

## LEGAL GUIDANCE ON COVID-19

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**This document provides guidance for public bodies related to the current COVID-19 related public health emergency and the laws and declarations associated with it. The guidance is specifically focused on Public Employees – Classification and Emergency Leave, the Public Bid Law, the Local Government Budget Act, Open Meetings Law, and other emergency related guidance for public entities.**

**This guidance is based on the LLA's Legal section's interpretation of the various COVID-19 related laws and proclamations. Further questions may be directed to 225.339.3871. However, this guidance is not a substitute for legal advice. No actions should be taken by a public entity without consultation with their attorney and/or the Attorney General.**

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## I. **Federal Acts**

### A. **The FFCRA**

On March 18, 2020, the U.S. Congress passed and the President signed the Families First Coronavirus Response Act (FFCRA). This new law goes into effect on April 1, 2020, and it will remain in effect until December 31, 2020. The FFCRA includes many provisions, including free coronavirus testing, food assistance and medical services' budget increases. It also includes the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act. These two acts provides for broad changes for employers regarding paid sick leave, paid family and medical leave along with tax credits for the paid leave, and an expansion of unemployment insurance.

### B. **The CARES Act**

On March 27, 2020, the U.S. Congress passed and the President signed the “Coronavirus Aid, Relief, and Economic Security Act” — the “CARES Act.” The Act:

- Creates the Coronavirus Relief Fund, which allocates \$150 billion to state and local governments nationwide to assist in expenses associated with the COVID-19 outbreak. Louisiana will receive \$1.8 billion in funds, with the State then allocating 45% to local governments and retaining the remaining 55%.
- Provides various forgivable loans and other loan programs for small and mid-sized businesses, but attaches conditions designed to encourage businesses to retain employee or re-hire laid off employees (the “Payroll Protection Program”);
- Extends and increases benefit levels for unemployment insurance payments, and makes unemployment insurance payments available to sole proprietors, independent contractors and workers with limited employment histories; and
- Makes certain clarifying changes to the Families First Coronavirus Response Act regarding the availability of paid sick leave for rehired employees (i.e., employees who were laid off by an employer after March 1, 2020, and then re-hired, may have access to paid family and medical leave in certain instances).
- Provides the CDC with an additional \$4.3 billion, available until September 30, 2024. (As noted below in Part C, previous federal action—enactment of CPRSAA—provided the CDC with \$2.2 billion.) About one-third of the additional CDC funding (\$1.5 billion) is for grants to and cooperative agreements with states, localities, tribes, and territories. Louisiana, through the Louisiana Department of Health (LDH), will receive at least \$8.6 million from the CDC pursuant to the CARES Act grant.

C. [Coronavirus Preparedness and Response Supplemental Appropriations Act](#)

On March 6, 2020, the U.S. Congress passed and the President signed the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (P.L. 116-123) (CPRSAA). The bill provides \$8.3 billion in emergency funding for federal agencies to respond to the coronavirus outbreak. Of the \$8.3 billion, \$6.7 billion (81%) is designated for the domestic response and \$1.6 billion (19%) for the international response. Key highlights are below.

Domestic Efforts:

Of the \$6.7 billion designated for the domestic response:

- The majority (\$6.2 billion) is for the Department of Health and Human Services (HHS) including:
  - \$3.4 billion for the Office of the Secretary – Public Health and Social Services Emergency Fund (PHSSEF), which includes more than \$2 billion for the Biomedical Advanced Research and Development Authority (BARDA) (for the research and development of vaccines, therapeutics, and diagnostics), \$300 million in contingency funding for the purchase of vaccines, therapeutics, and diagnostics to be used if deemed necessary by the Secretary of HHS, and \$100 million for the Health Resources and Services Administration (HRSA) for grants under the Health Center Program, which aims to improve health care to people who are geographically isolated and economically or medically vulnerable.
  - \$1.9 billion for the Centers for Disease Control and Prevention (CDC), which includes \$950 million for state and local response efforts, of which \$475 million must be allocated within 30 days of the enactment of the bill, and \$300 million for the replenishment of the Infectious Diseases Rapid Response Reserve Fund, which supports U.S. efforts to respond to an infectious disease emergency. Louisiana, through LDH, will receive at least \$7.8 million from the CDC pursuant to this CPRSAA grant.
  - \$836 million for the National Institute of Allergy and Infectious Diseases (NIAID), which conducts research on therapies, vaccines, diagnostics, and other health technologies, at the National Institutes of Health (NIH).
  - \$61 million for the Food and Drug Administration (FDA) for the development and review of vaccines, therapeutics, medical devices and countermeasures, address potential supply chain interruptions, and support enforcement of counterfeit products.

- \$20 million is for the Small Business Administration (SBA) disaster loans program to support SBA's administration of loan subsidies that will be made available to entities financially impacted as a result of the coronavirus.
- The bill also includes a waiver removing restrictions on Medicare providers allowing them to offer telehealth services to beneficiaries regardless of whether the beneficiary is in a rural community, at an estimated cost of \$500 million.

