



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission
From: Jonathan Wayne, Executive Director
Date: July 20, 2022
Re: Proposed Changes to Commission's Remote Participation Policy

Under 1 M.R.S. § 403-B, a state body may allow its members to participate remotely in meetings, provided that the body has adopted a written policy that addresses certain issues. On July 30, 2021, the Commission adopted a remote participation policy consistent with this law.

Proposed changes. Earlier this year, the Legislature enacted P.L. 2021, Chapter 666 that provides state agencies with greater flexibility to set their own standards when remote participation is allowed. In particular, Chapter 666 eliminated the standard that remote participation is permitted when physical presence is “not practicable.” The new law takes effect August 8, 2022.

After conferring with the Commission Counsel, the staff proposes some changes to the Commission's remote participation policy for your consideration at your July 27, 2022 meeting. Two versions of the proposed amended policy are attached: one version shows the proposed insertions and deletions, and the other is a “clean” version that reflects the proposed amendments.

In our proposal:

- We suggest eliminating the “not practicable” standard from the policy.
- Instead, a Commission member could participate remotely when the member determines that their in-person attendance at a meeting would result in a hardship/be inconvenient for the member (we propose these as alternatives for you to choose from).
- The entire Commission could meet remotely when “the Chair determines that an emergency or urgent issue requires the Commission to meet remotely.”

- After conferring with Commission Counsel, we suggest clarifying that the Commission’s own meeting statute (21-A M.R.S. § 1002(2)) allows for videoconference meetings during the last 28 days before an election when the Commission is required to meet within two business days of the filing of a complaint.
- We propose language that the Commission will “make every reasonable effort” to stream the Commission’s meetings to YouTube, consistent with the Commission’s staffing and technological resources. We fully intend to stream every meeting but suggest a little flexibility in the written policy in case there is an unforeseen staffing shortage or technological problem.

If you would like us to incorporate any other language for consideration on July 27, 2022, please email me.

Implementation question. The current policy states that if a person is requesting an action by the Commission (*e.g.*, a waiver of a late-filing penalty or investigation), the Commission expects that the person will attend the Commission meeting in person. For good cause shown, the Commission may allow remote participation. The same applies if the Commission requests that someone participate in the meeting (*e.g.*, to respond to a complaint). After conferring with the Commission Chair, the staff has been taking the written “good cause” standard seriously. If people would like to participate remotely, we ask them to state the reason.

Some people who appear before the Commission may live some distance from Augusta and do not travel here for work (*e.g.*, first-time candidates, or treasurers of local party committees). If you have any advice to offer on how we should interpret “good cause,” please feel free to share it at the July 27 meeting. The staff is fine applying the “good cause” standard without any additional guidance from you, but I am raising it to make sure we are acting in accordance with your preferences. For example, if someone has to drive more than 90 minutes to attend a Commission meeting in Augusta, and they are seeking a waiver of a penalty for a routine reason, and based on precedent the merits of the request (or lack thereof) seem to point in a particular direction, would you be comfortable allowing them to participate remotely or would you prefer they attend in person? Thank you.



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine

Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

POLICY ON REMOTE PARTICIPATION IN ETHICS COMMISSION MEETINGS

In accordance with 1 M.R.S. § 403-B, it is the policy of the Commission on Governmental Ethics and Election Practices (“Commission”) to allow Commission members to participate remotely using synchronous telephonic or video technology allowing simultaneous reception and exchange of information pursuant to this policy.

1. Notice to the Public of Commission Meetings

The Commission will notify the public of the date, time, and location of each Commission meeting on the home page of the Commission’s website, www.maine.gov/ethics. If applicable, the notice will specify the means by which members of the public may access the proceeding remotely. Members of the public may also sign up to receive notices of upcoming meetings through an email notification service established by the Commission. A link to subscribe to the email notices is available at www.maine.gov/ethics. In addition, the Commission staff posts a link to the agenda and written materials for each meeting to www.maine.gov/ethics roughly one week before each meeting, unless the Commission is meeting due to an emergency or urgent issue.

2. Remote Participation by Commission Members

Commission members are expected to be physically present for meetings except when the Chair determines that an emergency or urgent issue requires the Commission to meet remotely or when a Commission member determines that their in-person attendance at a meeting would [result in a hardship] [be inconvenient] for the member. Examples of [hardships] [inconveniences] include, but are not limited to:

- significant travel time,
- illness or, other physical condition,
- family emergency, or other significant conflict with family or professional obligations,
- temporarily absence from Maine, and
- predicted or actual inclement weather affecting travel.

If a Commission member determines that attending in person would [cause a hardship] [be inconvenient], the member will notify the Commission staff as soon as possible. If the Commission Chair determines that an emergency or urgent issue

requires the Commission to meet remotely, the Chair will notify Commission staff. In both cases, the staff will arrange for remote participation by telephonic or video technology. When one or more members is participating remotely, the Commission will provide an opportunity for members of the public to attend the meeting remotely.

