RIGHT TO KNOW ADVISORY COMMITTEE

Thursday, October 12, 2017
9:00 am
State House Room 438

Meeting Agenda

1. Welcome and introductions

2. Discussion of access to records and personal information related to licensed professionals and state and local government employees

3. Discussion of remote participation by members of public bodies; review of LD 1586 (127th Legislature)

4. Discussion of the penalty provision in the Freedom of Access Act at 1 MRSA §410

5. Opportunity for members of the Advisory Committee to raise other topics for potential discussion

6. Adjourn

Next meetings:

Wednesday, November 15 at 9 am in State House Room 438 (Judiciary Committee)
- Subcommittee meeting to review existing public records exceptions meeting at 1 pm
Issues for Discussion:
Access to records and personal information related to licensed professionals
and state and local government employees

1. Is there a recommended approach for how to address access to records containing personal information?

A. Records maintained by government are presumed public unless designated as confidential (reflected in current law current approach; suggested in discussion draft for LD 1267 and LD 146)

B. Records containing personal information are presumed confidential and certain categories of information are specifically identified as public (reflected in discussion draft for LD 1541)

2. Are there types of personal information that should be designated as confidential and protected from public disclosure?

A. Consider types of personal information designated as confidential for State employees and other employees in current law? (see comparison of current law)

B. Should similar information be designated as confidential for licensed professionals?

3. Consider approach under Federal Privacy Act for records containing personally identifiable information?

Background Information Attached

1. Comparison of Proposed Discussion Draft Amendments Related to Personal Information about Licensed Professionals: LD 1267 and LD 1541 {p. 3}

2. Comparison of Current Law Related to Confidentiality of Employee Personnel Records for State Employees, County Employees, Municipal Employees and Employees of the Maine State Housing Authority {p. 9}

3. Federal Privacy Act; definition of “record” {p. 13}

Prepared by RTKAC Staff for Review
## Comparison of Proposed Discussion Draft Amendments Related to Personal Information about Licensed Professionals: LD 1267 and LD 1541

<table>
<thead>
<tr>
<th>Proposed Discussion Draft Amendment to LD 1267</th>
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<tbody>
<tr>
<td><strong>Applicability</strong></td>
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<tr>
<td>Records and information held by State Board of Nursing, Board of Licensure in Medicine, Board of Osteopathic Licensure</td>
<td>Records and information held by Department of Public Safety related to professional investigators, security guards and polygraph examiners</td>
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<tr>
<td><strong>Treatment of Contact Information</strong></td>
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<tr>
<td>1. <strong>Contact Address.</strong> An applicant or licensee shall provide the board with a current employment address, employment email address, and employment telephone number, which will be her/his public contact address. In addition, an applicant or licensee shall provide the board with a current personal residence address, personal email address, and personal telephone number, which will be her/his public contact information if she/he does not provide employment contact information.</td>
<td>1. <strong>Contact Information.</strong> An applicant or licensee shall provide the department with a current business address, business email address, and business telephone number, which will be publicly accessible as public contact information. In addition, an applicant or licensee shall provide the department with a current personal residential address, personal email address, and personal telephone number. If an applicant or licensee does not provide a business address, business email address, or business telephone number, the personal residential address, personal email address, or personal telephone number, as applicable, will be publicly accessible as public contact information.</td>
</tr>
<tr>
<td><strong>Information Designated as Confidential</strong></td>
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</tr>
<tr>
<td>3. <strong>Confidential Information of Applicant or Licensee.</strong> Except for disclosures authorized in subsection 2, the following information is confidential and may not be disclosed:</td>
<td>3. <strong>Confidential records and information.</strong> Except as provided in subsection 2, all records and information submitted to, collected by, or created by the department in administering this chapter are confidential and not public records for the purposes of Title 1, chapter 13.</td>
</tr>
<tr>
<td>A. Personal residence address, unless it is the public contact address;</td>
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<tr>
<td>B. Personal email address, unless it is the public contact email address;</td>
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<tr>
<td>C. Personal telephone number, unless it is the public contact telephone number;</td>
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<td>D. Personal health information;</td>
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<td>E. Birth certificate or the equivalent;</td>
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<td>F. Marriage certificate or the equivalent;</td>
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<td>G. Divorce judgment or the equivalent;</td>
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<td>H. Passport information;</td>
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<td>I. Social Security Number or the equivalent;</td>
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<td>J. Photographs;</td>
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<td>K. College or medical school transcripts;</td>
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<td>L. National examination scores; and</td>
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<tr>
<td>M. U.S. Drug Enforcement Administration Registration Number.</td>
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</table>

### Information Designated as Public

2. **Publicly records and information.** The following records and information may be publicly disclosed by the department.

