sup> No final or binding action may be taken during an executive session and the public comment period requirement is still applicable.<sup>6</sup>

Note, the public body should still give notice, as circumstances permit, to allow the public an opportunity to comment before deliberation. To the extent possible, the agenda should list each item separately and describe each item with reasonable specificity.<sup>7</sup>

### **Do the public comment requirements change during an emergency?**

No, but reasonable rules and restrictions are allowed. 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.<sup>8</sup> A governing body or school board may adopt reasonable rules and restrictions regarding such a comment period.<sup>9</sup>

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 27 JBE 2020 or guidance from the Centers for Disease Control and Prevention.<sup>10</sup> 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 not eliminate the public comment requirement in La. R.S. 42:14, but allows interested persons to socially distance themselves while still having a mechanism to participate; 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.

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<sup>1</sup> The Governor declared a Public Health Emergency in Proclamation Number 25 JBE 2020. In Proclamation Number 27 JBE 2020 the Governor ordered that all gatherings of 250 people or more must be postponed or canceled between Friday, March 13, 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.

<sup>2</sup> *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.

<sup>3</sup> La. Atty. Gen. Op. No. 14-0011.

<sup>4</sup> La. Atty. Gen. Op. Nos. 99-385, 01-256, 14-0011.

<sup>5</sup> La. R.S. 42:16.

<sup>6</sup> La. R.S. 42:16.

<sup>7</sup> La. R.S. 42:19.

<sup>8</sup> La. R.S. 42:15.

<sup>9</sup> La. R.S. 42:14; La. R.S. 17:81; La. Atty. Gen. Op. No. 04-0107.

<sup>10</sup> 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-Documents\\_FINAL.pdf](https://www.cdc.gov/coronavirus/2019-ncov/downloads/Mass-Gatherings-Documents_FINAL.pdf) (accessed 3/16/2020).