STATE OF TENNESSEE

EXECUTIVE ORDER

BY THE GOVERNOR

No. 16

AN ORDER ENSURING GOVERNMENT CONTINUES TO FUNCTION OPENLY AND TRANSPARENTLY DURING THE COVID-19 EMERGENCY WHILE TAKING APPROPRIATE MEASURES TO PROTECT THE HEALTH AND SAFETY OF CITIZENS AND GOVERNMENT OFFICIALS

WHEREAS, on March 12, 2020, I issued Executive Order No. 14, which declared a state of emergency and waived certain laws to facilitate the response to Coronavirus Disease 2019 (COVID-19), and on March 19, 2020, I issued Executive Order No. 15, which superseded Executive Order No. 14 and, in addition to reiterating the existence of a state of emergency, took a number of additional measures in furtherance of the treatment and containment of COVID-19; and

WHEREAS, the findings in Executive Order No. 15 are incorporated herein by reference; and

WHEREAS, it is critical to limiting the community spread of COVID-19 that private and governmental entities of all types eliminate large public gatherings and conduct business remotely by electronic means to the greatest extent possible; and

WHEREAS, to this end, guidance from the White House and Centers for Disease Control and Prevention (CDC) advises that Americans should "avoid social gatherings in groups of more than 10 people" and advises that older persons and persons with serious underlying health conditions should remain at home; and

WHEREAS, state, county, and municipal governing bodies must continue to meet to carry out essential functions, including, but not limited to, considering annual budgets or special budgetary items in response to COVID-19 or measures providing regulatory flexibility or other means to treat and contain COVID-19; and

WHEREAS, in accordance with state and federal guidance, during this continuing emergency, the interest of public health and safety requires avoiding large gatherings of people in the same physical location; and

WHEREAS, despite these constraints on holding public meetings, maintaining open, public access to government proceedings, as guaranteed by Article I, Section 19 of the Tennessee Constitution and the Open Meetings Act, codified in Tennessee Code Annotated, Title 8, Chapter 44, Part 1, is of critical importance; and

WHEREAS, in a March 20, 2020, letter, the Tennessee Coalition for Open Government acknowledged the need to balance these interests, stating that, in light of the COVID-19 outbreak, governing bodies should be able to meet electronically regarding essential business, so long as they provide electronic access to the public and reasonable safeguards to ensure transparency; and

WHEREAS, other state entities have recently taken measures balancing the protection of public health and safety with the need to ensure that government continues to function and remains open to the public, including:

> On March 13, 2020, the Supreme Court of Tennessee issued an order suspending in-person court proceedings through March 31, 2020, subject to certain narrow exceptions for essential proceedings, and, even in those exceptional cases, limited attendees to attorneys, parties, witnesses, security officers, and other necessary parties. The Supreme Court's order further "urged [judges] to limit in-person courtroom contact as much as possible by utilizing available technologies, including alternative means of filing, teleconferencing, email, and video conferencing" and suspended "[a]ny Tennessee state or local rule, criminal or civil, that impedes a judge's or court clerk's ability to utilize available technologies to limit in-person contact."
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> Beginning March 16, 2020, the Lieutenant Governor and Speaker of the House of Representatives limited access to the Cordell Hull Building, while ensuring that the General Assembly's proceedings remained open to the public through the livestreaming services on its website, and I announced that the State Capitol would likewise be closed to tours and visitors; and

WHEREAS, in addition to the other powers granted by law, Tennessee Code Annotated, Section 58-2-107(e), provides that during a state of emergency, the Governor is authorized to suspend laws and rules regarding the conduct of state business if necessary to cope with the emergency, utilize all available state and local resources and state departments and personnel to combat the emergency, order evacuations, make orders concerning entry and exit and the occupancy of premises within an emergency area, and take measures concerning the conduct of civilians and the calling of public meetings and gatherings, among other things; and

WHEREAS, pursuant to this authority and the general emergency management powers of the Governor under law, the temporary suspension of selected state laws and rules and the other

measures contained herein are necessary to facilitate the response to the current public health 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, in light of the continuing state of emergency to facilitate the response to COVID-19, do hereby order the following:

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, rather than being required to gather a quorum of members physically present at the same 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 governing body meetings conducted by electronic means under this Order shall remain open and accessible to public attendance by electronic means, as follows: Each governing body must make reasonable efforts to ensure that the public access to the meeting via electronic means is live access, but if the governing body cannot provide such live public access despite reasonable efforts, the governing body must make a clear audio or video recording of the meeting available to the public as soon as practicable following the meeting, and in no event more than two business days after the meeting; and

    b. This Order does not in any way limit existing quorum, meeting notice, or voting requirements under law, and governing bodies are urged to provide the public with clear notice of the meeting agenda and how the public can access the meeting electronically at a time and location reasonably accessible to all members of the public; and

    c. The provisions of Tennessee Code Annotated, Section 8-44-108(c), remain in effect; and

    d. 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 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. Any law, order, rule, or regulation inconsistent with this Order is hereby suspended.

5. This Order shall remain in effect until 12:01 a.m., Central Daylight Time, on May 18, 2020, at which time the suspension of any state laws and rules and my authorization pursuant to Tennessee Code Annotated, Section 58-2-118, shall cease and be of no further force or effect.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the State of Tennessee to be affixed this 20th day of March, 2020.

GOVERNOR

ATTEST:

SECRETARY OF STATE