RIGHT TO KNOW ADVISORY COMMITTEE

Thursday, September 13, 2018
4:00 p.m.
State House Room 438

Meeting Agenda

1. Introductions

2. Review and discussion of the Twelfth Annual Report of the Right to Know Advisory Committee (January 2018) and actions related to those recommendations

3. Report of Subcommittee on Penalties, Judy Meyer, Chair

4. Subcommittee to review existing public records exceptions: Plans

5. Discussion of issues and topics to cover

6. Establish future meeting dates

7. Adjourn
An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Freedom of Access Training for Public Officials

Reported by Representative MOONEN of Portland for the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §412, as amended by PL 2011, c. 662, §7, is further amended to read:

§412. Public records and proceedings training for certain officials and public access officers

1. Training required. A public access officer and an elected official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official or public access officer shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official or the person is designated as a public access officer pursuant to section 413, subsection 1.

2. Training course; minimum requirements. The training course under subsection 1 must be designed to be completed by an official or a public access officer in less than 2 hours. At a minimum, the training must include instruction in:

A. The general legal requirements of this chapter regarding public records and public proceedings;

B. Procedures and requirements regarding complying with a request for a public record under this chapter; and

C. Penalties and other consequences for failure to comply with this chapter.

An elected official or a public access officer meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.

3. Certification of completion. Upon completion of the training course required under subsection 1, the elected official or public access officer shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected or appointed. A public access officer shall file the record with the agency or official that designated the public access officer.

4. Application. This section applies to a public access officer and the following elected and appointed officials:

A. The Governor;

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

C. Members of the Legislature elected after November 1, 2008;
E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;

G. Officials of school administrative units; and

H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

**SUMMARY**

Current law requires officials elected to certain positions to complete training on the requirements of the Freedom of Access Act but does not require officials appointed to those positions to complete that training. This bill implements the recommendation of the Right To Know Advisory Committee that appointed officials also be required to complete the training.
Majority

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE

HOUSE OF REPRESENTATIVES

128TH LEGISLATURE

SECOND REGULAR SESSION


Amend the bill by inserting after the title and before the enacting clause the following:

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

SUMMARY

This amendment is the majority report of the Joint Standing Committee on Judiciary. It adds a mandate preamble to the bill. The costs incurred by local governments to comply with the bill's provisions have been estimated to be insignificant.

FISCAL NOTE REQUIRED

(See attached)
An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Freedom of Access Training for Public Officials

Fiscal Note for Bill as Amended by Committee Amendment

Committee: Judiciary
Fiscal Note Required: Yes

Fiscal Note

State Mandate - Exempted

State Mandates

<table>
<thead>
<tr>
<th>Required Activity</th>
<th>Unit Affected</th>
<th>Local Cost</th>
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<tbody>
<tr>
<td>Training appointed officials on the requirements of the Freedom of Access Act.</td>
<td>County</td>
<td>Insignificant</td>
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<tr>
<td></td>
<td>Municipality</td>
<td>statewide</td>
</tr>
<tr>
<td></td>
<td>School</td>
<td></td>
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</tbody>
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Pursuant to the Mandate Preamble, the two-thirds vote of all members elected to each House exempts the State from the constitutional requirement to fund 90% of the additional costs.
An Act Concerning Remote Participation in Public Proceedings

Reported by Representative MOONEN of Portland for the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

ROBERT B. HUNT
Clerk

JUD: Majority ONTP
Minority OTP
Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 1 MRSA §403-A is enacted to read:

§403-A. Remote participation in public proceedings

1. Remote participation. This section governs participation in a public proceeding of a body subject to this subchapter by a member of that body when the member is not physically present. It is the intent of the Legislature that actions of those bodies be taken openly and their deliberations be conducted openly. Remote participation through telephonic, video, electronic or other similar means of communication may not be used to defeat the purposes of this subchapter as stated in section 401.

2. Prohibition. Except as provided in subsection 3, a body subject to this subchapter may not allow a member of the body to participate in any of its public proceedings through telephonic, video, electronic or other similar means of communication.

3. Exceptions. A member of the following bodies may participate in a public proceeding of the body when not physically present to the extent authorized in the respective statute:

A. The Finance Authority of Maine, as authorized in Title 10, section 971-A;

B. The Commission on Governmental Ethics and Election Practices, as authorized in Title 21-A, section 1002, subsection 2;

C. The Maine Health and Higher Educational Facilities Authority, as authorized in Title 22, section 2054, subsection 4-A;

D. The Maine State Housing Authority, as authorized in Title 30-A, section 4723, subsection 2, paragraph B-1;

E. The Maine Municipal Bond Bank, as authorized in Title 30-A, section 5951, subsection 4-A;

F. The Emergency Medical Services' Board, as authorized in Title 32, section 88, subsection 1, paragraph E; and

G. The Workers' Compensation Board, as authorized in Title 39-A, section 151, subsection 5-A.

PART B

Sec. B-1. 10 MRSA §971, as amended by PL 1995, c. 117, Pt. C, §1, is repealed.

Sec. B-2. 10 MRSA §971-A is enacted to read:

§971-A. Actions of the members

1. Quorum required. Seven members of the authority constitute a quorum of the members. The affirmative vote of the greater of 5 members, present and voting, or a
majority of those members present and voting is necessary for any action taken by the members. A vacancy in the membership of the authority does not impair the right of the quorum to exercise all powers and perform all duties of the members.

2. Emergency meeting. Notwithstanding any other provision of law, in a situation determined by the chief executive officer to be an emergency requiring action of the members on not more than 3 days' oral notice, an emergency meeting of the members may be conducted by telephone in accordance with the following.

A. A conference call to the members must be placed by ordinary commercial means at an appointed time.

B. The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting.

C. Public notice of the emergency meeting must be given in accordance with Title 1, section 406 and that public notice must include the time of the meeting and the location of a telephone with a speakerphone attachment that enables all persons participating in the telephone meeting to be heard and understood and that is available for members of the public to hear the business conducted at the telephone meeting.

This subsection is repealed July 1, 2020.

Sec. B-3. 21-A MRSA §1002, sub-§2, as amended by PL 2011, c. 389, §2, is further amended to read:

2. Telephone meetings. The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:

A. During the 28 days prior to an election when the commission is required to meet within 2 business days of the filing of any complaint with the commission; or

B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.

This subsection is repealed July 1, 2020.

Sec. B-4. 22 MRSA §2054, sub-§4, as amended by PL 2015, c. 449, §2, is further amended to read:

4. Powers of authority. The powers of the authority are vested in its members, and 5 members of the authority constitute a quorum at any meeting of the authority. A vacancy in the membership of the authority does not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. An action taken by the authority under this chapter may be authorized by resolution approved by a majority of the members present at any regular or special meeting, which resolution takes effect.
immediately, or an action taken by the authority may be authorized by a resolution
circularized or sent to each member of the authority, which resolution takes effect at such
time as a majority of the members have signed an assent to such resolution. Resolutions
of the authority need not be published or posted. The authority may delegate by
resolution to one or more of its members or its executive director such powers and duties
as it considers proper.