3. Meetings by Video or Telephone Technology

Consistent with 21-A M.R.S. § 1002(2), the Commission may meet by video or telephone technology:

- to address procedural or logistical issues before a regular meeting, such as scheduling, deadlines for parties' submission of written materials, setting of the meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses, or recusal by a Commission member, and
- during the 28 days before an election, when the Commission is required to meet within two business days of the filing of any complaint with the Commission.

In the event of a meeting by video or telephone technology, the Commission will provide notice to all affected parties and its office will remain open for attendance by complainants, witnesses, the press and other members of the public.

4. Participation by Interested Persons

When a person requests an opportunity to participate in a Commission meeting (*e.g.*, requesting a waiver of a late-filing penalty) or when the Commission requests that someone participate in the meeting (*e.g.*, to respond to a complaint), the Commission expects the person to attend in person. For good cause shown, the Commission may allow the person to participate remotely by telephone or video technology. The Commission's executive director is authorized to make decisions on requests for remote participation and will confer with the Chair as necessary.

5. Accessibility to the Public

It is the policy of the Commission to make its meetings accessible to all members of the public. The Commission will make every reasonable effort to use video technology to stream its meetings to the Commission's YouTube channel or other publicly accessible website, consistent with the staffing and technological resources of the Commission.

In addition to remote attendance as permitted under paragraph 2, members of the public may appear at the Commission's office (or such other location designated in the public notice) to attend any Commission meeting. When an emergency or urgent issue requires the Commission to meet remotely and the Commission Chair

determines that allowing in-person attendance is not practicable, remote attendance will be afforded to the public.

The Commission will provide reasonable accommodations as necessary to allow members of the public with disabilities to access its meetings. A member of the public seeking a particular accommodation for a disability should request this by contacting Commission staff at (207) 287-4179 or ethics@maine.gov.

6. Opportunity for Public to Comment

If the Commission invites members of the public to comment on an item of business before the Commission (*e.g.*, when conducting a rulemaking or adopting a policy or guidance document), the Commission will provide an effective means for members of the public to communicate with the Commission. In meetings in which the public is invited to attend remotely, participation will be permitted by telephonic or video technology.

Adopted on _____



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2. Remote Participation by Commission Members

Commission members are expected to be physically present for meetings except when the Chair determines that an emergency or urgent issue requires the Commission to meet remotely or when a Commission member determines that their in-person attendance at a meeting would ~~attending in person would~~ [result in a hardship] [be inconvenient] for a the member. Examples of [hardships] [inconveniences] include, but are not limited to: it is not practicable for a member to attend the meeting in person, for example:

- ~~when the time for a member to travel to a meeting exceeds 90 minutes~~ significant travel time,
- ~~when a member would face significant difficulties attending a meeting in person due to illness or,~~ other physical condition,
- family emergency, or other significant conflict with family emergency or professional obligations, ~~or the member’s-~~
- temporarily absence from Maine,

- ~~when there are geographic characteristics or meteorological conditions that impede safety or slow travel, including but not limited to islands not connected by bridges or significant weather events such as snowstorms, ice storms or nor'easters, or predicted or actual inclement weather affecting travel.~~
- ~~when an emergency or urgent issue, as determined by the Commission Chair, requires the Commission to meet remotely.~~

If a Commission member determines it is not practicable for them to participate that attending in person would [cause a hardship] [be inconvenient], the member will notify the Commission staff as soon as possible. If the Commission Chair determines that an emergency or urgent issue requires the Commission to meet remotely, the Chair will notify Commission staff as soon as possible. In both cases, the staff will arrange for remote participation by telephonic or video technology. When one or more members is participating remotely, the Commission will provide an opportunity for members of the public to attend the meeting remotely.

3. Telephone Meetings by Video or Telephone Technology Permitted

~~The Commission's meetings statute, Consistent with 21-A M.R.S. § 1002(2), permits the Commission to~~ may meet by video or telephone technology:

- to address procedural or logistical issues before a regular meeting, such as scheduling, deadlines for parties' submission of written materials, setting of the meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses, or recusal by a Commission member; and
- during the 28 days before an election, when the Commission is required to meet within two business days of the filing of any complaint with the Commission.

In the event of a meeting by video or telephone technology, the Commission will provide notice to all affected parties and its office will remain open for attendance by complainants, witnesses, the press and other members of the public.

4. Participation by Interested Persons

When a person requests an opportunity to participate in a Commission meeting (e.g., requesting a waiver of a late-filing penalty) or when the Commission requests that someone participate in the meeting (e.g., to respond to a complaint), the Commission expects the person to attend in person. For good cause shown, the Commission may allow the person to participate remotely by telephone or video technology. The Commission's executive director is authorized to make decisions on requests for remote participation and will confer with the Chair as necessary.

5. Accessibility to the Public

It is the policy of the Commission to make its meetings accessible to all members of the public. The Commission will make every reasonable effort to use video technology to stream its meetings to the Commission's YouTube channel or other publicly accessible website, consistent with the staffing and technological resources of the Commission.

In addition to remote attendance as permitted under paragraph 2, members of the public may appear at the Commission's office (or such other location designated in the public notice) to attend any Commission meeting. When an emergency or urgent issue requires the Commission to meet remotely and the Commission Chair determines that allowing in-person attendance is not practicable, remote attendance will be afforded to the public.