International Efforts:

Of the \$1.6 billion designated for the international response:

The majority, \$986 million, is provided to the United States Agency for International Development (USAID) including funding provided through:

- \$435 million for the Global Health Programs (GHP) account to support health systems responding to the coronavirus outbreak overseas.
- \$300 million for the International Disaster Assistance (IDA) account to support humanitarian assistance needs resulting from the coronavirus outbreak.
- \$250 million for the Economic Support Fund (ESF) account to support economic, security and stabilization efforts resulting from the coronavirus outbreak
- \$1 million for the Office of the Inspector General (OIG) for oversight of coronavirus response activities.

The State Department receives \$264 million to support consular operations, emergency evacuations, and other needs at U.S. embassies.

\$300 million is provided to CDC to support global disease detection and emergency response efforts.

Expenditure Period:

The bill specified that funding could be disbursed over a multi-year period, although the periods vary by agency and account. For instance, Congress specified funding provided through the CDC "to remain available until September 30, 2022," funding provided through the FDA "to remain available until expended," and funding provided through NIAID "to remain available until September 30, 2024."



## II. **Presidential Declarations**

### A. **National Emergencies Act Declaration and Stafford Act Declaration**

On March 13, 2020, President Trump announced a national emergency in response to the coronavirus outbreak. The announcement includes two types of emergency declarations: one under the National Emergencies Act (NEA) and one under the Stafford Disaster Relief and Emergency Assistance Act.

The NEA declaration marks the beginning of the national emergency as March 1, 2020. This declaration does the following:

- Empowers the Secretary of Health and Human Services (HHS) to exercise authority under Section 1135 of the Social Security Act (SSA) to waive or modify certain requirements of Medicare, Medicaid, and State Children's Health Insurance programs and of the Health Insurance Portability and Accountability Act Privacy Rule throughout the duration of the emergency. These waivers will loosen restrictions on telehealth usage and certain requirements for hospitals and healthcare providers so they can better respond to the crisis.
- Requires the Secretary of HHS to provide advanced written notice of the waiver to Congress as required by the SSA. This notice must include a description of the specific provisions that will be waived, the health care providers to whom the waiver will apply, the relevant geographic area, and the period of time for which the waiver or modification will be in effect. The proclamation states that its directives are consistent with the SSA's requirements.
- It clarifies that nothing in the proclamation should impair or otherwise affect executive branch authority or the functions of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals. It also states that it does not create any substantive or procedural right or benefit enforceable by law.

The Stafford Act Declaration

- Section 501(b) of the Stafford Act grants the president authority to declare a national emergency. Once an emergency is declared, the act allows state governments and tribal authorities to request disaster assistance from the federal government.
- In its March 13, 2020 letter to the director of the Federal Emergency Management Agency (FEMA) and the secretaries of the Department of Homeland Security, Department of the Treasury, and the Department of Health and Human Services, the White House outlines the legal basis for its emergency declaration in response to COVID-19. The letter states that the federal government has the power to respond to a pandemic that began abroad under its authority to regulate interstate matters and foreign commerce and to conduct foreign relations—citing 42 U.S.C.

§ 264, which concerns regulations to control communicable diseases, as an example of that authority. In addition, the letter states, the federal government is responsible for securing the nation's borders and controlling the entry of foreign nationals.

### **B. Major Disaster Declaration for Louisiana**

On March 24, 2020, the President approved Governor Edwards' request for a major disaster declaration in Louisiana. With this approval, federal emergency aid has been made available for the State of Louisiana to supplement the State, tribes and local recovery efforts in the areas affected by the COVID-19 pandemic beginning on January 20, 2020, and continuing.

Federal funding is now available to state, tribal, and eligible local governments and certain private nonprofit organizations on a cost-sharing basis for emergency protective measures, including direct federal assistance under Public Assistance, for all areas affected by COVID-19, at a federal cost share of 75 percent.

George A. Robinson has been named as the Federal Coordinating Officer for federal recovery operations in the affected area. Additional designations may be made at a later date if requested by the State and warranted by the results of further assessments.

## **III. Governor's Proclamations**

Louisiana Governor John Bel Edwards has signed several Proclamations related to COVID-19. Following is each with a brief summary and date signed:

1. [JBE 2020-25](#) (March 11, 2020) – declares a public health emergency related to COVID-19; empowers the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) and the Secretary of the Louisiana Department of Health (LDH) to take all actions necessary; provides for suspension of certain provisions of the State Procurement Code and Public Bid Law requirements for the procurement of services or supplies needed for the public health emergency; imposes travel restrictions for State employees; and implements the laws against price gouging.
2. [JBE 2020-27](#) (March 13, 2020) – provides additional measures related to COVID-19; limits public gatherings of 250 people or more; closes all public schools until April 13, 2020; suspends deadlines for administrative hearings; suspends fees and other licensing requirements of the Office of Motor Vehicles; authorizes State departments or agencies and political subdivisions the authority to extend non-essential deadlines for up to 30 days, if necessary; requests the Legislature to consider a suspension resolution for the suspension of certain legal requirements; prohibits any charitable gaming activities from March 13, 2020 through April 12, 2020; and suspends certain provisions of laws related to unemployment insurance.

