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To: Fire Protection District and Local Government Clients

Re: COVID-19 Matters Update

Illinois Open Meetings Act

On May 23, 2020, the Illinois legislature passed Senate Bill 2135. Among other things, this Bill amended the Illinois Open Meetings Act to authorize public bodies to meet remotely, without a physical quorum being present at a meeting location, so long as the Illinois Governor or Director of the IDPH has issued a disaster declaration that covers all or part of the public body's jurisdiction and other specific steps are taken by the public body. As of June 1, 2020, Governor Pritzker has not yet signed this legislation into law. However, the Governor's Executive Order 2020-39 (COVID-19 E.O. 37) extended the applicability of E.O.'s 2020-07 and 2020-33 regarding the Open Meeting Act relaxation until June 27, 2020 *or* until corresponding legislation, namely SB 2135 described in this memo, is enacted and takes effect, whichever occurs first. Additionally, on May 29, 2020 Governor Pritzker issued Executive Order 2020-38 (COVID-19 E.O. 36) which is covered at the very end of this memo.

To comply with the new amendment and the addition of subsection (e) to Section 2.01 of the Open Meetings Act (5 ILCS 120/2.01(e)), the following steps must be taken in order for a unit of local government to meet remotely and without a physical quorum present:

1. The Illinois Governor or Director of IDPH must have issued a disaster declaration related to public health concerns because of a disaster defined in Section 4 of the Illinois Emergency Management Agency Act, and all or part of the jurisdiction of the public body is covered by the disaster area. The Gubernatorial Disaster Declaration for COVID-19 should satisfy this requirement.
2. The President of the Board of Trustees must determine that an in-person meeting would not be prudent or practical because of the disaster.
 - a. It is recommended that something similar to the following should be stated at the beginning of each remotely held meeting by the President of the Board:

I have determined that an in-person meeting of the Board of Trustee is not practical or prudent because of the disaster as declared by the Illinois Governor [or Director of IDPH, as applicable] in the Governor's Executive Order No. 2020-38

and 2020-39, and the Gubernatorial Disaster Declaration dated May 29, 2020. As such, there is no physical quorum of Board members present at the meeting location, and this meeting is being held remotely by [telephone and/or video conference], for which the instructions for participation by members of the public have been included on the agenda for this meeting.

- b. Note: The Board of Trustees does not need to vote to approve the President's determination. This is not required in the Act.
3. As has been the practice throughout the COVID-19 era, meetings must still be preceded by an agenda, physically posted at the meeting's location, and posted on the unit of local government's website. **Important Note:** the amendment does not limit this to units of local government whose website is regularly maintained by full-time staff. Therefore, the most conservative approach is to post all agendas of remotely-held meetings on a District's website (if it has one), even if not regularly maintained by full-time staff. That agenda must include the instructions for remote participation by the public. This means the telephone or video conference access information must be clearly noted on the agenda.
4. All public body Board members present must be verified, and they must be able to hear everything in the call.
 - a. For this, we recommend that the President or Secretary note, after roll is taken, which members are present and whether their voices were identified. Additionally, we recommend that the meeting's minutes reflect that all members were verified.
5. All citizens in attendance must be able to hear and listen to the meeting, except for closed sessions.
6. This is a new requirement, but one that we have been suggesting: At least *one* member of the Board, chief legal counsel, or a "chief administrative officer" (like a Fire Chief), must be physically present at the regular meeting location, unless that presence is physically unfeasible due to the disaster. Note there is no definition of "unfeasible" in the amendment to the Act.
 - a. It is recommended that members of the public who opt to physically attend should be allowed to be present in the meeting room with the individual of the public body present. A telephone or video conference should be available for those attendees to participate/listen to the Board's meeting.

7. There is another new requirement: All votes must be conducted by roll call, so each member's vote on each issue can be identified and recorded. Be sure to record each vote in the meeting's minutes.

8. There is another new requirement: **A verbatim record of all telephone or video conference meetings must be kept**. This is the same requirement for closed sessions, but it is now being applied to all remotely-held meetings.
 - a. Some video conferencing services do offer the option to record a meeting, however investigate this prior to your meeting. They will often only give you a certain level of storage space for free. Any additional storage space will require a fee. Additionally, ensure you will be able to download the recordings to a computer of the public body. These recordings (except closed session recordings) **will** be subject to the Freedom of Information Act and the Local Records Act.

