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March 20, 2020

The Honorable Governor Bill Lee of the State of Tennessee,

As state and local governments across the United States take measures to respond to the COVID-19 epidemic, executive orders are being issued and legislative action taken to allow governing bodies to make decisions without complying with parts of the Open Meetings laws.

Last night, the General Assembly was unable, in their very compressed schedule, to reconcile differences in bills that would have allowed governing body members to electronically participate in meetings and prohibit public attendance, provided that the public had some type of electronic access.

We believe action is needed to provide our local governing bodies some relief. We urge you, if considering such action, to include important safeguards in any emergency order that you issue.

At all times, but most especially during times of crisis, trust and credibility are the government's most precious assets.

We sincerely urge that you lay out in any emergency order clear guidelines *and* guardrails so that governing bodies have assurance and that the public has assurance that business can continue in a reasonable and transparent way.

We've attached those safeguards on the following pages.

Respectfully,

Deborah Fisher
Executive Director, Tennessee Coalition for Open Government

Important Safeguards for Emergency Compliance with Certain Open Meetings Law provisions

Tennessee Coalition for Open Government supported key safeguards that were largely incorporated in the past few days into Senate Amendment 1, Drafting Code 17339. (SB 2897, HB 2815)

These safeguards are:

1 - Just as citizens are being asked to defer nonessential business, so should governing bodies. Now is not the time to take advantage of the public's inability to attend and participate at public meetings by making critical decisions affecting the public's interest if those decisions can reasonably be postponed. We believe governing bodies should be **allowed to act on essential business and business that the governing body believes cannot reasonably be delayed** until after the state-declared state of emergency ceases to exist.

2 - We believe that a governing body should not be allowed to prohibit the public from attending the unless there is a declared state of emergency by the governor. We do not believe that the power to declare the emergency — and therefore noncompliance with the state law — should rest with each individual governing body.

3 - Under a state of emergency declared by the governor related to this outbreak, we think governing bodies should be able to meet if they can provide electronic access to the meeting to the public. We believe governing bodies need to make reasonable efforts to acquire the technology to provide this live video or audio stream — which could even include partnering with local radio, local television station, or other local communications companies, if they do not have the equipment, expertise or technology themselves.

However, we also believe that if the governing body has made reasonable efforts and has not yet gotten that capacity, they need the ability to meet on essential business. Under this circumstance, we think they should be allowed to do so, provided they make an audio or video record of the meeting, and provide it to the public immediately afterward, such as within 48 hours of the meeting. If the crisis continues for weeks or months, this gives the smallest and least resourced governing bodies the time to get the capacity to provide live video and audio feeds. **We believe Tennesseans will help.**

4 - We also believe that members of the governing body, to protect their safety, must be allowed to call in, either through video or audio, to participate and vote. Guidelines for this participation are already outlined in § T.C.A. 8-44-108, as state boards and commissions have this capacity in times of necessity. Such guidelines should include being able to verify the identity of the governing body member, audibility, access to all board meeting materials, and roll call votes.

5 - Because of the extreme nature of these conditions for a public meeting, we believe that the public notice of such a meeting should be enhanced. The public notice of the meeting should have clear instructions on how the public can access the meeting electronically. And the governing body needs to include an agenda in its public notice that describes what is planned to be discussed or voted upon at that meeting. That notice and agenda should be posted in a place that the public can reasonably be thought to see it — no posting on courthouse doors or hallway bulletin boards as is custom now for some. And the notice should be posted in enough time before the meeting so that citizens have a chance to see it and contact their personal representatives on the governing body in advance about any issues.