3. [JBE 2020-28](#) (March 13, 2020) – reschedules elections, including absentee and early voting periods, due to COVID-19; reschedules the April 4, 2020 Presidential primary election to June 20, 2020; and reschedules the May 9, 2020 elections to July 25, 2020. Provides that the deadline for calling of special elections and proposition elections for the April 4, 2020 election and the May 9, 2020 election shall not be extended.
4. [JBE 2020-29](#) (March 14, 2020) – provides additional measures related to COVID-19; suspends certain provisions regarding the limit of hours operators of commercial vehicles may drive; provides for out of state health care providers to operate within the state; suspends certain fees of the Office of Vital Statistics; and suspends certain laws related to unemployment insurance.
5. [JBE 2020-30](#) (March 16, 2020) – provides additional measures to slow the spread of COVID-19 and to ensure uninterrupted supply chains; limits public gatherings of 50 people or more until April 13, 2020; closes all casinos, video poker establishments, movie theaters, bars, bowling alleys and fitness centers/gyms statewide; limits all food establishments to delivery or carry out service only statewide; provides for the participation in public meetings by telephone or teleconference; suspends certain legal deadlines; and suspends certain provisions of the State Procurement Code and Public Bid Law.
6. [JBE 2020-32](#) (March 19, 2020) -- waives some education requirements in the law; further suspends certain provisions of the Public Bid Law; authorizes the use of telehealth; and suspends some laboratory requirements to speed the process of coronavirus testing, among other things.
7. [JBE 2020-33](#) (March 22, 2020) – provides for a statewide Stay at Home order to slow the spread of COVID-19 beginning March 23, 2020 until April 13, 2020, except for essentials such as food or medical services; limits public gathers of 10 people or more until April 13, 2020. The provisions of the order do not apply to airports, medical facilities, office buildings, manufacturing facilities, or grocery stores; closes places of amusement, museums, malls, hair and nail salons, massage parlors and tattoo shops. Provides for the closure of all State office buildings to the public, except that essential State functions shall continue.
8. [JBE 2020-37](#) (March 26, 2020) – provides additional measures for COVID-19 response in Louisiana, including provisions related to first responders, law enforcement and granting emergency authority to the insurance commissioner. Provides for issues concerning notary publics during the COVID-19 Emergency.
9. [JBE 2020-38](#) (March 31, 2020) -- eases medical licensure laws to make it easier for health care professionals out of state to come to Louisiana to practice during the COVID-19 outbreak and directs funerals to occur as expeditiously as possible with limitations on attendance.

10. [JBE 2020-41](#) (April 2, 2020) -- extends Stay at Home order until April 30, 2020 to slow the spread of COVID-19, which extends the length of time that schools and some businesses are closed and continues limits on the size of gatherings; continues suspension of certain provisions of Public Bid Law; and extends closure of State office buildings to the public, except that essential State functions shall continue.
11. [JBE 2020-43](#) (April 7, 2020) -- provides for the renewal of the waiver of certain provisions of law related to unemployment and workers' compensation (See [JBE 2020-27](#) and [JBE 2020-29](#)), extends the suspension of legal deadlines to April 30, 2020 and also deems health care workers and first responders who work for the state as essential for purposes of the exclusion from Emergency Paid Sick Leave Act and Emergency FMLA Expansion Act under the federal Families First Coronavirus Response Act.
12. [JBE 2020-46](#) (April 14, 2020) – provides for the rescheduling of elections due to COVID-19. The presidential primary election is rescheduled from June 20, 2020 to July 11, 2020; the July 25, 2020 election is reschedule to August 15, 2020; early voting and deadlines to request absentee ballots are also rescheduled.

## **IV. Questions and Answers**

### **A. Public Employees – Classification and Emergency Leave**

#### **Q.1. May public bodies compensate employees who are unable to work due to COVID-19 related office closures?**

- A.1.** The Attorney General has opined that public entities may compensate employees who are unable to work due to COVID-19 related office closures. See, AG Letter to the Louisiana Legislative Auditor (LLA) dated March 23, 2020. [[Click here](#)]. The Attorney General states that the payment of emergency leave is not gratuitous because of the reciprocal obligations of the parties, as the employees who are unable to work due to COVID-19 office closures must stand ready to return to work when emergency declarations are lifted. The Attorney General also states that the payment of this emergency leave does not relieve employees of their obligation under leave policies their agencies may have in place in regard to compensatory, annual or sick leave.

