

Proposed

State of Kansas
Office of the Attorney General

Notice of Public Hearing on Proposed Administrative Regulations
K.A.R. 16-20-1

June 18, 2020

A public hearing will be conducted on August 18, 2020 at 9:00 a.m. in Memorial Hall Auditorium, 120 SW 10th Ave., 2nd Floor, Topeka, Kansas to consider the adoption of proposed rule and regulation, K.A.R. 16-20-1, of the Office of the Attorney General, on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rule and regulation. All interested parties may submit written comments prior to the hearing to the Legal Opinions and Government Counsel Division, Office of the Kansas Attorney General, 120 SW 10th Ave., 2nd Floor, Topeka, Kansas 66612 or by email to philip.michael@ag.ks.gov. All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulation during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Philip Michael at (785) 368-8402 (or TYY 1-800-766-3777). The public entrance to Memorial Hall is accessible. Handicapped parking is located in front of Memorial Hall.

Summaries of the proposed regulation and its economic impact follow. (Note: Statements indicating that a regulation is "not anticipated to have any economic impact" are intended to indicate that no economic impact on the Office of the Attorney General, other state agencies, state employees, or the general public has been identified.)

A copy of the proposed regulation and the Economic Impact Statement for the proposed regulation can be viewed at the following website: www.ag.ks.gov/regulation-hearings.

K.A.R. 16-20-1 - Compliance with the Kansas open meetings act during an emergency declaration. Establishes requirements public bodies and agencies shall follow to comply with the provisions of the Kansas Open Meetings Act (K.S.A. 75-4317 et seq., and amendments thereto) during an emergency declaration made pursuant to K.S.A. 48-924(a) through (c), and amendments thereto, or other emergency declaration lawfully declared pursuant to applicable emergency-powers provisions of local, state or federal law. No economic impact is anticipated.

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K.A.R. 16-20-1. Compliance with the Kansas open meetings act during an emergency declaration. (a) This regulation shall be in effect only as follows:

(1) During a state of disaster emergency lawfully declared by the governor pursuant to K.S.A. 48-924(a) through (c), and amendments thereto, or other emergency declaration lawfully declared pursuant to applicable emergency-powers provisions of local, state, or federal law;

(2) in the territory affected by any such declaration; and

(3) to the extent that emergency responses required pursuant to any such declaration prevent or impede the ability of any of the following:

(A) Members of a public body or agency subject to the Kansas open meetings act, K.S.A. 75-4317 et seq. and amendments thereto, to conduct meetings by physically gathering in person;

(B) members of the public to attend or observe public meetings by physically attending the meetings; or

(C) a combination of both paragraph (a)(3)(A) and paragraph (a)(3)(B).

(b) All requirements of the Kansas open meetings act, K.S.A. 75-4317 et seq. and amendments thereto, shall remain in force and effect during any emergency declared as described in paragraph (a)(1) unless expressly suspended by order of the governor pursuant to K.S.A. 48-925(c)(1), and amendments thereto, or other applicable provision of K.S.A. 48-925, and amendments thereto. No order of the governor shall be construed to suspend any

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requirement of the Kansas open meetings act, unless the order meets the following conditions:

(1) Expressly cites and invokes K.S.A. 48-925(c)(1), and amendments thereto, and any other specific provision of K.S.A. 48-925, and amendments thereto, from which the order draws authority;

(2) expressly references the Kansas open meetings act and the specific provisions thereof that the governor intends to suspend during the state of disaster emergency; and

(3) makes plain and unequivocal the intent of the governor to suspend any such requirement.

(c) Any public body or agency may comply with the requirement of K.S.A. 75-4318(a), and amendments thereto, that a meeting be "open to the public" through the use of a telephone or other medium for interactive communication if the requirements of subsection (e) are met.

(d) As used in this regulation, "medium for interactive communication" shall include teleconference, videoconference, internet conference, television broadcast, or any other method that permits the public to listen to the meeting and also to observe the meeting if the method allows for visual observation.

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(e) Each public body or agency conducting an open meeting utilizing solely a telephone or another medium for interactive communication rather than by members of the body or agency gathering in person at a physical location shall meet the following requirements:

(1) Use a medium for interactive communication that, at a minimum, allows members of the public, without cost, to listen to the meeting and, if available, also allows video observation of the meeting;

(2) comply with all requirements of the Kansas open meetings act, except any temporarily suspended by the governor as provided by subsection (b), including requirements for notice;

(3) if the medium for interactive communication allows, provide an alternative means to access the meeting for members of the public who do not have internet access that also complies with the requirements issued pursuant to any emergency declaration;

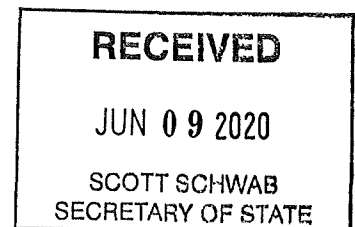
(4) provide directions describing how members of the public will be able to electronically access, listen to, or observe the open meeting;

(5) if the medium for interactive communication does not permit easy identification of the individual speaker, require each member of the public body or agency, staff, or presenter to state the individual's name and title, if any, each time the individual begins

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JUN 03 2020

APPROVED
JUN 08 2020



speaking or voting so that the individual can be readily identified by remote listeners or observers;

(6) require all participants to ensure that microphones, phones, or other electronic devices are muted when the participants are not speaking so that the ability of remote listeners or observers to hear the proceedings is not unnecessarily impeded;

(7) describe at the beginning of the meeting whether public comment will be allowed and what process will be used to identify any individual who wishes to comment, if permitted;

(8) describe at the beginning of the meeting the process that will be used for a closed or executive meeting pursuant to K.S.A. 75-4319, and amendments thereto;

(9) before any meeting, provide electronic or paper copies of an agenda, if any, to any individual requesting the agenda;

(10) clearly state each motion before the public body votes and announce the results of the final vote; and

(11) when not otherwise established by the agency or by ordinance or resolution of the public body, pass a motion that clearly identifies and authorizes by delegation each member of the public body or staff who will be permitted to sign any binding document for the public body or agency.