The authority may meet by telephonic, video, electronic or other similar means of
communication with less than a quorum assembled physically at the location of a public
proceeding identified in the notice required by Title 1, section 406 only if:

A. Each member can hear all other members, speak to all other members and, to the
extent reasonably practicable, see all other members by videoconferencing or other
similar means of communication during the public proceeding, and members of the
public attending the public proceeding at the location identified in the notice required
by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see
all members participating from other locations by videoconferencing or other similar
means of communication;

B. Each member who is not physically present at the location of the public
proceeding and who is participating through telephonic, video, electronic or other
similar means of communication identifies all persons present at the location from
which the member is participating;

C. A member who participates while not physically present at the location of the
public proceeding identified in the notice required by Title 1, section 406 does so
only when the member’s attendance is not reasonably practical. The reason that the
member’s attendance is not reasonably practical must be stated in the minutes of the
meeting; and

D. Each member who is not physically present at the location of the public
proceeding and who is participating through telephonic, video, electronic or other
similar means of communication has received, prior to the public proceeding, all
documents and materials discussed at the public proceeding, with substantially the
same content as those presented at the public proceeding. Documents or other
materials made available at the public proceeding may be transmitted to the member
not physically present during the public proceeding if the transmission technology is
available. Failure to comply with this paragraph does not invalidate an action taken
by the authority at the public proceeding.

Sec. B-5. 22 MRSA §2054, sub-§4-A is enacted to read:

4-A. Remote participation in meetings. The authority may meet by telephonic,
video, electronic or other similar means of communication with less than a quorum
assembled physically at the location of a public proceeding identified in the notice
required by Title 1, section 406 only if:

A. Each member can hear all other members, speak to all other members and, to the
extent reasonably practicable, see all other members by videoconferencing or other
similar means of communication during the public proceeding, and members of the
public attending the public proceeding at the location identified in the notice required
by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all members participating from other locations by videoconferencing or other similar means of communication:

B. Each member who is not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the member is participating:

C. A member who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the member's attendance is not reasonably practicable. The reason that the member's attendance is not reasonably practicable must be stated in the minutes of the meeting; and

D. Each member who is not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate an action taken by the authority at the public proceeding.

This subsection is repealed July 1, 2020.

Sec. B-6. 30-A MRSA §4723, sub-§2, ¶B, as amended by PL 2015, c. 449, §3, is further amended to read:

B. The Maine State Housing Authority, as authorized by Title 5, chapter 379, must have 10 commissioners, 8 of whom must be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over economic development and to confirmation by the Legislature. The 9th commissioner is the Treasurer of State who serves as an ex officio voting member. The Treasurer of State may designate the Deputy Treasurer of State to serve in place of the Treasurer of State. The 10th commissioner is the director of the Maine State Housing Authority who serves as an ex officio nonvoting member. At least 3 gubernatorial appointments must include a representative of bankers, a representative of elderly people and a resident of housing that is subsidized or assisted by programs of the United States Department of Housing and Urban Development or of the Maine State Housing Authority. In appointing the resident, the Governor shall give priority consideration to nominations that may be made by tenant associations established in the State. Of the 5 remaining gubernatorial appointments, the Governor shall give priority to a representative involved in the housing business and a representative of people with disabilities. The powers of the Maine State Housing Authority are vested in the commissioners. The commissioners may delegate such powers and duties to the director of the Maine State Housing Authority as they determine appropriate.
The Governor shall appoint the chair of the commissioners from among the 8
gubernatorial appointments. The chair serves as a nonvoting member, except that the
chair may vote only when the chair's vote will affect the result. The commissioners
shall elect a vice-chair of the commissioners from among their number.

Following reasonable notice to each commissioner, 5 commissioners of the Maine
State Housing Authority constitute a quorum for the purpose of conducting its
business, exercising its powers and for all other purposes, notwithstanding the
existence of any vacancies. Action may be taken by the commissioners upon a vote
of a majority of the commissioners present, unless otherwise specified in law or
required by its bylaws.

The Maine State Housing Authority may meet by telephonic, video, electronic or
other similar means of communication with less than a quorum assembled physically
at the location of a public proceeding identified in the notice required by Title 1,
section 406 only if:

(1) Each commissioner can hear all other commissioners, speak to all other
commissioners and, to the extent reasonably practicable, see all other
commissioners by videoconferencing or other similar means of communication
during the public proceeding, and members of the public attending the public
proceeding at the location identified in the notice required by Title 1, section 406
are able to hear and, to the extent reasonably practicable, see all commissioners
participating from other locations by videoconferencing or other similar means of
communication;

(2) Each commissioner who is not physically present at the location of the public
proceeding and who is participating through telephonic, video, electronic or other
similar means of communication identifies all persons present at the location
from which the commissioner is participating;

(3) A commissioner who participates while not physically present at the location
of the public proceeding identified in the notice required by Title 1, section 406
does so only when the commissioner's attendance is not reasonably practical.
The reason that the commissioner's attendance is not reasonably practical must be
stated in the minutes of the meeting; and

(4) Each commissioner who is not physically present at the location of the public
proceeding and who is participating through telephonic, video, electronic or other
similar means of communication has received prior to the public proceeding all
documents and materials discussed at the public proceeding, with substantially
the same content as those presented at the public proceeding. Documents or
other materials made available at the public proceeding may be transmitted to the
commissioner not physically present during the public proceeding if the
transmission technology is available. Failure to comply with this subparagraph
does not invalidate an action taken by the Maine State Housing Authority at the
public proceeding.

Sec. B-7. 30-A MRSA §4723, sub-§2, ¶B-1 is enacted to read:
B-1. The Maine State Housing Authority may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:

(1) Each commissioner can hear all other commissioners, speak to all other commissioners and, to the extent reasonably practicable, see all other commissioners by videoconferencing or other similar means of communication during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all commissioners participating from other locations by videoconferencing or other similar means of communication;

(2) Each commissioner who is not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the commissioner is participating;

(3) A commissioner who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the commissioner's attendance is not reasonably practicable. The reason that the commissioner's attendance is not reasonably practicable must be stated in the minutes of the meeting; and

(4) Each commissioner who is not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the commissioner not physically present during the public proceeding if the transmission technology is available. Failure to comply with this subparagraph does not invalidate an action taken by the Maine State Housing Authority at the public proceeding.

This paragraph is repealed July 1, 2020.