If you have any questions concerning compensation, these questions should be directed 1) to your own attorney, 2) the Attorney General, and/or 3) LLA-Legal.

**Q.2. What are the rules regarding employee emergency paid sick leave under the Families First Coronavirus Response Act?**

- A.2.** Under the Families First Coronavirus Response Act (HR 6201), which takes effect as of **April 1, 2020**, employers with fewer than 500 employees, and public employers of any size, must provide 80 hours of paid sick leave to full-time employees who are unable to work or telework for specific reasons related to the COVID-19 virus. Additionally, such employers must provide part-time employees with sick leave based on their average hours worked over a two week period. Note that employers are prohibited from requiring employees to find a replacement worker or use other sick time before this sick leave. For more information, see Division E of the [Families First Coronavirus Response Act](#).

**Q.3. Can an employee be asked to leave work or stay home if they are showing symptoms of the coronavirus?**

- A.3.** Yes, employers are permitted to request that an employee leave work or stay at home if they show symptoms of the coronavirus. In a recent release from the US Equal Employment Opportunity Commission (EEOC), the EEOC asserts that the Americans with Disabilities Act (ADA) does not conflict with employers following the advice of the Center for Disease Control (CDC) advising employees who become ill with symptoms of COVID-19 to leave the workplace. The EEOC has indicated that an ADA-covered employer may take the body temperature of employees during the COVID-19 pandemic as a precautionary measure. See What You Should Know About the ADA, the Rehabilitation Act, and COVID-19, March 19, 2020, from the EEOC [here](#).

For procedures regarding State Civil Service employees, please see the [Emergency Civil Service Rules, Chapter 27 - Response to Coronavirus Disease 19 \("COVID-19"\)](#) adopted by the Civil Service Commission on March 18, 2020.

**Q.4. Who are critical infrastructure workers?**

- A.4.** The Department of Homeland Security has issued guidance as to what may be considered the essential critical infrastructure workforce.

While this list is advisory in nature, and not considered to be a Federal law or standard, it provides some direction as to what workers and businesses may be considered critical.

Healthcare and public health workers of various types are described on the list, as well as law enforcement, public safety and first responders. Certain workers in the food and agriculture industry are listed, as well as certain workers in the energy, utility, transportation, communication, information technology, manufacturing, financial services and other related sectors.

More information can be found at the Cybersecurity and Infrastructure Security Agency of the Department of Homeland Security: <https://www.cisa.gov/>.

**Q.5. Are public entities entitled to seek reimbursement for paid sick leave and paid FMLA benefits through tax credits provided in the FFCRA?**

**A.5.** No. The provisions of the FFCRA regarding tax credits, specifically Section 7001(e)(4), exclude Federal, State, and local government public employers from receiving the credits.

**Q.6. Is an employer required to continue health coverage for an employee who is taking emergency paid sick leave or Emergency Expanded FMLA under the Families First Coronavirus Response Act?**

**A.6.** Yes, according to guidance from the U.S. Department of Labor, employees are entitled to continued group health coverage, including any family coverage, during their entitled leave under the FFCRA on the same terms as if they continued to work. The employee is responsible for continuing to make any required normal employee contributions for their health coverage.

**Q.7. May an employer require an employee to supplement or adjust the employee's pay mandated under the FFCRA with paid leave the employee may have accrued under the employer's paid leave policies?**

**A.7.** No, according to guidance from the U.S. Department of Labor, under the FFCRA, only the employee may decide whether to use existing accrued paid leave (i.e. vacation, annual, sick leave) to supplement the amount they receive from emergency paid sick leave or expanded FMLA leave. If the employee agrees to use their accrued paid leave, the accrued paid leave may be used to supplement the pay mandated under the FFCRA.

**Q.8. May an employer provide employees compensation beyond the amounts mandated for emergency paid sick leave and expanded FMLA leave under the FFCRA?**

**A.8.** Yes, an employer by formal policy may provide compensation beyond the amounts mandated by the FFCRA. However, any additional compensation will not be eligible for reimbursement through tax credits provided to employers other than government employers under the FFCRA.

Public employers should work with its legal counsel to ensure that any such formal paid leave policy comports with Article VII, §14 of the Louisiana Constitution and the AG's Guidance on pay during the declared COVID-19 Emergency.

**Q.9. If an employee has already utilized their 12 weeks of FMLA leave for the current 12 month period, may they still receive leave for COVID-19 related reasons?**

**A.9.** According to guidance from the U.S. Department of Labor, eligible employees are still entitled to emergency paid sick leave under the FFCRA, regardless of how much leave they have already taken under the FMLA.

However, for employers and eligible employees that were subject to the FMLA prior to April 1, 2020, the employee's eligibility for expanded FMLA leave under the FFCRA will depend on how much FMLA leave the employee has already taken for the 12 month period utilized by the employer for the purposes of the FMLA.