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JUN 09 2020

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Proposed

K.A.R. 16-20-1

P. 5

(f) To the extent that emergency responses required pursuant to the emergency declaration prevent or impede the ability of the public to physically attend a public meeting, any public body or agency may comply with the requirement of K.S.A. 75-4318(a), and amendments thereto, by meeting in person but limiting physical access of the public to the place where the meeting occurs if the public body or agency meets the following requirements:

(1) Complies with all requirements of the Kansas open meetings act, except any requirements suspended by the governor as provided by subsection (b), including requirements for notice;

(2)(A)(i) Broadcasts the meeting live on television or the internet; and

(ii) provides members of the public with the ability to access the meeting by telephone without cost; or

(B) uses any other method other than the methods specified in paragraphs (f)(2)(A)(i) and (ii) that permits the public to listen to or observe the meeting without cost;

(3) provides directions describing how members of the public will be able to electronically access, listen to, or observe the open meeting;

(4) if the medium for interactive communication does not permit easy identification of the individual speaker, requires each member of the public body or agency, staff, or presenter to state the individual's name and title, if any, each time the individual begins

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JUN 03 2020

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speaking or voting so that the individual can be readily identified by remote listeners or observers;

(5) describes at the beginning of the meeting whether public comment will be allowed and what process will be used to identify any individual who wishes to comment, if permitted;

(6) describes at the beginning of the meeting the process that will be used for a closed or executive meeting pursuant to K.S.A. 75-4319, and amendments thereto;

(7) before any meeting, provides electronic or paper copies of an agenda, if any, to any individual requesting the agenda;

(8) states each motion before the public body votes and announces the results of the final vote; and

(9) when not otherwise established by the agency or by ordinance or resolution of the public body, passes a motion that clearly identifies and authorizes by delegation each member of the public body or staff who will be permitted to sign any binding document for any public body or agency.

(g) Nothing in this regulation shall require any public body or agency to provide members of the public with the opportunity for public comment.

(h) Nothing in this regulation shall require any public body or agency to take action to prevent any member of the public from physically attending any public meeting.

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Proposed

K.A.R. 16-20-1

P. 7

(Authorized by K.S.A. 75-762; implementing K.S.A. 75-4317 and 75-4318; effective, T-16-3-

25-20, March 25, 2020; effective P-_____.)

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**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget**

Proposed

Office of the Attorney General

Agency

Philip Michael, Assistant Attorney General 368-8402

Agency Contact

Contact Phone Number

16-20-1 Permanent

K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to:

Division of the Budget
900 SW Jackson, Room 504-N
Topeka, KS 66612

I. Brief description of the proposed rule(s) and regulation(s).

The Office of the Attorney General is authorized to adopt regulations to implement and administer the provisions of the open records act, K.S.A. 45-215 et seq., and amendments thereto, and the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto.

K.A.R. 16-20-1 provides requirements public bodies and agencies shall follow to comply with the provisions of the Kansas Open Meetings Act (K.S.A. 75-4317 et seq., and amendments thereto) during an emergency declaration made pursuant to K.S.A. 48-924(a) through (c), and amendments thereto, or other emergency declaration lawfully declared pursuant to applicable emergency-powers provisions of local, state or federal law.

II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)

This regulation is not mandated by the federal government.

III. Agency analysis specifically addressing following:

A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The OAG is not aware of a basis to conclude that these regulations will meaningfully enhance or restrict business activities or growth.

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- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;**

The proposed regulation provides requirements necessary to comply with the provisions of the Kansas Open Meetings Act during an emergency declaration. The OAG is not aware of a basis to conclude that these regulations will directly affect businesses, sectors, public utility ratepayers, individuals, or local governments.

- C. Businesses that would be directly affected by the proposed rule and regulation;**

The OAG is not aware of a basis to conclude that these regulations will directly affect businesses.

- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;**

The benefit of the proposed regulation is that it provides requirements that allow public bodies or agencies to continue to conduct meetings necessary for their governmental unit while also complying with the provisions of the Kansas Open Meetings Act.

- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;**

The OAG contends that this regulation does not have costs or impact on business or economic development within the State of Kansas.

- F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.**

\$0

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES ☐ NO ☒

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

The cost was estimated by a layperson as the OAG does not employ an economist.

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable,

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document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES ☐ NO ☒

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

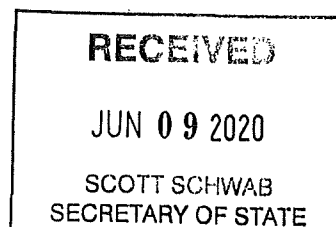
The OAG does not have a basis to believe this new regulation will impact the revenue of cities, counties, or school districts.

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

The OAG has been in contact with several local governments, state agencies, and institutions seeking guidance on how to comply with the KOMA during an emergency declaration. The OAG considered input from these entities during the drafting of this regulation.

- I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

This is not an environmental regulation.



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