Sec. B-8. 30-A MRSA §5951, sub-§4, as amended by PL 2015, c. 449, §4, is further amended to read:

4. Officers of board; exercise of powers. The board of commissioners shall elect one of its members as chair and one as vice-chair and shall appoint an executive director who also serves as both secretary and treasurer. The powers of the bank are vested in the commissioners of the bank in office from time to time. Three commissioners of the bank constitute a quorum at any meeting of the commissioners. Action may be taken and motions and resolutions adopted by the bank at any meeting by the affirmative vote of at least 3 commissioners of the bank. A vacancy in the office of commissioner of the bank does not impair the right of a quorum of the commissioners to exercise all the powers and perform all the duties of the bank.
The board of commissioners may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:

A. Each commissioner can hear all other commissioners, speak to all other commissioners and, to the extent reasonably practicable, see all other commissioners by videoconferencing or other similar means of communication during the public proceeding and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all commissioners participating from other locations by videoconferencing or other similar means of communication;

B. Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the commissioner is participating;

C. A commissioner who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the commissioner's attendance is not reasonably practicable. The reason that the commissioner's attendance is not reasonably practicable must be stated in the minutes of the meeting;

D. Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the commissioner not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate an action taken by the bank at the public proceeding.

Sec. B-9. 30-A MRSA §5951, sub-§4-A is enacted to read:

4-A. Remote participation. The board of commissioners may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:

A. Each commissioner can hear all other commissioners, speak to all other commissioners and, to the extent reasonably practicable, see all other commissioners by videoconferencing or other similar means of communication during the public proceeding and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all commissioners participating from other locations by videoconferencing or other similar means of communication;

B. Each commissioner who is not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 and who is participating through telephonic, video, electronic or other similar means of
communication identifies all persons present at the location from which the
commissioner is participating:

C. A commissioner who participates while not physically present at the location of
the public proceeding identified in the notice required by Title 1, section 406 does so
only when the commissioner's attendance is not reasonably practicable. The reason
that the commissioner's attendance is not reasonably practicable must be stated in the
minutes of the meeting; and

D. Each commissioner who is not physically present at the location of the public
proceeding identified in the notice required by Title 1, section 406 and who is
participating through telephonic, video, electronic or other similar means of
communication has received prior to the public proceeding all documents and
materials discussed at the public proceeding, with substantially the same content as
those presented at the public proceeding. Documents or other materials made
available at the public proceeding may be transmitted to the commissioner not
physically present during the public proceeding if the transmission technology is
available. Failure to comply with this paragraph does not invalidate an action taken
by the bank at the public proceeding.

This subsection is repealed July 1, 2020.

Sec. B-10. 32 MRSA §88, sub-§1, ¶D, as amended by PL 2007, c. 274, §19, is
further amended to read:

D. A majority of the members appointed and currently serving constitutes a quorum
for all purposes and no decision of the board may be made without a quorum present.
A majority vote of those present and voting is required for board action, except that
for purposes of either granting a waiver of any of its rules or deciding to pursue the
suspension or revocation of a license, the board may take action only if the proposed
waiver, suspension or revocation receives a favorable vote from at least 2/3 of the
members present and voting and from no less than a majority of the appointed and
currently serving members. The board may use videoconferencing and other
technologies to conduct its business but is not exempt from Title 1, chapter 13,
subchapter 1. Members of the board, its subcommittees or its staff may participate in
a meeting of the board, subcommittees or staff via videoconferencing, conference
telephone or similar communications equipment by means of which all persons
participating in the meeting can hear each other, and participation in a meeting
pursuant to this subsection constitutes presence in person at such meeting.

Sec. B-11. 32 MRSA §88, sub-§1, ¶E is enacted to read:

E. The board may use videoconferencing and other technologies to conduct its
business but is not exempt from Title 1, chapter 13, subchapter 1. Members of the
board, its subcommittees or its staff may participate in a meeting of the board,
subcommittees or staff via videoconferencing, conference telephone or similar
communications equipment by means of which all persons participating in the
meeting can hear each other, and participation in a meeting pursuant to this paragraph
constitutes presence in person at such meeting.

This paragraph is repealed July 1, 2020.
Sec. B-12. 39-A MRSA §151, sub-§5, as amended by PL 2003, c. 608, §9, is further amended to read:

5. Voting requirements; meetings. The board may take action only by majority vote of its membership. The board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

Sec. B-13. 39-A MRSA §151, sub-§5-A is enacted to read:

5-A. Remote participation. The board shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology.

This subsection is repealed July 1, 2020.

PART C

Sec. C-1. 1 MRSA §431, sub-§4 is enacted to read:

4. Remote participation. "Remote participation" means participation in a public proceeding by a member of the body that is holding or conducting the public proceeding while the member is not physically present at the location of the public proceeding identified in the notice required by section 406.

Sec. C-2. 1 MRSA §435 is enacted to read:

§435. Review of proposed remote participation authorization

1. Procedures before legislative committees. Whenever a legislative measure containing a new remote participation authorization or a change that affects the accessibility of a public proceeding is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among the members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed remote participation authorization or proposed change that affects the accessibility of a
public proceeding may not be enacted into law unless review and evaluation pursuant to subsection 2 have been completed.

2. Review and evaluation. Upon referral of a proposed remote participation authorization or proposed limitation on accessibility from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred. The review committee shall use the following criteria to determine whether the proposed remote participation authorization should be enacted:

A. Geographic distribution of members;

B. Demonstrated need based on emergency nature of action;

C. Demonstrated need based on exigent circumstances, such as a natural disaster or an emergency declaration by the Governor directly related to the activities of the body; and

D. Any other criteria that assist the review committee in determining the value of the proposed remote participation authorization as compared to the public's interest in all members participating.

3. Report. The review committee shall report its findings and recommendations on whether the proposed remote participation authorization or proposed limitation on accessibility to public proceedings should be enacted to the joint standing committee of the Legislature having jurisdiction over the proposal.

SUMMARY

This bill is in response to recommendations contained in the Right To Know Advisory Committee's 12th annual report concerning remote participation in public proceedings by members of public bodies that are subject to the Freedom of Access Act. The bill expressly prohibits a member of a body subject to the Freedom of Access Act from participating in the body's public proceedings if the member is not physically present.

Part A prohibits a member of a public body from participating in a public proceeding when that member is not physically present at the location of the public proceeding as indicated in the required public notice. The members of 7 specific public bodies are currently statutorily authorized to participate remotely in the public proceedings of those bodies, and they may continue to do so as long as the statutes still authorize such participation. The 7 bodies are the Finance Authority of Maine, the Commission on Governmental Ethics and Election Practices, the Maine Health and Higher Educational Facilities Authority, the Maine State Housing Authority, the Maine Municipal Bond Bank the Emergency Medical Services' Board and the Workers' Compensation Board.

Part B amends the statutes enabling remote participation for the 7 bodies to repeal the authorization for remote participation July 1, 2020.
Part C amends the Freedom of Access Act to require the joint standing committee of
the Legislature having jurisdiction over judiciary matters to conduct a review of any
proposed statutory authorization of remote participation or change in accessibility with
respect to public proceedings.
An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation

Reported by Representative MOONEN of Portland for the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

ROBERT B. HUNT
Clerk

JUD: Majority ONTP
Minority OTPA

Not enacted
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §403-A is enacted to read:

§403-A. Remote participation in public proceedings

It is the intent of the Legislature that actions of bodies subject to this subchapter be taken openly and their deliberations be conducted openly. This section governs participation in a public proceeding of such a body by a member of that body when the member is not physically present. Remote participation, which means participation through telephonic, video, electronic or other similar means of communication may not be used to defeat the purposes of this subchapter as stated in section 401. The Legislature may not allow its members to participate remotely in public proceedings of the Legislature.

