



Executive Order 16 and Revised Guidance from the Comptroller

Elisha Hodge, Melissa Ashburn, Stephanie O'Hara, MTAS Legal Consultants

Late Friday, Governor Bill Lee issued Executive Order No. 16. The Executive Order provides that because governing bodies must continue to meet to carry out essential functions, governing bodies are authorized to meet electronically, under certain enumerated circumstances.

The Executive Order provides:

1. Pursuant to the Governor's authority under Tennessee Code Annotated § 58-2-107(e), the provisions of the Tennessee Open Meetings Act are suspended, to the extent necessary, to allow governing bodies to meet and conduct essential business by electronic means, as opposed to in person at the same location, if the governing body determines that meeting electronically is necessary to protect the health, safety, and welfare of Tennesseans, due to COVID-19, subject to the following requirements:

a. All governing body meetings conducted by electronic means pursuant to Executive Order No. 16 must remain open and accessible to the public by electronic means. The governing body must make reasonable efforts to ensure that the public is able to access the meeting in real time, but if that is not possible after reasonable efforts are made to provide access in real time, the governing body must make a clear audio or video recording of the meeting available to the public as soon as possible, following the meeting. However, the audio or video recording must be made available to the public within 2 business days after the meeting.

b. The existing quorum, notice, and voting requirements in State law or municipal charters are not impacted by Executive Order No. 16.

c. Governing bodies are urged to provide the public with clear notice of the meeting agenda and the manner in which the public can access the meetings being held electronically.

d. The provisions of Tennessee Code Annotated § 8-44-108(c) remain in effect. As such, any governing body that was previously authorized to meet

electronically under the provisions in Title 8, Chapter 44, Part 1, must continue to abide by the provisions in Tennessee Code Annotated § 8-44-108(c).

e. All electronic meetings are to be conducted in accordance with Article I, Section 19 of the Tennessee Constitution regarding freedom of speech and the press.

2. All political subdivisions are authorized to make, amend, and rescind orders and rules as necessary to conduct electronic meetings that adhere to Executive Order No. 16 and the spirit of the Tennessee Open Meetings Act.

3. The requirement in Tennessee Code Annotated § 8-44-108(b)(3) that notice of electronic meetings and findings of necessity for such meetings be provided to the Tennessee Secretary of State is suspended.

4. Any law, order, rule, or regulation inconsistent with Executive Order No. 16 is suspended.

5. Executive Order No. 16 is effective until 12:01 a.m. Central Daylight Time, on May 18, 2020.

In addition to the language provided in Executive Order No. 16, the Office of the Comptroller of the Treasury issued guidance on how municipalities should comply with the Order. A link to the [revised guidance](#) is included below. We encourage municipal governing bodies and staff to review the guidance and confer with your municipal attorneys to determine how to implement the provisions contained therein, to the extent possible.

Executive Order No. 16 and the Revised Guidance from the Comptroller can be found [here](#) on the MTAS COVID-19 resource page.