According to the DOL, the FMLA, including any expanded leave under the FFCRA, continues to be limited to 12 weeks for a 12 month period.

Employers should consult with their legal counsel and HR staff in determining an employee's remaining FMLA leave eligibility.

**Q.10. Are health care workers and first responders eligible for paid sick leave under the federal Emergency Paid Sick Leave Act or the expanded FMLA?**

**A.10.** No. JBE 2020-41 deems health care workers and first responders who work for the state as essential for purposes of the federal Family First Coronavirus Response Act. They are excluded from receiving paid sick leave under the federal Emergency Paid Sick Leave Act or expanded family and medical leave under The Emergency Family and Medical Leave Expansion Act

**Q.11. Do the paid leave provisions in the FFCRA apply to quasi-public non-profits?**

**A.11.** An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing (a) paid sick leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons and (b) expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern. A small business may claim this exemption if an authorized officer of the business has determined that:

- The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
- There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

## **B. Public Bid Law/Emergency Purchasing**

### **Q.12. What are the requirements for political subdivisions in documenting disaster-related procurement during the COVID-19 emergency?**

**A.12.** The public entity must ensure that every contract that is negotiated shall be supported by written determination and findings by the public entity justifying the emergency.

If contract action is taken pursuant to telephone or other oral offers, written confirmation of the accepted offer must be included in the file.

The file of the public entity must contain:

- A minimum of the description of the work to be performed;
- The name and address of each offeror quoting; and
- The performance time and terms of each offer.

If quotes lower than the accepted quote are not accepted, reasons for rejection must be in the file.

Records must be kept a minimum of 6 years.

For additional information on Emergency Procurement, please see the Section IV Emergencies, of [LLA's Public Bid Law FAQ](#).

### **Q.13. Are public bid laws suspended?**

**A.13.** The Louisiana Public Bid Law (La. R.S. 38:2211, et seq.) and its corresponding rules and regulations relating to deadlines for advertisement for bids and public works contracts are suspended during the COVID-19 emergency. The provisions of La. R.S. 39:124 through 126 regarding periodic meetings and/or inspection of capital outlay projects and prior approval of change orders are also suspended. See Proclamation Number [JBE 2020-32](#), March 19, 2020.

### **Q.14. How can an entity ensure it follows the proper procedures for FEMA reimbursement?**

**A.14.** To be eligible for FEMA reimbursement, an entity must follow the Procurement Standards for Disasters on or after December 26, 2014 found at 2 CFR Part 200 §200.317 – 200.326. Important aspects of these standards include:

2 CFR 200.319 requires

- Full and open competition
- Geographical preferences are not favored, unless Federal Law provides for one, or in the case of A/E services
- Written selection procedures identifying all requirements that offerors must fulfill



- Ensure all pre-qualified lists of persons, firms or products are current and include enough qualified sources to ensure maximum open and free competition
- FEMA considers “piggybacking” contracts non-competitive.

2 CFR 200.320 has significant conflicts with state small purchase thresholds and procedures

- 2 CFR 200.320(a) provides a threshold for micro-purchases of \$10,000, unless specified to another amount under 48 CFR 2.101
  - Must distribute equitably among qualified suppliers
  - Awarded without soliciting competitive quotations if the price is reasonable
- 2 CFR 200.320(b) provides a threshold of less than \$250,000 (or current Simplified Acquisition Threshold as defined in 48 CFR 2.101) for small purchases
  - Price quotes from adequate number of qualified sources
  - Must document

For more information regarding compliance with Federal FEMA guidelines please contact Louisiana GOHSEP at <https://gohsep.la.gov/> or go to the FEMA website here: <https://www.fema.gov/media-library/assets/documents/111781>

### **C. Local Government Budget Act**

**Q.15. Is a political subdivision required to amend its budget in order to expend State or Federal funds obtained to respond to the Covid-19 emergency?**

**A.15.** Yes, the AG has opined that the political subdivision must amend its budget to appropriate these additional funds in order to expend them. See [AG Op. No. 10-0232](#).

**Q.16. Is a political subdivision still required to adopt a budget during this emergency period?**

**A.16.** Yes, the requirements for a political subdivision to adopt its budget have not been suspended.

**Q.17.** What if a political subdivision is unable to adopt its budget?

**A.17.** The political subdivision will continue to operate on 50% of its last adopted budget, as finally amended. See [R.S. 39:1312](#).

Political subdivisions operating under a Home-Rule Charter should also consult their charter's provisions. See [AG Op. No. 14-0024](#).

**Q.18.** Are FEMA funds considered revenue for budgeting purpose?

**A.18.** FEMA funds are not treated differently from other revenue for budgeting purposes and should be included in a political subdivision's annual budget even if only shown as an estimated amount. If the receipt of FEMA funds after the budget has been adopted results in a political subdivision having a change in operations, the budget must be amended to reflect receipt of the funds [AG Op. No. 10-0232](#).