1. Remote participation; requirements. Except as provided in subsection 2, a body subject to this subchapter may not allow a member of the body to participate remotely in any of its public proceedings unless the participation is in accordance with this subchapter and:

A. After notice and public hearing, the body has adopted a written policy or rule that authorizes a member of the body who is not physically present to participate in a public proceeding of that body in a manner that allows all members to simultaneously hear and speak to each other during the public proceeding and allows members of the public attending the public proceeding at the location identified in the notice required by section 406 to hear all members of the body. If the policy allows remote participation in executive sessions, the policy must establish procedures and requirements that ensure the privacy of the executive session;

B. A quorum is physically present at the location identified in the notice required by section 406, unless immediate action is imperative and physical presence of a quorum is not reasonably practicable within the period of time in which action must be taken. The determination that a quorum is not required under this paragraph must be made by the presiding officer of the body and the facts supporting that determination must be included in the record of the meeting. A body may not consider matters other than those requiring immediate action in a public proceeding held pursuant to this subsection when a quorum is not physically present;

C. Each member of the body who is participating in the public proceeding remotely identifies for the record all persons present at the location from which the member is participating. The member shall note for the record when any person enters or leaves the location throughout the course of the public proceeding;

D. All votes taken during the public proceeding are taken by roll call;

E. A member of the body who is not physically present at the location identified in the notice required by section 406 does not participate and does not vote in an adjudicatory proceeding; and

F. Each member of the body who is participating in the public proceeding remotely receives any documents or other materials presented or discussed at the public
proceeding in advance or when made available at the public proceeding if the
transmission technology is available. Failure to comply with this subsection does not
invalidate an action of the body.

2. Exceptions. The following bodies are exempt from the provisions of this section
and a member of the following bodies may participate in a public proceeding of the body
when the member is not physically present:

A. The Finance Authority of Maine, as provided in Title 10, section 971;
B. The Commission on Governmental Ethics and Election Practices, as provided in
Title 21-A, section 1002, subsection 2;
C. The Maine Health and Higher Educational Facilities Authority, as provided in
Title 22, section 2054, subsection 4;
D. The Maine State Housing Authority, as provided in Title 30-A, section 4723,
subsection 2, paragraph B;
E. The Maine Municipal Bond Bank, as provided in Title 30-A, section 5951,
subsection 4;
F. The Emergency Medical Services' Board, as provided in Title 32, section 88,
subsection 1, paragraph D; and
G. The Workers' Compensation Board, as provided in Title 39-A, section 151,
subsection 5.

SUMMARY

This bill implements the recommendation of the Right To Know Advisory
Committee to clarify when members of public bodies may participate remotely in public
proceedings of those bodies. The bill prohibits a body subject to the Freedom of Access
Act from allowing its members to participate in its public proceedings through
telephonic, video, electronic or other similar means of communication unless the body
has adopted a written policy that authorizes remote participation in a manner that allows
all members to simultaneously hear and speak to each other during the public proceeding
and allows members of the public attending the public proceeding at the location
identified in the meeting notice to hear all members of the body. If the policy allows
remote participation in executive sessions, the policy must establish procedures and
requirements that ensure the privacy of the executive session. The bill requires a quorum
of the body to be physically present at the location identified in the meeting notice unless
immediate action is imperative and physical presence of a quorum is not reasonably
practicable within the period of time requiring action. The bill requires that each member
participating remotely identify all persons present at the remote location, that all votes be
taken by roll call and that members participating remotely receive documents or other
materials presented or discussed at the public proceeding in advance or when made
available at the meeting, if the technology is available. The bill prohibits members who
are not physically present at the meeting location from participating and voting in
adjudicatory proceedings.
The bill prohibits the Legislature from allowing its members to participate in its public proceedings through telephonic, video, electronic or other similar means of communication, but allows the Finance Authority of Maine, the Commission on Governmental Ethics and Election Practices, the Maine Health and Higher Educational Facilities Authority, the Maine State Housing Authority, the Maine Municipal Bond Bank, the Emergency Medical Services' Board and the Workers' Compensation Board to continue allowing remote participation at their public proceedings as currently authorized in law.
JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE

HOUSE OF REPRESENTATIVES

128TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1274, L.D. 1832, Bill, "An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'PART A

Sec. A-1. 1 MRSA §403-A is enacted to read:

§403-A. Remote participation in public proceedings

It is the intent of the Legislature that actions of public bodies subject to this subchapter be taken openly and their deliberations be conducted openly. This section governs participation in a public proceeding of such a public body by a member of that public body when the member is not physically present. Remote participation, which means participation through telephonic, video, electronic or other similar means of communication may not be used to defeat the purposes of this subchapter as stated in section 401. The Legislature may not allow its members to participate remotely in public proceedings of the Legislature.

1. Remote participation; requirements. Except as provided in subsection 5, a public body subject to this subchapter may not allow a member of the public body to participate remotely in any of its public proceedings unless the participation is in accordance with this subchapter and:

A. After notice and public hearing, the public body has adopted a written policy or rule that authorizes a member of the public body who is not physically present to participate in a public proceeding of that public body in a manner that allows all members to simultaneously hear and speak to each other during the public proceeding and allows members of the public attending the public proceeding at the location identified in the notice required by section 406 to hear all members of the public body. The policy may not allow remote participation in executive sessions. The
policy must prohibit a member who is participating remotely from voting on an issue
that was discussed in an executive session if the executive session immediately
precedes the proceeding in which the vote is taken:

B. For public bodies consisting of 3 or fewer members, at least one member is
physically present at the location identified in the notice required by section 406; and,
for public bodies of more than 3 members, a quorum is physically present at the
location identified in the notice required by section 406, unless immediate action is
imperative and physical presence of a quorum is not reasonably practicable within the
period of time in which action must be taken. The determination that a quorum is not
required under this paragraph must be made by the presiding officer of the public
body and the facts supporting that determination must be included in the record of the
meeting. A public body of 3 or more members may not consider matters other than
those requiring immediate action in a public proceeding held pursuant to this
subsection when a quorum is not physically present. Every member must be
physically present for at least one proceeding each year:

C. Each member of the public body who is participating in the public proceeding
remotely identifies for the record all persons present at the location from which the
member is participating. The member shall note for the record when any person
enters or leaves the location throughout the course of the public proceeding:

D. All votes taken during the public proceeding are taken by roll call:

E. A member of the public body who is not physically present at the location
identified in the notice required by section 406 does not participate and does not vote
in an adjudicatory proceeding; and

F. Each member of the public body who is participating in the public proceeding
remotely receives any documents or other materials presented or discussed at the
public proceeding in advance or when made available at the public proceeding if the
transmission technology is available. Failure to comply with this subsection does not
invalidate an action of the body.

