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Secretary of State
Tre Hargett

STATE OF TENNESSEE

EXECUTIVE ORDER

BY THE GOVERNOR

No. 78

AN ORDER EXTENDING REMOTE MEETINGS AND IMPLEMENTING BEST PRACTICES ACROSS THE STATE TO PROMOTE TRANSPARENT GOVERNMENT BY EXTENDING EXECUTIVE ORDER NO. 71, AS AMENDED

WHEREAS, on March 20, 2020, I issued Executive Order No. 16, which allowed governing bodies to meet electronically regarding essential business in light of COVID-19, and that order was extended by Executive Order Nos. 34, 51, 60, 65, and 71; and

WHEREAS, the effects of COVID-19 continue to affect our citizens, and it is imperative to ensure that gatherings are conducted in a transparent and safe way, particularly for those at increased risk of suffering severe illness from COVID-19; and

WHEREAS, certain best practices have emerged across the state as a result of months of experience with conducting with electronic meetings during the COVID-19 pandemic, and all governing bodies were required to transition to such best practices on October 1, 2020, which are restated below for clarity; and

WHEREAS, the suspension of selected state laws and rules and the other measures contained herein are necessary to facilitate the response to the current emergency.

NOW THEREFORE, I, Bill Lee, Governor of the State of Tennessee, by virtue of the power and authority vested in me by the Tennessee Constitution and other applicable law, do hereby declare a continuing state of emergency to facilitate the response to COVID-19 and order the extension of the provisions of Executive Order No. 71, as amended herein, and more specifically order the following:

A. Meetings of governing bodies.

1. As a reasonable measure to protect the safety and welfare of Tennesseans while ensuring that government business may continue in a manner that is open and accessible to the public, the provisions of Tennessee Code Annotated, Title 8, Chapter 44, Part 1, are hereby suspended to the extent necessary to allow a governing body, as defined in Tennessee Code Annotated, Section 8-44-102, to meet and conduct its

essential business by electronic means as provided for herein, rather than being required to gather a quorum of members physically present at thesame location, if the governing body determines that meeting electronically is necessary to protect the health, safety, and welfare of Tennesseans in light of the COVID-19 outbreak, subject to the following conditions:

a. All meetings of a governing body conducted by electronic means under this Order shall remain open and accessible to the public by providing real-time, live audio or video access to the public; provided, that in the case of contested case hearings under title 4, chapter 5, part 3, this requirement may be satisfied through compliance with Tennessee Code Annotated, Section 4-5-312(d); and

b. A clear audio or video recording of the meeting shall be made available to the public as soon as practicable following the meeting, and in no event more than two (2) business days after the meeting; and

c. In the public notice required by Tennessee Code Annotated, Section 8-44-103, governing bodies shall provide information regarding how the public can obtain real-time, live access to or broadcast of the meeting, and governing bodies are strongly urged to provide an agenda for the meeting in such notice; and

d. Members of governing bodies, staff, and others participating in an electronic meeting by audio means only shall identify themselves in a manner reasonably calculated to permit the public to ascertain the identity of the person speaking; and

e. This Order does not in any way limit quorum, meeting notice, or voting requirements under current law; and

f. This Order does not limit, preempt, or repeal any local requirement permitting public comment during meetings, except that compliance with such requirements may be accomplished by allowing timely and appropriately submitted written public comments to be read into the recordby a member or staff of the governing body during the meeting of the governing body; and

g. The provisions of Tennessee Code Annotated, Section 8-44-108(c), apply to all state and local governing bodies; and

h. All such meetings shall be conducted in a manner consistent with Article I, Section 19 of the Tennessee Constitution.

2. Pursuant to Tennessee Code Annotated, Sections 58-2-107 and 58-2-118, I hereby authorize all governing bodies, state departments and agencies, and political subdivisions of the state, and other agencies designated or appointed by the governor to make, amend, and rescind orders and rules as necessary to conduct electronic meetings as provided for herein and adhering to the provisions and spirit of the Tennessee Constitution and Open Meetings Act.

3. Given the findings underlying, and general applicability of, this Order, Tennessee Code Annotated, Section 8-44-108(b)(3), which requires each governing body to provide findings to the Secretary of State concerning the need for a meeting where a quorum is not physically present, is hereby suspended.

4. Nothing in Paragraph A.1 prohibits some members of a governing body from participating in a meeting of the governing body in the same physical location while another member or members participate in the meeting electronically, so long as the governing body complies with all of the conditions and requirements of Paragraph A.1 with respect to that meeting.

5. The provisions of Tennessee Code Annotated, Section 4-5-312(c), are hereby suspended to the extent necessary to allow contested case hearings to proceed by telephone, television, or other electronic means, in the discretion of the administrative law judge or hearing officer and agency members, regardless of whether the parties agree. This paragraph does not waive the requirement that each participant in the hearing have an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceedings while taking place.

AA. Remote Shareholder Meetings

1. Tennessee Code Annotated, Section 48-17-109, which requires shareholders participating in a meeting conducted through special communications be able to simultaneously hear each other during the meeting, is hereby suspended; provided, that the corporation or its board of directors establishes procedures to enable verified shareholders and proxyholders not physically present at the meeting with a reasonably opportunity to:

   a. Read or hear the proceedings of the meeting substantially concurrently with such proceedings;

   b. Submit questions during the meeting;

   c. Be deemed present in person at the meeting; and

   d. Vote on matters submitted at the meeting.

2. Tennessee Code Annotated, Section 48-17-101(b), is hereby suspended to the extent necessary so that the place of meeting required to be specified may include a method of remote communication in which shareholders may participate in accordance with Paragraph AA.1.

3. The relevant provisions of Tennessee Code Annotated, Section 48-17-201(c), requiring that a corporation holding a shareholders' meeting make available at the meeting its list of shareholders who are entitled to notice of a shareholders' meeting is hereby suspended in the case of a corporation conducting a meeting in accordance with Paragraph AA.1; provided, that the corporation makes the list available on an electronic network to which shareholders are granted access for the entirety of the meeting.

B. Suspension of inconsistent laws. Any law, order, rule, or regulation inconsistent with this Order is hereby suspended.

C. Effective date and term. This Order takes effect at 11:59 p.m., Central Time, on February 27, 2021, and shall remain in effect until 11:59 p.m., Central Time, on April 28, 2021.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the State of Tennessee to be affixed this 26th day of February, 2020.

GOVERNOR

ATTEST:

SECRETARY OF STATE