~~At the time of the adoption of this policy, the Commission is exploring the feasibility of using video technology to stream its meetings to a YouTube channel for the public to access. In addition to live access, the Commission will make audio recordings of each meeting available to the public upon request within a reasonable timeframe after the conclusion of the meeting.~~

The Commission will provide reasonable accommodations as necessary to allow members of the public with disabilities to access its meetings. A member of the public seeking a particular accommodation for a disability should request this by contacting Commission staff at (207) 287-4179 or ethics@maine.gov.

6. Opportunity for Public to Comment

If the Commission invites members of the public to comment on an item of business before the Commission (e.g., when conducting a rulemaking or adopting a policy or guidance document), the Commission will provide an effective means for members of the public to communicate with the Commission. In meetings in which the public is invited to attend remotely, participation will be permitted by telephonic or video technology.

Adopted on _____

**1 M.R.S. § 403-B. Remote participation in public proceedings
(before amendments in P.L. 2021, Chapter 666)**

1. Remote participation. This section governs remote methods of participation in public proceedings of certain public bodies. For the purposes of this section, "remote methods" means telephonic or video technology allowing simultaneous reception of information and may include other means when such means are necessary to provide reasonable accommodation to a person with a disability. Public proceedings may not be conducted by text-only means such as e-mail, text messages or chat functions.

2. Requirements. A public body subject to this subchapter may allow members of the body to participate in a public proceeding using remote methods only under the following conditions:

A. After notice and hearing the body has adopted a written policy governing the conditions upon which members of the body and the public may participate in a public proceeding of that body by remote methods;

B. The policy adopted pursuant to paragraph A must provide that members of the body are expected to be physically present for public proceedings except when being physically present is not practicable. Circumstances in which physical presence for one or more members is not practicable may include:

(1) The existence of an emergency or urgent issue that requires the public body to meet by remote methods;

(2) Illness, other physical condition or temporary absence from the jurisdiction of the body that causes a member of the body to face significant difficulties traveling to and attending in person at the location in the notice under section 406;

(3) With respect to a public body with statewide membership, significant distance a member must travel to be physically present at the location in the notice under section 406; and

(4) The area of the public body's jurisdiction includes geographic characteristics that impede or slow travel, including but not limited to islands not connected by bridges;

C. The policy adopted pursuant to paragraph A must provide members of the public a meaningful opportunity to attend by remote methods when members of the body participate by remote methods, and reasonable accommodations may be provided when necessary to provide access to individuals with disabilities;

D. If the body allows or is required to provide an opportunity for public input during the proceeding, an effective means of communication between the members of the body and the public must be provided;

E. Notice of the proceeding must be provided in accordance with section 406. When the public may attend by remote methods pursuant to paragraphs C and D,

the notice must include the means by which members of the public may access the proceeding using remote methods. The notice must also identify a location for members of the public to attend in person. The body may not determine that public attendance at a proceeding will be limited solely to remote methods except under the conditions in paragraph B, subparagraph (1);

F. A member of the body who participates in a public proceeding by remote methods is present for purposes of a quorum and voting;

G. All votes taken during a public proceeding using remote methods must be taken by roll call vote that can be seen and heard if using video technology, and heard if using only audio technology, by the other members of the public body and the public; and

H. The public body must make all documents and other materials considered by the public body available, electronically or otherwise, to the public who attend by remote methods to the same extent customarily available to members of the public who attend the proceedings of the public body in person, as long as additional costs are not incurred by the public body.

3. Remote participation not permitted. This section does not authorize town meetings held pursuant to Title 30-A, section 2524 or regional school unit budget meetings held pursuant to Title 20-A, section 1482-A to be conducted using remote methods.

4. Application. This section does not apply to:

A. The Legislature; or

B. A public body to which specific statutory provisions for remote participation apply.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-TWO

—
H.P. 1323 - L.D. 1772

An Act To Amend the Remote Meeting Law in Maine's Freedom of Access Act

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §403-B, sub-§2, ¶B, as enacted by PL 2021, c. 290, §1, is repealed.

Sec. 2. 1 MRSA §403-B, sub-§2, ¶E, as enacted by PL 2021, c. 290, §1, is amended to read:

E. Notice of the proceeding must be provided in accordance with section 406. When the public may attend by remote methods pursuant to paragraphs C and D, the notice must include the means by which members of the public may access the proceeding using remote methods. The notice must also identify a location for members of the public to attend in person. The body may ~~not determine that~~ limit public attendance at a proceeding ~~will be limited solely to remote methods except under the conditions in paragraph B, subparagraph (1) if there is an emergency or urgent situation that requires the body to meet only by remote methods;~~

Sec. 3. 1 MRSA §403-B, sub-§2, as enacted by PL 2021, c. 290, §1, is amended by enacting at the end a new first blocked paragraph to read:

The policy adopted pursuant to this subsection applies to a board or committee that is within the jurisdiction of the public body, unless the board or committee adopts its own policy under this subsection.