2. State public bodies. The policy under subsection 1 applicable to a state public
body must be adopted by the public body as a major substantive rule under the Maine
Administrative Procedure Act.

3. County and municipal public bodies. A county or municipality may by
ordinance require stricter requirements than those set out in this section and may prohibit
remote participation by any public body under its jurisdiction.

4. Elected public bodies. A public body consisting of elected members may adopt a
policy under subsection 1 only after the constituents of the public body have voted to
authorize the public body to adopt the remote participation policy. The public body must
provide notice and hold a separate hearing before adopting the remote participation
policy.

5. Exceptions. The following public bodies are exempt from the provisions of this
section and a member of the following bodies may participate in a public proceeding of
the public body when the member is not physically present:

A. The Finance Authority of Maine, as provided in Title 10, section 971:
B. The Commission on Governmental Ethics and Election Practices, as provided in Title 21-A, section 1002, subsection 2;

C. The Maine Health and Higher Educational Facilities Authority, as provided in Title 22, section 2054, subsection 4;

D. The Maine State Housing Authority, as provided in Title 30-A, section 4723, subsection 2, paragraph B;

E. The Maine Municipal Bond Bank, as provided in Title 30-A, section 5951, subsection 4;

F. The Emergency Medical Services' Board, as provided in Title 32, section 88, subsection 1, paragraph D; and

G. The Workers' Compensation Board, as provided in Title 39-A, section 151, subsection 5.

This subsection is repealed July 1, 2022.

PART B

Sec. B-1. 10 MRSA §971, as amended by PL 1995, c. 117, Pt. C, §1, is repealed.

Sec. B-2. 10 MRSA §971-A is enacted to read:

§971-A. Actions of the members

1. **Quorum required.** Seven members of the authority constitute a quorum of the members. The affirmative vote of the greater of 5 members, present and voting, or a majority of those members present and voting is necessary for any action taken by the members. A vacancy in the membership of the authority does not impair the right of the quorum to exercise all powers and perform all duties of the members.

2. **Emergency meeting.** Notwithstanding any other provision of law, in a situation determined by the chief executive officer to be an emergency requiring action of the members on not more than 3 days' oral notice, an emergency meeting of the members may be conducted by telephone in accordance with the following.

   A. A conference call to the members must be placed by ordinary commercial means at an appointed time.

   B. The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting.

   C. Public notice of the emergency meeting must be given in accordance with Title 1, section 406 and that public notice must include the time of the meeting and the location of a telephone with a speakerphone attachment that enables all persons participating in the telephone meeting to be heard and understood and that is available for members of the public to hear the business conducted at the telephone meeting.

This subsection is repealed July 1, 2022.
COMMITTEE AMENDMENT “A” to H.P. 1274, L.D. 1832

Sec. B-3. 21-A MRSA §1002, sub-§2, as amended by PL 2011, c. 389, §2, is further amended to read:

2. Telephone meetings. The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission’s office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:

A. During the 28 days prior to an election when the commission is required to meet within 2 business days of the filing of any complaint with the commission; or

B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties’ submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.

This subsection is repealed July 1, 2022.

Sec. B-4. 22 MRSA §2054, sub-§4, as amended by PL 2015, c. 449, §2, is further amended to read:

4. Powers of authority. The powers of the authority are vested in its members, and 5 members of the authority constitute a quorum at any meeting of the authority. A vacancy in the membership of the authority does not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. An action taken by the authority under this chapter may be authorized by resolution approved by a majority of the members present at any regular or special meeting, which resolution takes effect immediately, or an action taken by the authority may be authorized by a resolution circularized or sent to each member of the authority, which resolution takes effect at such time as a majority of the members have signed an assent to such resolution. Resolutions of the authority need not be published or posted. The authority may delegate by resolution to one or more of its members or its executive director such powers and duties as it considers proper.

The authority may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title I, section 406 only if:

A. Each member can hear all other members, speak to all other members and, to the extent reasonably practicable, see all other members by videoconferencing or other similar means of communication during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title I, section 406 are able to hear and, to the extent reasonably practicable, see all members participating from other locations by videoconferencing or other similar means of communication;

B. Each member who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the member is participating;
A member who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the member's attendance is not reasonably practicable. The reason that the member's attendance is not reasonably practicable must be stated in the minutes of the meeting; and

D. Each member who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate an action taken by the authority at the public proceeding.

Sec. B-5. 22 MRSA §2054, sub-§4-A is enacted to read:

4-A. Remote participation in meetings. The authority may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:

A. Each member can hear all other members, speak to all other members and, to the extent reasonably practicable, see all other members by videoconferencing or other similar means of communication during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all members participating from other locations by videoconferencing or other similar means of communication;

B. Each member who is not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the member is participating;

C. A member who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the member's attendance is not reasonably practicable. The reason that the member's attendance is not reasonably practicable must be stated in the minutes of the meeting; and

D. Each member who is not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available.
1 Failure to comply with this paragraph does not invalidate an action taken by the
2 authority at the public proceeding.
3
4 This subsection is repealed July 1, 2022.
5
6 Sec. B-6. 30-A MRSA §4723, sub-§2, ¶B, as amended by PL 2015, c. 449, §3,
7 is further amended to read:
8
9 B. The Maine State Housing Authority, as authorized by Title 5, chapter 379, must
10 have 10 commissioners, 8 of whom must be appointed by the Governor, subject to
11 review by the joint standing committee of the Legislature having jurisdiction over
12 economic development and to confirmation by the Legislature. The 9th
13 commissioner is the Treasurer of State who serves as an ex officio voting member.
14 The Treasurer of State may designate the Deputy Treasurer of State to serve in place
15 of the Treasurer of State. The 10th commissioner is the director of the Maine State
16 Housing Authority who serves as an ex officio nonvoting member. At least 3
17 gubernatorial appointments must include a representative of bankers, a representative
18 of elderly people and a resident of housing that is subsidized or assisted by programs
19 of the United States Department of Housing and Urban Development or of the Maine
20 State Housing Authority. In appointing the resident, the Governor shall give priority
21 consideration to nominations that may be made by tenant associations established in
22 the State. Of the 5 remaining gubernatorial appointments, the Governor shall give
23 priority to a representative involved in the housing business and a representative of
24 people with disabilities. The powers of the Maine State Housing Authority are vested
25 in the commissioners. The commissioners may delegate such powers and duties to
26 the director of the Maine State Housing Authority as they determine appropriate.
27
28 The Governor shall appoint the chair of the commissioners from among the 8
29 gubernatorial appointments. The chair serves as a nonvoting member, except that the
30 chair may vote only when the chair's vote will affect the result. The commissioners
31 shall elect a vice-chair of the commissioners from among their number.
32
33 Following reasonable notice to each commissioner, 5 commissioners of the Maine
34 State Housing Authority constitute a quorum for the purpose of conducting its
35 business, exercising its powers and for all other purposes, notwithstanding the
36 existence of any vacancies. Action may be taken by the commissioners upon a vote
37 of a majority of the commissioners present, unless otherwise specified in law or
38 required by its bylaws.
39
40 The Maine State Housing Authority may meet by telephonic, video, electronic or
41 other similar means of communication with less than a quorum assembled physically
42 at the location of a public proceeding identified in the notice required by Title 1,
43 section 406 only if:
44
45 (1) Each commissioner can hear all other commissioners, speak to all other
46 commissioners and, to the extent reasonably practicable, see all other
47 commissioners by videoconferencing or other similar means of communication
48 during the public proceeding, and members of the public attending the public
49 proceeding at the location identified in the notice required by Title 1, section 406
50 are able to hear and, to the extent reasonably practicable, see all commissioners
(2) Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the commissioner is participating;