#### **D. Open Meetings Law**

**Q.19.** May public bodies hold meetings via teleconference or video conference during the COVID-19 public health emergency?

**A.19.** Normally, the Open Meetings Law does not allow a member to attend a meeting remotely via teleconference or video conference. On March 16, 2020, however, the Governor issued Proclamation No. [JBE 2020-30](#), which provides that attendance at essential governmental meetings may be via teleconference or video conference during the pendency of the COVID-19 emergency for all state agencies, boards, commissions and local political subdivisions of the State.

See also Attorney General Memorandum of March 19, 2020 [[Click here](#)]

**Q.20.** Are there any special notice requirements for meetings held via teleconference or video conference?

**A.20.** Yes, a public body that does hold a meeting via teleconference or video conference shall provide written certification, signed by the agency head or chief executive officer, that the public body was otherwise unable to operate due to quorum requirements of [R.S. 42:19](#). All public bodies shall post this notice in the same time, manner and place as they would a normal agenda pursuant to [R.S. 42:19](#).

Sample language that a public entity may use for this written certification is as follows:

**Certification of Inability to Operate Due to Lack of Quorum**

In accordance with the Executive Proclamation JBE 2020-30 issued by Governor John Bel Edwards on March 16, 2020, and concurrence by the Attorney General on March 19, 2020, this notice shall serve as certification of the [public entity's] inability to otherwise operate in accordance with the Louisiana Open Meetings Law due to a lack of quorum as a result of the COVID-19 public health emergency.

Pursuant to Section 4 of JBE 2020-30 the [public entity] will provide for attendance at its essential government meeting on [date] via [video or telephone] conference in order to obtain a quorum of its members.

Therefore, in accordance with JBE 2020-30, the [public entity's] meeting on [date] at [time] will be held via [video or telephone] conference and in a manner that will allow for observation and input by members of the public, as set forth in the notice posted on [date].  
All other Open Meetings Law requirements have been met.

\_\_\_\_\_  
Signature of Agency Head/  
Chief Executive Officer

**Q.21. Are the quorum requirements of La. R.S. 42:19 applicable?**

**A.21.** Yes, the quorum requirements for a public body to convene a meeting are still applicable.

**Q.22. Are public bodies still required to keep minutes?**

**A.22.** Yes, public bodies are still required to keep minutes and make them available to the public within a reasonable time pursuant to [R.S. 42:20](#).

**Q.23. Do the public comment requirements change during an emergency?**

**A.23.** No, the provisions of [R.S. 42:14](#) that require public bodies to allow a public comment period before acting on an agenda item upon which a vote is to be taken are still applicable. School boards are additionally required to have a public comment period preceding each agenda item.

However, the Attorney General Guidance linked above [[Q.18.](#)] provides guidance on reasonable rules and restrictions that are allowed regarding such public comment periods. These reasonable rules and restrictions may include (1) limiting the amount of time for each speaker; (2) limiting the number of people in a meeting room to comply with Public Health Emergency Proclamation Number [JBE 2020-30](#) or guidance from the Centers for Disease Control and Prevention; or (3) establishing procedures to receive public comments via video, email, facsimile, telephone or other means for a certain period preceding the meeting and having an administrator read the comments to the members

during the public comment period of the meeting. This will serve to adhere to the public comment requirement in [R.S. 42:14](#), and allow interested persons to socially distance themselves while still having a mechanism to participate.

**Q.24. Does the method of canceling a public meeting change during an emergency?**

**A.24.** No The cancelation of a meeting is done in the usual manner, even during an emergency.

**E. Donations and Suspension of Collections**

**Q.25. Can a political subdivision donate the use of its equipment or personnel to another political subdivision in order to address the COVID-19 emergency?**

**A.25.** Yes, political subdivisions by written agreement, such as a Cooperative Endeavor Agreement (CEA), can allow for the donated use of their equipment or personnel to another political subdivision.

Authority for this is found in [Article VII, Section 14\(B\)\(14\)](#), which provides:

**(B) Authorized Uses. Nothing in this Section shall prevent. . .  
(14) pursuant to a written agreement, the donation of the use of public equipment and personnel by a political subdivision upon request to another political subdivision for an activity or function the requesting political subdivision is authorized to exercise.**

See also [R.S 33:4712.18](#).

For additional information on CEAs, please see the [LLA's Guidance on Cooperative Endeavor Agreements](#). This document includes discussions on Article VII, Section 14, various AG opinions discussing its application, and a sample CEA.

**Q.26. Can a public entity suspend cutting off municipal utilities for non-payment during the COVID-19 emergency? Can the public entity forgive any unpaid utility bills?**

**A.26.** Yes, it appears that the public entity can formally suspend cutting off utilities during the COVID-19 emergency. See Governor Edwards' Emergency Proclamation [JBE 2020-30](#), as extended by [JBE 2020-43](#), which provides for suspension of all legal deadlines.