A. The full name, age, and gender of an applicant or licensee, as well as all prior full names by which the applicant has gone. This paragraph does not authorize disclosure of the date of birth of an applicant or licensee, or documentation submitted to or ascertained by the department to substantiate the identity or age of an applicant or licensee;

B. A copy of the licensing certificate issued to a licensee;

C. Public contact information, as described in subsection 1;

D. Confirmation that an individual has met the licensure requirement established in section 7382, subsection 1, paragraph A. This paragraph does not authorize disclosure of any records or information ascertained by the department to substantiate that an applicant or
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<td>licensee has met that requirement; however, the department may refer a person seeking such information to the Department of Public Safety, Maine State Police, State Bureau of Identification to ensure the person will obtain the most up-to-date public criminal history record information available;</td>
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<tr>
<td>E. If applicable, the name of the accredited college or university from which an applicant or licensee has earned a baccalaureate degree. This paragraph does not authorize disclosure of any documentation submitted to or ascertained by the department to substantiate that an applicant or licensee has met this requirement of licensure, such as academic transcripts or a copy of the degree certification document;</td>
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<tr>
<td>F. If applicable, the name of each agency for which an applicant or licensee has worked to satisfy the requirement established in section 7382, subsection 1, paragraph B, subparagraph 2. This paragraph does not authorize disclosure any documentation submitted to or ascertained by the department to substantiate such employment;</td>
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<tr>
<td>G. The name of the commissioner-approved polygraph examiner course an applicant or licensee has satisfactorily completed to meet the requirement established in section 7382, subsection 1, paragraph C. This paragraph does not authorize disclosure of any documentation submitted to or ascertained by the department to substantiate the completion of such a course;</td>
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<tr>
<td>H. The name of the polygraph examiner with whom an applicant or licensee worked during the polygraph examiner internship of an applicant or licensee required in section 7382, subsection 1, paragraph C;</td>
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<tr>
<td>I. Confirmation that an applicant or licensee has passed an examination pursuant to section 7382, subsection 1, paragraph D. This paragraph does not authorize disclosure of the examination;</td>
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<td>J. If applicable, confirmation that an applicant</td>
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<td>has filed an “irrevocable consent” statement or form pursuant to section 7383. This paragraph does not authorize disclosure of the filing made pursuant to that section;</td>
<td>K. If applicable, confirmation that a licensee holds a polygraph examiner license from another state that has license requirements substantially equivalent to or more stringent than those of this State;</td>
</tr>
<tr>
<td>L. Confirmation that a licensee has met the continuing education requirements established in section 7385. This paragraph does not authorize disclosure of any documentation submitted to or ascertained by the department to substantiate that such continuing education requirements have been satisfied;</td>
<td>M. Any dates during which a licensee’s polygraph examiner license was suspended or revoked in this State or any other state in which the licensee held or holds a polygraph examiner license issued by that state. Except as provided in paragraph O, this paragraph does not authorize disclosure of any documentation submitted to or ascertained or created by the department to substantiate or document such suspensions or revocations;</td>
</tr>
<tr>
<td>N. Confirmation that an applicant has been denied a license pursuant to this chapter. In the case of such denial, only the final written decision of the department that states the reasons why the license was denied may be disclosed;</td>
<td>O. In a case in which a complaint has been made against an applicant or licensee, the final written decision of the department that states the grounds for which a complaint has been found to have merit. If a complaint is found by the department not to have merit, that determination may be disclosed to the person making the complaint, and</td>
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<tr>
<td>P. Confirmation that an applicant or licensee has paid the fee required pursuant to section 7381.</td>
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<td>Authorized Disclosure of Confidential Information</td>
<td>4. Permissible disclosure of confidential records and information. Notwithstanding subsection 3, records and information made confidential under this section may be disseminated by the department:</td>
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<tr>
<td>2. Authorized Disclosure. The information designated in subsection 3 regarding an applicant or licensee in the possession of the board is confidential, and may only be disclosed:</td>
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<tr>
<td>A. To governmental licensing or disciplinary authorities or to any health care providers or healthcare entities located within or outside this State that are concerned with granting, limiting, denying, suspending or revoking a physician’s employment or privileges not be disclosed without an order issued by a court of competent jurisdiction;</td>
<td>A. To a criminal justice agency for use in a criminal investigation or prosecution. For the purposes of this paragraph, “criminal justice agency” has the same meaning as in Title 16, section 803, subsection 4;</td>
</tr>
<tr>