(3) A commissioner who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the commissioner's attendance is not reasonably practical. The reason that the commissioner's attendance is not reasonably practical must be stated in the minutes of the meeting; and

(4) Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the commissioner not physically present during the public proceeding. If the transmission technology is available. Failure to comply with this subparagraph does not invalidate an action taken by the Maine State Housing Authority at the public proceeding.

Sec. B-7. 30-A MRSA §4723, sub-§2, ¶B-1 is enacted to read:

B-1. The Maine State Housing Authority may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:

(1) Each commissioner can hear all other commissioners, speak to all other commissioners and, to the extent reasonably practicable, see all other commissioners by videoconferencing or other similar means of communication during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all commissioners participating from other locations by videoconferencing or other similar means of communication;

(2) Each commissioner who is not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the commissioner is participating;

(3) A commissioner who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the commissioner's attendance is not reasonably practicable.
The reason that the commissioner's attendance is not reasonably practicable must be stated in the minutes of the meeting; and

(4) Each commissioner who is not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the commissioner not physically present during the public proceeding if the transmission technology is available. Failure to comply with this subparagraph does not invalidate an action taken by the Maine State Housing Authority at the public proceeding.

This paragraph is repealed July 1, 2022.

Sec. B-8. 30-A MRSA §5951, sub-§4, as amended by PL 2015, c. 449, §4, is further amended to read:

4. Officers of board; exercise of powers. The board of commissioners shall elect one of its members as chair and one as vice-chair and shall appoint an executive director who also serves as both secretary and treasurer. The powers of the bank are vested in the commissioners of the bank in office from time to time. Three commissioners of the bank constitute a quorum at any meeting of the commissioners. Action may be taken and motions and resolutions adopted by the bank at any meeting by the affirmative vote of at least 3 commissioners of the bank. A vacancy in the office of commissioner of the bank does not impair the right of a quorum of the commissioners to exercise all the powers and perform all the duties of the bank.

The board of commissioners may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:

A.—Each commissioner can hear all other commissioners, speak to all other commissioners and, to the extent reasonably practicable, see all other commissioners by videoconferencing or other similar means of communication during the public proceeding; and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all commissioners participating from other locations by videoconferencing or other similar means of communication;

B.—Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the commissioner is participating;

C.—A commissioner who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the commissioner's attendance is not reasonably practical. The reason that the commissioner's attendance is not reasonably practical must be stated in the minutes of the meeting; and
D. Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the commissioner not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate an action taken by the bank at the public proceeding.

Sec. B-9. 30-A MRSA §5951, sub-§4-A is enacted to read:

4-A. Remote participation. The board of commissioners may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:

A. Each commissioner can hear all other commissioners, speak to all other commissioners and, to the extent reasonably practicable, see all other commissioners by videoconferencing or other similar means of communication during the public proceeding and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all commissioners participating from other locations by videoconferencing or other similar means of communication;

B. Each commissioner who is not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the commissioner is participating;

C. A commissioner who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the commissioner's attendance is not reasonably practicable. The reason that the commissioner's attendance is not reasonably practicable must be stated in the minutes of the meeting; and

D. Each commissioner who is not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the commissioner not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate an action taken by the bank at the public proceeding.

This subsection is repealed July 1, 2022.

Sec. B-10. 32 MRSA §88, sub-§1, PPPD, as amended by PL 2007, c. 274, §19, is further amended to read:

COMMITTEE AMENDMENT
D. A majority of the members appointed and currently serving constitutes a quorum for all purposes and no decision of the board may be made without a quorum present. A majority vote of those present and voting is required for board action, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable vote from at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members. The board may use videoconferencing and other technologies to conduct its business but is not exempt from Title 1, chapter 13, subchapter 1. Members of the board, its committees or its staff may participate in a meeting of the board, committees or staff via videoconferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.

Sec. B-11. 32 MRSA §88, sub-§1, ¶E is enacted to read:

E. The board may use videoconferencing and other technologies to conduct its business but is not exempt from Title 1, chapter 13, subchapter 1. Members of the board, its committees or its staff may participate in a meeting of the board, committees or staff via videoconferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this paragraph constitutes presence in person at such meeting.

This paragraph is repealed July 1, 2022.

Sec. B-12. 39-A MRSA §151, sub-§5, as amended by PL 2003, c. 608, §9, is further amended to read:

5. Voting requirements; meetings. The board may take action only by majority vote of its membership. The board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

Sec. B-13. 39-A MRSA §151, sub-§5-A is enacted to read:

5-A. Remote participation. The board shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology.
This subsection is repealed July 1, 2022.

PART C

Sec. C-1. 1 MRSA §431, sub-§4 is enacted to read:

4. Remote participation. "Remote participation" means participation in a public proceeding by a member of the body that is holding or conducting the public proceeding while the member is not physically present at the location of the public proceeding identified in the notice required by section 406.

Sec. C-2. 1 MRSA §435 is enacted to read:

§435. Review of proposed remote participation authorization

1. Procedures before legislative committees. Whenever a legislative measure containing a new remote participation authorization or a change that affects the accessibility of a public proceeding is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among the members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed remote participation authorization or proposed change that affects the accessibility of a public proceeding may not be enacted into law unless review and evaluation pursuant to subsection 2 have been completed.

2. Review and evaluation. Upon referral of a proposed remote participation authorization or proposed limitation on accessibility from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred. The review committee shall use the following criteria to determine whether the proposed remote participation authorization should be enacted:

A. Geographic distribution of members;

B. Demonstrated need based on emergency nature of action;

C. Demonstrated need based on exigent circumstances, such as a natural disaster or an emergency declaration by the Governor directly related to the activities of the body; and

D. Any other criteria that assist the review committee in determining the value of the proposed remote participation authorization as compared to the public's interest in all members participating.

3. Report. The review committee shall report its findings and recommendations on whether the proposed remote participation authorization or proposed limitation on accessibility to public proceedings should be enacted to the joint standing committee of the Legislature having jurisdiction over the proposal.
COMMITTEE AMENDMENT A to H.P. 1274, L.D. 1832

SUMMARY

This amendment is the minority report of the Joint Standing Committee on Judiciary. This amendment makes the following changes to the bill.