The public entity may not waive or otherwise forgive unpaid utility bills, as this would violate Article VII, Section 14 of the Louisiana Constitution. However, the public entity can formally suspend any late fees during the emergency.

**Q.27. Can a privately owned utility company suspend cutting off municipal utilities for non-payment during the COVID-19 emergency?**

**A.27.** Yes, all privately-owned utilities subject to oversight by the Public Service Commission are prohibited from cutting off services to customers for non-payment pursuant to the [PSC's Executive Order issued on March 13, 2020](#).

All other privately-owned utilities may by resolution of its board suspend cutting off services to customers for non-payment.

**Q.28. May the utility company and/or public entity enter into a repayment plan with users for the deferred/missed utility payments?**

**A.28.** Yes, the provisions in Governor Edwards' Emergency Proclamation [JBE 2020-30](#) as extended by [JBE 2020-43](#), allows suspension of the collection of utilities, but the public entity may not waive or otherwise forgive unpaid utility bills. Therefore, a written repayment plan may be implemented by the utility company and/or public entity for its utility customers. Any repayment plan should be crafted to provide for full repayment within a reasonable amount of time. The repayment plan should also provide for disconnection of utilities for non-payment following conclusion of the COVID-19 emergency.

## **F. Assessments and Ad Valorem Taxes**

**Q.29. What impact will the COVID-19 emergency have on the 2020 Assessments?**

**A.29.** All questions regarding the 2020 assessments should be directed to the Parish Assessor or to the Louisiana Tax Commission (LTC).

**Q.30. What impact will the COVID-19 emergency have on payment of ad valorem taxes?**

**A.30.** All questions regarding the payment of ad valorem taxes should be directed to the taxing authority (the city, Parish, etc.).

## **G. Audit, Income Tax and Legal Deadlines**

**Q.31. Are government or quasi-public agencies still required to submit their annual financial report by the regular statutory deadline?**

**A.31.** If a government or quasi-public agency cannot meet its deadline due to Covid-19 related delays, the agency may submit a disaster extension request through the LLA online portal at <https://www.la.gov/local-government-entities/extension-request-form/index.shtml>. The LLA will accept disaster extension requests no earlier than one month before the statutory deadline. That is, please do not submit an extension request until June 1 for a June 30 deadline.

**Q.32.** If a quasi-public entity receives an SBA loan under the CARES Act and uses those funds to retain or re-hire employees, which under the provisions of the Act makes the loan forgivable, are those funds considered public funds for audit purposes? Must the quasi-public entity include the proceeds from an SBA loan under the CARES Act in determining its appropriate level of financial reporting under the Audit Law?

**A.32.** No. The SBA loan funds, unless co-mingled with public funds, remain private funds even if the loan becomes forgivable under the terms of the Act. As private funds, these funds should be excluded in determining the quasi-public entity's required level of financial reporting under the Audit Law.

**Q.33.** Have the deadlines for State and Federal taxes been extended for individuals?

**A.33.** Yes. The deadline for both income tax filings and payments has been pushed back from April 15, 2020 (Federal) and May 15, 2020 (State), until July 15, 2020.

**Q.34.** Have legal deadlines been extended?

**A.34.** Yes, all legal deadlines have been suspended until April 30, 2020. See Proclamation No. [JBE 2020-41](#). This includes all liberative prescription and preemptive periods applicable to legal proceedings, as well as tax legal proceedings, and legal proceedings of administrative agencies and boards.

**Q.35.** Does the legal deadline suspension extend to Public Records Requests?

**A.35.** Yes, the Attorney General has opined that the suspension of legal deadlines by the Governor in [JBE 2020-30](#) includes deadlines in the Public Records Act. See <https://www.ag.state.la.us/Article/9745>

## **H. Ethics**

**Q.36.** How does the Code of Governmental Ethics apply to contracting during the COVID-19 emergency?

**A.36.** Questions regarding the Code of Governmental Ethics and its application should be directed to the Louisiana Board of Ethics. [www.ethics.la.gov](http://www.ethics.la.gov)

**Q.37.** Has the May 15th deadline for submitting Personal Financial Disclosure (PFD) forms to the Louisiana Board of Ethics been extended?

**A.37.** No. The Louisiana Board of Ethics has advised that all 2019 PFD are due by May 15, 2020, in accord with R.S. 42:1124, et seq. If the official has not filed their taxes by May 15, 2020, they can leave that portion on the first page of the report unchecked. It will not be considered a "red" flag if a person files the report by May 15th and has not checked on of the boxes on the cover page.

If this changes, the Board of Ethics will post a notice on their website at <http://www.ethics.la.gov/>.

