Dear Jenni:  The League of Wisconsin Municipalities requests that Governor Evers consider issuing an executive order providing local governmental bodies with flexibility for complying with the open meetings law during the COVID-19 emergency.  We have received many questions from our members about the ability of municipal governing bodies to dissuade the public from attending otherwise open meetings and/or use technology to conduct virtual meetings during the health emergency. We urge the Governor to issue an executive order relaxing certain aspects of the state's open meetings law during the COVID-19 health emergency, similar to what the Massachusetts Governor issued late last week. The Massachusetts’ order allows governmental bodies to conduct virtual meetings or to post recorded videos or copies of meeting transcripts on municipal websites as soon as practicable after each meeting, instead of requiring that meetings be held in a public place that is open and physically accessible to the public. More information is here: <https://www.mma.org/gov-signs-order-suspending-parts-of-open-meeting-law-to-enable-local-decision-making-during-covid-19-emergency/>.

I’ve pasted below the questions and comments the League attorneys have written on this issue.  We urge the Governor to take action as quickly as possible.  Thanks for considering our request.

**How does the Open Meetings Law apply in a pandemic situation created by a highly-contagious virus?** Wisconsin’s Open Meetings Law (OML), in conjunction with the COVID-19 pandemic, puts governmental bodies in a uniquely difficult situation in terms of trying to comply with public health advisories to practice “social distancing” while also trying to ensure compliance with OML requirements. Wisconsin Stat. § 19.83(1) requires that all meetings of governmental bodies be held in open session. Wisconsin Stat. § 19.82(3) defines “open session” as “a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times.”

Due to public health advisories regarding COVID-19, governmental bodies are concerned about holding meetings where large members of the public may be in attendance. There is also a concern about vulnerable governmental body members being required to convene physically to conduct essential business, particularly business required to address the current public health emergency. Additionally, some governmental bodies may have the capabilities to convene electronically and live broadcast their meetings, but there are numerous governmental bodies that will not have such capabilities. In light of these unique challenges, below are the League of Wisconsin Municipalities’ suggestions for the Governor to consider as part of an order on open meetings in response to this emergency situation, which are based on the approach recently taken by Massachusetts.

* A governmental body, as defined in Wis. Stat. § 19.82(1), is hereby relieved from the requirements of Wis. Stat. §§ 19.82(3) and 19.83(1) that it conduct its meetings in a place that is reasonably accessible to members of the public and open to all citizens at all times, provided that the governmental body makes provisions to ensure public access to the meeting for members of the public through adequate, alternative means.
* Adequate, alternative means of public access shall mean measures that provide transparency and permit timely and effective public access to the meeting of the governmental body. Such means may include, without limitation, providing public access through telephone, internet, or satellite-enabled audio or video conferencing or any other technology that enables the public to clearly follow the governmental body’s meeting while such meeting is occurring.
* Where allowing for active, real-time participation by members of the public is a specific requirement of a general or special law or regulation, or a local ordinance or by-law, pursuant to which the meeting is conducted, any alternative means of public access must provide for such participation.
* A governmental body that for reasons of economic hardship, and despite best efforts, is unable to provide alternative means of public access that will enable the public to follow the governmental body’s meeting in real time may instead post on its governmental website a full and complete transcript, recording, or other comprehensive record of the meeting as soon as practicable upon the meeting’s conclusion. This paragraph shall not apply to meetings that are conducted pursuant to a general or special law or regulation, or a local ordinance or by-law, that requires allowance for active participation by members of the public.
* A public body must offer its selected alternative means of access to its meetings without subscription, toll, or similar charge to the public.
* These changes should be made effective immediately and should remain in effect until rescinded or until the State of Emergency in Wisconsin is terminated, whichever happens first.

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