1. It prohibits remote participation in executive session. It also prohibits a member who is participating remotely in a proceeding from voting on an issue that was discussed in executive session that immediately preceded the vote in the public proceeding.

2. It changes, for public bodies that consist of 3 or fewer members, the requirement that a quorum be physically present. It requires at least one member of the public body of 3 or fewer members to be physically present at the location identified in the meeting notice.

3. It requires that each member of a public body subject to the Freedom of Access Act be physically present in at least one public proceeding each year.

4. It requires that a state public body adopt its remote participation policy as a major substantive rule under the Maine Administrative Procedure Act.

5. It authorizes municipalities and counties to impose stricter requirements than are provided in this amendment and allows municipalities and counties to prohibit the use of remote participation by any public body under their jurisdictions. The stricter requirements or the prohibition must be imposed through the adoption of an ordinance by the municipality or the county.

6. It provides that an elected public body may adopt a remote participation policy only after the constituency of the elected public body has voted to authorize the body to adopt the policy.

7. It provides, in Parts A and B, that the exemptions for the 7 entities whose statutes currently provide for remote participation expire on July 1, 2022. Those entities will need to adopt policies that comply with the law to continue any remote participation.

8. It amends, in Part C, the Freedom of Access Act to require the joint standing committee of the Legislature having jurisdiction over judiciary matters to conduct a review of any proposed statutory authorization of remote participation or change in accessibility with respect to public proceedings.

FISCAL NOTE REQUIRED
(See Attached)
128th MAINE LEGISLATURE

LD 1832                           LR 2890(02)

An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning
Remote Participation

Fiscal Note for Bill as Amended by Committee Amendment 'A' (H-735)
Committee: Judiciary
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes
Any additional costs to affected departments or agencies are assumed to be minor and can be absorbed within existing budgeted resources.
Convened 1:07 p.m., Room 600, Cross State Office Building, Augusta

Present:
Judy Meyer, Chair
Luke Rossignol
Eric Stout

Absent:
Rep. Chris Babbidge
Chris Parr
Linda Pistner

Staff:
Adam Bohanan

Welcome and introductions

Ms. Meyer, Chair of the Subcommittee, called the meeting to order and all members introduced themselves.

Discussion of penalty provisions

Ms. Meyer opened the discussion by noting that the subject of penalties has been raised in the full committee for each of the past ten years or more and led to the formation of the subcommittee. It was further noted that while the training requirement has been very successful in promoting good behavior with respect to fulfilling FOAA requests, changes to the current statute governing penalties for violations might do more to modify behavior. Such changes could include increasing the amount of the penalty, awarding the civil forfeiture to the requestor in addition to or instead of the state general fund, or allowing a private right of action.

Public Access Ombudsman Brenda Kielty then addressed the subcommittee and pointed out that FOAA is fundamentally a remedial statute rather than a punitive one. There are civil penalties, but the main recourse a requestor has is appealing a denial in court. However, she noted that court costs can be a significant barrier for a requestor who wishes to challenge a denial. Ms. Kielty encouraged the Subcommittee to consider unintended consequences of any changes to the law. For instance, would increasing the penalty change behavior? Could making attorney’s fees more readily available lead to a flood of FOAA appeals led by plaintiff’s attorneys? Ms. Kielty further emphasized the need for more education and training regarding the statute and renewed the recommendation to expand the list of public officials required to have FOAA training to include appointed officials as well as elected officials.

The discussion then turned to potential changes to law and an examination of approaches taken in other states. (An updated staff analysis of penalty statutes and legal remedies in all fifty states was distributed and is attached.) Mr. Rossignol expressed the opinion that allowing a
private right of action might be the only thing that would significantly alter behavior. He added that requiring that a requestor exhaust all administrative remedies or providing (or requiring) alternative dispute resolution (ADR) before a requestor could proceed to court could be a way to resolve disputes over records requests without resorting to costly litigation. Ms. Kiely added that while this could help resolve disputes, it could also delay the process of gaining access to records.

Mr. Stout suggested that holding state employees liable for fines in their individual capacities rather than as government employees could have a greater effect on behavior. He pointed out that this is more in line with how federal law addresses violations and noted that violations of the Federal Privacy Act, a companion to the Freedom of Information Act, levies a fine of up to $5,000 that is paid by the individual and not by the agency. Ms. Kiely stated that training would be crucial if state employees were to be held individually and personally liable for FOAA violations.

Next, the Subcommittee highlighted certain models from the fifty-state survey and asked staff to do additional research to be discussed at the next meeting. Particular types of measures taken in other states that were of interest include levying fines against individual state employees, awarding fines collected to the requestor as well as the state, lowering the legal standard necessary for a prevailing plaintiff to be awarded attorney’s fees, and the availability of ADR before proceeding to court.

Next meeting

The Subcommittee will hold its next meeting on April 26, 2018 at 11:00 a.m. in Room 437 of the State House, Augusta.

Adjournment

Ms. Meyer adjourned the meeting at 3:15 p.m.

Respectfully submitted,

Adam Bohanan
RIGHT TO KNOW ADVISORY COMMITTEE
Penalties Subcommittee
April 26, 2018
Meeting Summary [DRAFT]

Convened 11:06 p.m., Room 437, State House, Augusta

Present:
Judy Meyer, Chair
Luke Rossignol

Absent:
Rep. Chris Babbidge
Chris Parr
Linda Pistner
Eric Stout

Staff:
Craig Nale
Adam Bohanan

Discussion of research compiled since previous meeting

First, the Subcommittee heard from staff about research compiled since the last meeting. Staff distributed and described an updated version of the fifty-state survey, a breakdown of that survey by type of penalty, and a chart detailing the legal standard for the award of attorney’s fees by state. Staff also briefly pointed out a few noteworthy items from these compilations and from other research done in response to questions from the previous meeting. There was no evidence of mediation or alternative dispute resolution (ADR) being offered or mandated in any state’s freedom of access statutes, but it was noted that such a requirement may exist in states’ rules of civil procedure or other court rules. Only two states, Iowa and New Hampshire, hold public employees personally liable for civil fines in a way similar to the Federal Privacy Act. There was insufficient time to do a fifty-state survey on whether there was a fiscal note on each state’s attorney fee provision, but it was determined that it was reasonable to expect that the unpredictable cost to any state awarding attorney’s fees would have resulted in a fiscal note, as was the case in Maine.

