

Legislative Subcommittee  
Right to Know Advisory Committee  
October 3, 2013  
Draft Meeting Summary

Convened 9:00 a.m., Room 126, State House, Augusta

Present:

Judy Meyer, Chair  
Joe Brown  
Suzanne Goucher  
Bill Logan  
Chris Parr  
Linda Pistner  
Harry Pringle  
Luke Rossignol  
Senator Linda Valentino

Absent:

Richard Flewelling  
Mal Leary

Staff:

Henry Fouts  
Peggy Reinsch

**Convening, Introductions**

Judy Meyer, Legislative Subcommittee Chair, called the meeting to order and asked the members to introduce themselves.

**Public body member participation from remote locations, LD 258**

Ms. Meyer opened the discussion about LD 258, which was voted ONTP by the Judiciary Committee, by explaining the history of the work of the Right to Know Advisory Committee on the concept. She explained that the draft had been proposed as a response to question about electronic meetings, and that the Advisory Committee has not reached consensus on all the aspects of legislation addressing the subject matter. Some members do not believe a member of a public body should be able to vote if not physically present, others believe that bringing members together electronically is the wave of the future and should be accommodated, and others believe the type of organization or the type of the proceeding should govern what is permissible. The Judiciary Committee asked the Advisory Committee to continue developing the idea, and include feedback from entities that currently rely on technology to make their proceedings effective.

The Subcommittee raised many questions. Should a person elected to a local government position be able to participate when spending six months of the year in Florida? Does the significance of the issues affect whether the members can participate from a remote location? If members of the public body are well-compensated for their participation,

should they be required to be physically present for all proceedings? What is the best way to narrowly tailor the proposed statute to ensure effective public proceedings and provide for transparency and accountability for the public?

The Subcommittee members reviewed the chart of responses from State entities that currently conduct public proceedings by using some form of communication technology to allow one or more members to participate from remote locations. They also reviewed the written testimony provided to the Judiciary Committee on LD 258. There are several public bodies that make use of technology to conduct their proceedings, despite the lack of general authorization in the FOAA or specific authorization in the statutes that pertain to the individual public bodies.

Joe Brown, relying on his experience as a county commissioner, said that he had never been to a meeting at which new information wasn't provided, and that the new information always has a potential to influence the decision-making that day. Public officials should always be available to be influenced by their constituents, he said, especially if the public officials are elected.

Harry Pringle, declining to support or oppose legislation on this subject, agreed that if a person is elected, the person needs to be there, but that we also need to move into the modern age. He said it is very important to clarify the law because there are various bodies making their own decisions about whether it is appropriate to meet over the phone. We have to be very careful to deal with all the issues. For example, if a school board approves a \$21 million bond issue using electronic communication, is the bond valid? If the school board imposes discipline through an electronic meeting, is it valid? Mr. Pringle noted that boards can be divided into two types – local and statewide, which often include members from a large geographic expanse – and that may be a way to address permissible activities. He urged the Subcommittee to recommend legislative action to clarify which bodies are specifically authorized to allow remote participation.

Luke Rossignol, who often travels from the County to attend meetings, emphasized the importance of entities, such as the Maine Human Rights Commission, being able to take testimony and allow participants, witnesses and complainants to connect electronically. He asked how LD 258 deals with a public body when it uses executive session – can the member participating remotely still be a part of the executive session? How do you know who is in the room with the member to ensure that the executive session is truly closed?

There was discussion about application of any changes to the Legislature. Senator Valentino expressed her frustration that the legislative rules allow a committee member who was not present to nonetheless cast a vote (although it must be done in person and not via phone or email).

Mr. Pringle noted that LD 258 requires the public body to adopt a policy authorizing remote participation before a member can participate without being physically present, which means it is the right of the body to decide, not the right of the individual member.

Chris Parr wondered whether the absent person should be in a public place to participate, although that would eliminate the member of a public body connecting from home. He agreed that the issue is very complex and that, although we have the technology that should be used, there are practical considerations.

There was significant discussion about prohibiting elected officials from using remote participation, and also about drawing distinctions based on what the body is doing. Maybe it would be acceptable to allow advisory committees to meet by phone. If a person is paid a salary to attend a panel and doesn't show, Perry Antone said the person should just be replaced. Maybe it would be best to look at whether the public body can benefit from members participating even when not physically present? After floating a couple of motions that did not succeed, the members agreed that one size does not fit all and that they need more information.

The Subcommittee asked staff to follow up on what other states authorize. Mr. Parr moved that the question be addressed incrementally: use LD 258 as a framework, but don't allow elected officials to meet remotely unless there is an emergency. There is concern about abuse of an "emergency" exception. In addition, executive sessions need to be addressed. The Subcommittee voted 6-2 in favor of the motion. (In favor: Judy Meyer, Joe Brown, Suzanne Goucher, Chris Parr and Linda Pistner; opposed: Harry Pringle and Luke Rossignol) Staff will prepare draft legislation for discussion at the next meeting.

### **Encryption of public safety radio transmissions**

The Subcommittee agreed to discuss the encryption issues in the joint meeting of the Legislative Subcommittee and the Public Policy Subcommittee, immediately following adjournment of the Legislative Subcommittee meeting.

### **Future Meetings**

The Legislative Subcommittee will meet with the Public Policy Subcommittee at **10:00 a.m. on Tuesday, November 12, 2013**

The Advisory Committee will meet at 1:00 pm, Room 438, State House on Tuesday, November 12, 2013.

The meeting was adjourned at 10:10 a.m.

Respectfully submitted,  
Peggy Reinsch and Henry Fouts