 - b. If your unit of government opts to use a service that does not offer the recording of calls/conferences, then we suggest that one (or more to be safe) Board member use an old fashioned tape recorder or voice recorder with their telephone on speakerphone to capture the entirety of the meeting.

9. Finally: All costs associated with the remotely held meetings will be at the expense of the public body.
 - a. This may include a subscription to a video conferencing service, and it may include the cost for each telephone conference. Be sure to research the available options well in advance of a meeting, and be sure to test them before a meeting.

 - b. This expense can likely come out of an Administrative Expense, Office Expense, Miscellaneous Expense, Software/IT, or similar line-item in your budget and appropriation ordinance. It is not expected that these will be significantly expensive, and some public bodies may choose to not use them at all.

Bear in mind that, as stated above, the usual agenda requirements, minutes requirements, and public comment requirements are still in place. The public will still need to be afforded the opportunity to comment during a meeting. Please refer to our prior memos sent on these issues for further guidance, or contact us if you have any additional questions.

OTHER CHANGES/REVISIONS

Workers Compensation:

House Bill 2455 was passed by both the Illinois Senate and House on May 22, 2020. As of June 1, 2020 the Governor has not signed this bill into law, but it is expected. The law adds Section (g) to the Illinois Workers' Occupation Diseases Act which provides that as to a first responder or front-line worker (defined in the Act) who is exposed to or contracts COVID-19 and subsequently suffers an injury or disease, the exposure or contraction is rebuttably presumed to have arisen out of and in the course of the employee's first responder or front-line employment.

The Act includes several examples of evidence that may rebut the presumption, but it is not an exhaustive list. The rebuttable presumption applies to all cases where the diagnosis of COVID-19 was made on or after March 9, 2020 and on or before December 31, 2020. Additionally, the Act provides that no COVID-19 case shall increase or affect an employer's workers' compensation insurance experience rating or modification. Furthermore, the Act provides that an employer is entitled to a credit against any liability for temporary total disability due to an employee for Emergency FMLA Expansion Act payment or Emergency Paid Sick Leave Act payments.

Election Day 2020 is a State Holiday:

Senate Bill 1863 was pass by both Illinois Houses on May 22, 2020. As of June 1, 2020, the Governor has not signed this bill into law, but it is expected. Among other things, the law provides that November 3, 2020 (the 2020 General Election Day) is now a legal State holiday. All schools and government officers shall be closed, unless they are an authorized polling place. We suggest reviewing your collective bargaining agreements (if applicable to your District/unit of local government) to determine if the agreement is broad enough to apply to this holiday. Keep in mind: your District/unit of local government can still hold regular meetings on this holiday if the meeting happens to fall on it based on the regular meeting schedule, however special meetings cannot be scheduled on a legal holiday.

Freedom of Information Act:

There were provisions in SB2135, as originally proposed, that would have allowed a rather lengthy extension to response deadlines during the coronavirus, *however* those provisions were removed from the final version of SB2135 that was passed by the legislature. As such, no change was made, and unit of local government are still required to comply with all aspects of the FOIA – business as usual. With that said, keep an eye out for changes that may be forthcoming; we expect that will happen.

Executive Order 2020-38:

On May 29, 2020, Executive Order 2020-38 (COVID-19 Executive Order No. 36) was issued by the Governor. It makes the following changes to the current order insofar as units of local government are concerned:

- Social Distancing guidelines are still in place. Face coverings are still required (except for those under age two, and for those who have been medically advised not to wear a face covering) when in a public place and when unable to maintain a six-foot social distance. Continue to practice proper hygiene and handwashing.
- Gatherings of more than 10 people are prohibited unless exempted by E.O. 2020-38.
 - This limitation does not technically apply to public meetings, however, it is recommended that caution be taken, social distancing measures be adhered to, and electronic remote meetings be properly utilized to reduce unnecessarily risk of exposure.
- The Department of Commerce and Economic Opportunity has developed industry-specific guidance and toolkits to help businesses operate safely and responsibly during the “Phase 3” reopening.

Disaster Declaration Extension

On May 29, 2020, the Governor issued a new Gubernatorial Disaster Declaration extending the disaster declaration due to a public health emergency (COVID-19). There is specific language in this disaster declaration referring to SB 2135 and it will satisfy the requirement in SB2135’s OMA amendments that a Governor’s disaster declaration be in place.