Proposed recommendations to the full Committee

Next, the Subcommittee discussed possible recommendations to present to the full committee based on their priorities and on models from other states. The priorities discussed included making attorney’s fees more readily available to prevailing parties, increasing the civil penalty for violations, making damages available to aggrieved parties, and making ADR available.
1) Attorney’s fees
   The Subcommittee thought it was important to make attorney’s fees available to either party. Fees are currently only available to a substantially prevailing plaintiff, and they are at the discretion of the court.
   - The recommendation would be change the word “may” to “shall” in § 409(4) to make the award of fees mandatory for a plaintiff.
   - Further, the “bad faith” standard would be removed from that subsection, shifting the court’s discretion from whether attorney’s fees should be awarded to focus on whether the plaintiff has prevailed.
   - Language granting attorney’s fees to the public entity would need to be added and a standard for fees decided upon. For instance, some states award fees to the public defendant if the claim was frivolous or in bad faith.

2) Civil penalty amount and damages for plaintiff
   A number of possible changes to § 410 were discussed for recommendation to the full committee.
   - One idea was to simply raise the amount of the civil forfeiture to account for inflation since the $500 amount was instituted.
   - It was also suggested that public employees could be held individually liable for the forfeiture, as is the case in Iowa, New Hampshire, and at the federal level. In this instance, the standard for a violation would only be for “willful” violations and not for good faith errors.
   - Some states, such as New Jersey and Virginia, have a tiered structure for the civil penalty. There is a fine for the first violation, and the fine increases with subsequent violations.
   - Michigan law assesses a civil fine that is paid to the state general fund. The law also provides statutory damages paid directly to the person seeking a public record.

3) Alternative Dispute Resolution
   The availability of ADR could be an important way to come to agreed upon resolution to public access issues. Mr. Rossignal felt strongly about this issue and cited the process already in use in Maine Superior Court that requires ADR in civil actions before proceeding to trial. Public Access Ombudsman Brenda Kiety pointed out that her office did not have the resources or staff to provide this service at this time. AAG Kiety also noted that the imposition of an additional layer of process could be at odds with the presumption of a speedy resolution in FOAA matters. The Subcommittee acknowledged these issues and tensions but believes that ADR could have a place in the FOAA context and warrants further discussion.

4) Reconciling standards in § 409 and § 410
   The Subcommittee expressed a desire to make §§ 409 and 410 work together better. Currently, the standards for an award of attorney’s fees under § 409 and for a violation under § 410 are different. Further, according to AAG Kiety, appeals under § 409 tend to involve access to records rather than public meetings. There is a sense that open meeting infractions are less
often reported or more difficult to prove. Violations under § 410 are enforced, in practice, by the Attorney General’s Office. A more direct expression of the process for how violations are discovered and investigated and of how enforcement could overlap with citizens’ right to appeal was suggested. Further discussion in the full Committee is warranted.

Next meeting

The Subcommittee will not meet further at this time but will be prepared to present recommendations to the full Committee at its next meeting.

Adjournment

Ms. Meyer adjourned the meeting at 12:15 p.m.

Respectfully submitted,

Adam Bohanan
Penalties and Attorney’s fees statutes

CHAPTER 13
PUBLIC RECORDS AND PROCEEDINGS

SUBCHAPTER 1
FREEDOM OF ACCESS

§409. Appeals

1. Records. Any person aggrieved by a refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record under section 408-A may appeal the refusal, denial or failure within 30 calendar days of the receipt of the written notice of refusal, denial or failure to the Superior Court within the State for the county where the person resides or the agency has its principal office. The agency or official shall file a statement of position explaining the basis for denial within 14 calendar days of service of the appeal. If a court, after a review, with taking of testimony and other evidence as determined necessary, determines such refusal, denial or failure was not for just and proper cause, the court shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

2. Actions. If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

3. Proceedings not exclusive. The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.

4. Attorney’s fees. In an appeal under subsection 1 or 2, the court may award reasonable attorney’s fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action was committed in bad faith. Attorney’s fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.

This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.

§410. Violations

For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation shall be liable for a civil violation for which a forfeiture of not more than $500 may be adjudged.
From: Mackenzie Andersen <mackenziana@gmail.com>
Sent: Tuesday, September 11, 2018 9:08 AM
To: Reinsch, Margaret
Subject: Improvements needed to serve public benefit in Freedom of Access Law.

Dear Ms Reinsch,

Thank you for sending notice of the Right To Know committee meeting. I would like to submit this testimony of my own experience of how Freedom Of Access currently works and how the law can help to improve it.

I have observed that the Maine Legislative Library is excellent in providing information in the most usable form which is digital, searchable, and it is possible to copy specific information relevant to one's project. It is also sent in digital format free of charge.

The Maine Department of Corporations provides much information which can be downloaded for a reasonable $3.00 fee.

However, when I request information from other government agencies from the town to the state, I usually receive it in a form which is impossible to search with database tools, either because it is not in digital form or because it is in a PDF which has blocked searching and copying functions. I believe this is an intentional choice as is reflected in the response I received in 2014 from the Maine Ombudsman, Brenda Kielty.

1. Information made available on an agency website but not in a searchable database format may not provide the research and investigative tool needed by the public. The Freedom of Access Act does not require that public information be posted online in any particular format, just that public records be made available. While there is a strong argument for increasing the accessibility and usefulness of information, there is no current requirement that the technology in place achieve that objective.

2. The collection of data and reports generated from that data may be public records but the agency is not required under the law to create a new record or report in response to a FOAA request. If the dataset you request does not exist, the agency may choose to produce it for any number of reasons but not because they are legally required to take such an action. I appreciate your comments on this topic and I will continue to bring attention to the need for accessible, useful public data.

Brenda Kielty

Transparency is best served by a searchable online database but if that is not an option the public should be granted the right to request the information in digital form, which is searchable with functioning copying capability. It seems that the government will only allow the public to request information in the most usable form if there is a law mandating the government to do so- and so there should be.

To take this even further. Since the seventies, we have a public-private government in Maine in which much of its activity is concealed from public transparency by privacy laws specific to the private sector. The public-private government can use its public identity to access public funds for its own use and use the private side of
the partnership to conceal information from the public. Given that the public-private government is deeply entrenched, the rules of privacy and transparency could be rewritten to better serve public transparency.

Sincerely

Mackenzie Andersen

Preserving the American Political Philosophy

On 9/10/2018 3:01 PM, Reinsch, Margaret wrote:

The Right to Know Advisory Committee will hold its first meeting of 2018 on Thursday, September 13th at 4:00 p.m. (we're trying to accommodate the House and Senate Sessions that day) in Room 438 of the State House.

We apologize for the short notice. The meeting is open to the public and the audio will be streamed live over the Internet: http://legislature.maine.gov/Audio/#438

The plan is to post the agenda tomorrow: https://www.maine.gov/legis/opla/righttoknow.htm

Please let me know if you have any questions.

Thanks

Peggy

Margaret J. Reinsch, Esq., Legislative Analyst

Joint Standing Committee on Judiciary

Maine State Legislature

Office of Policy and Legal Analysis

Room 215, Cross State Office Building

13 State House Station

Augusta, Maine 04333

(207) 287-1670 (office number)

(207) 287-1673 (direct and voice mail)

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margaret.reinsch@legislature.maine.gov

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