<td>B. To the Federation of State Medical Boards, the National Board of Osteopathic Medical Examiners, the National Council of State Boards of Nursing, the National Commission on Certification of Physician Assistants, the International Association of Medical Regulatory Authorities, the American Board of Medical Specialties or their successor organizations;</td>
<td>B. To a governmental licensing or disciplinary authority of this State, any other state, or the federal government;</td>
</tr>
<tr>
<td>C. To criminal justice agencies for use in a law enforcement investigation or criminal prosecution;</td>
<td>C. In accordance with an order issued on a finding of good cause by a court of competent jurisdiction;</td>
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<tr>
<td>D. In a disciplinary hearing before the licensing authority or in any subsequent trial or appeal of a licensing authority’s action or order relating to such disciplinary hearing;</td>
<td>D. To another state or federal government agency when the record contains or information is evidence of a possible violation of a law enforced by that agency;</td>
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<tr>
<td>E. Pursuant to an order of a court of competent jurisdiction;</td>
<td>E. To the extent reasonably necessary to further an administrative licensing investigation being conducted by the department;</td>
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<td>F. To other state or federal agencies when the information contains evidence of possible violations of laws enforced by those agencies;</td>
<td>F. When, and to the extent, deemed necessary by the commissioner in order to avoid imminent and serious harm to any person. The authority of the commissioner to make such a disclosure may not be delegated;</td>
</tr>
<tr>
<td>G. To employees designated by the commissioner of an agency of which a licensing authority is a part;</td>
<td>G. To an applicant or licensee, or the applicant or licensee’s attorneys and authorized professional agents, for use in administrative or court proceedings related to licensure under this chapter. Records and information that may be disclosed pursuant to this paragraph only may be used for the purpose described in this paragraph and may not be disclosed further except to the extent deemed necessary and ordered by an administrative hearings officer or a court in order to fairly adjudicate a matter in dispute;</td>
</tr>
<tr>
<td>H. To designated complaint officers or Board</td>
<td>H. When required by any state or federal law; and</td>
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<td>members of a licensing authority;</td>
<td>I. In a consent agreement resolving a disciplinary or licensing action.</td>
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<td>I. By an employee or agent of the Board or by a complaint officer designated by the commissioner of the agency of which the licensing authority is a part, when, and to the extent, deemed necessary to facilitate an investigation; and</td>
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<tr>
<td>J. To the person investigated and/or licensed by the licensing authority, on request. The commissioner of the agency of which the licensing authority is a part may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the commissioner determines that disclosure might prejudice the investigation. The authority of the commissioner to make such a determination may not be delegated.</td>
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<tr>
<td>State Employees</td>
<td>County Employees</td>
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<td>(5 MRSA §7070, sub-§2)</td>
<td>(30-A MRSA §503, sub-§1)</td>
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<td>Records containing the following, except they may be examined by the employee to whom they relate when the examination is permitted or required by law:</td>
<td>County records containing the following:</td>
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<tr>
<td>A. Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;</td>
<td>(1) Medical information of any kind, including information pertaining to the diagnosis or treatment of mental or emotional disorders;</td>
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<tr>
<td>B. Performance evaluations and personal references submitted in confidence;</td>
<td>(2) Performance evaluations and personal references submitted in confidence;</td>
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<tr>
<td>C. Information pertaining to the credit worthiness of a named employee;</td>
<td>(3) Information pertaining to the creditworthiness of a named employee;</td>
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<tr>
<td>D. Information pertaining to the personal history, general character or conduct of members of the employee's immediate family;</td>
<td>(4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; and</td>
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<tr>
<td>D-1. Personal information pertaining to the employee's race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability and marital status; social security number; personal contact information as provided in Title 1, section 402, subsection 3, paragraph O'; and personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans,</td>
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<td>pension plans, health insurance and life insurance. When there is a work requirement for public access to personal information under this paragraph that is not otherwise protected by law, that information may be made public. The Director of the Bureau of Human Resources, upon the request of the employing agency, shall make the determination that the release of certain personal information not otherwise protected by law is allowed; and</td>
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<td>E. Except as provided in section 7070-A, complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written</td>
<td>(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be</td>
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## Current Law: Employee Records and Personal Information Designated as Confidential