## **I. Quasi-Public Qualification for the Payroll Protection Program**

### **Q.38. What is the Payroll Protection Program?**

**A.38.** The CARES Act allocates \$350 billion for the Small Business Administration (SBA) to establish the Payroll Protection Program (PPP), which is designed to provide a direct incentive for small businesses to keep their workers on the payroll. Under the PPP, businesses can receive loans up to \$10 million per business. These loans become forgivable if all employees are kept on the payroll for eight weeks and the money is used for payroll, rent, mortgage interest, or utilities.

### **Q.39. What entities are eligible to participate in the Payroll Protection Program?**

**A.39.** The following entities affected by Coronavirus (COVID-19) may be eligible:

- Any small business concern that meets SBA's size standards (either the industry based sized standard or the alternative size standard)
- Any business, 501(c)(3) non-profit organization, 501(c)(19) veterans organization, or Tribal business concern (sec. 31(b)(2)(C) of the Small Business Act) that meets the SBA size requirements;
- Any business with a NAICS Code that begins with 72 (Accommodations and Food Services) that has more than one physical location and employs less than 500 per location; and
- Sole proprietors, independent contractors, and self-employed persons.

### **Q.40. Are state and local governments eligible to receive SBA loans under the PPP?**

**A.40.** No. The PPP program does not apply to state and local government entities. However, certain quasi-public 501(c)(3) entities may be eligible.

### **Q.41. What are the terms and conditions of the SBA loans under the PPP and are they forgivable?**

**A.41.** SBA loans under the PPP will be fully forgiven if the funds are used for payroll costs, interest on mortgages, rent, and utilities (at least 75% of the forgiven amount must have been used for payroll).

This loan has a maturity of 2 years and an interest rate of 1%.

Loan payments will also be deferred for six months.

No collateral or personal guarantees are required. Neither the government nor lenders will charge small businesses any fees.

Forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels. Forgiveness will be reduced if full-time headcount declines, or if salaries and wages decrease.

**Q.42. Are faith based organizations eligible to receive loans under the PPP?**

**A.42.** Yes. Faith-based organizations, including houses of worship, are eligible to receive SBA loans under the PPP.

**Q.43. May a CPA engaged to perform the audits and reviews of a quasi-public agency or body under the Audit Law, serve as the entity's "agent" for the purpose of SBA loan applications under the Payroll Protection Program?**

**A.43.** No. The AICPA, in a statement on this issue, has cautioned CPAs that, for assurance clients, being an agent impairs independence.

**Q.44. May quasi-public entities utilize funds obtained under the PPP to cover costs of providing paid leave to employees?**

**A.44.** Generally yes. PPP loans cover payroll costs, including costs for employee vacation, parental, family, medical, and sick leave. However, the CARES Act excludes qualified Emergency Paid Sick Leave and Expanded FMLA Leave wages for which a credit is allowed under Sections 7001 and 7003 of the Families First Coronavirus Response Act (FFRCA). Therefore, proceeds from PPP loans may be used to cover paid leave provided to employees other than Emergency Paid Sick Leave and Expanded FMLA Leave provided under the FFCRA.

**Q.45. Does the CARES Act exclude any employees from eligible payroll costs under the PPP?**

**A.45.** Yes. The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of \$100,000.

This exclusion applies only to cash compensation, not to non-cash benefits such as:

- Employer contributions to defined-benefit or defined-contribution retirement plans;
- Payments for the employee benefits consisting of group health care coverage, including insurance premiums; and
- Payment of state and local taxes assessed on compensation of employees.



## **J. Additional Emergency Related Guidance**

**Q.46.** Where can information be found on the process for issuance of an emergency declaration for my parish?

**A.46.** For information concerning issuance of emergency disaster declarations by Parish Presidents, please see the [LLA's Guidance on Emergency Declarations by Parish Presidents](#).

**Q.47.** Where can the Governor's emergency proclamations be found?

**A.47.** The latest proclamations by Governor Edwards can be found [here](#).

**Q.48.** Where can additional guidance from the Attorney General on the COVID-19 emergency be found?

**A.48.** The latest guidance from the Attorney General can be found [here](#).

**Q.49.** Is there any additional emergency guidance available for local governments?

**A.49.** Yes, please see the [LMA's Mayor's Guide to Emergency Management and Disaster Management](#).

**Q.50.** Is there any additional accounting guidance available for local governments?

**A.50.** The Governmental Accounting Standards Board (GASB) launched a portal with an "emergency response toolkit" to help cities and states quickly identify authoritative accounting guidance that could be relevant during the COVID-19 crisis. The toolbox provides rule references for a list of about 20 topics, including on debt extinguishment, disposals of operations, going concern, and mergers between governments.

Please see the GASB announcement [here](#) for more information.

**This guidance is based on the LLA's Legal section's interpretation of the various COVID-19 related laws and proclamations. Further questions may be directed to 225.339.3871. However, this guidance is not a substitute for legal advice. No actions should be taken by a public entity without consultation with their attorney and/or the Attorney General.**