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<td>{30-A MRSA §2072, sub-§1}</td>
<td>{30-A MRSA §4706, sub-§5 (enacted by Public Law 2017, c. 234)}</td>
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**For RTKAC Review 10/12/17**

- **decision and kept confidential.** If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

For purposes of this paragraph, "final written decision" means:

1. The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or

2. If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days;

- **deleted from the final written decision and kept confidential.** If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

For purposes of this subparagraph, "final written decision" means:

(a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or

(b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and

- **arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential.** If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

For purposes of this subparagraph, "final written decision" means:

(a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or

(b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and

- **any records available to union representatives from having access to personnel records, consistent with subsection 4, that may be necessary for the bargaining agent to carry out its collective bargaining responsibilities.** Any records available to union representatives from having access to personnel records, consistent with subsection 4, that may be necessary for the bargaining agent to carry out its collective bargaining responsibilities.
Current Law: Employee Records and Personal Information Designated as Confidential*

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representatives that are otherwise covered by this subsection remain confidential and are not open for public inspection;

3. Other information. Other information to which access by the general public is prohibited by law.

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*LD 146, An Act to Protect the Confidentiality of State and Local Government Employees’ Private Information, proposed to make the categories of personal information designated as confidential for county and municipal employees parallel with State employees with the additional inclusion of genetic information and sexual orientation. LD 146 was not enacted. LD 1340, An Act to Amend the Laws Governing the Maine State Housing Authority, was considered separately and enacted a provision related to MSHA employee records that was modelled after current law for State employees and LD 146.

^Personal contact information defined in 1 MRSA §402, sub-§3, ¶ O means “home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number.”
THE PRIVACY ACT OF 1974

5 U.S.C. § 552a
As Amended

§ 552a. Records maintained on individuals

(a) Definitions

For purposes of this section—

(1) the term “agency” means agency as defined in section 552(e) of this title;

(2) the term “individual” means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term “maintain” includes maintain, collect, use, or disseminate;

(4) the term “record” means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term “system of records” means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term “statistical record” means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of Title 13;

(7) the term “routine use” means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(8) the term “matching program”—

(A) means any computerized comparison of—

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of—

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or
(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include—

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 404(e), 464, or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches—

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency; if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel;

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;

(vii) matches performed incident to a levy described in section 6103(k)(8) of
the Internal Revenue Code of 1986;

(viii) matches performed pursuant to section 202(x)(3) or 1611(e)(1) of the Social Security Act (42 U.S.C. 402(x)(3), 1382(c)(1));

(ix) matches performed by the Secretary of Health and Human Services or the Inspector General of the Department of Health and Human Services with respect to potential fraud, waste, and abuse, including matches of a system of records with non-Federal records; or

(x) matches performed pursuant to section 3(d)(4) of the Achieving a Better Life Experience Act of 2014; 1

(9) the term “recipient agency” means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term “non-Federal agency” means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term “source agency” means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term “Federal benefit program” means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term “Federal personnel” means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) Conditions of disclosure

No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be--

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;
(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the Government Accountability Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(e) of Title 31.

(c) Accounting of certain disclosures.

Each agency, with respect to each system of records under its control, shall—

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of—

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;
(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) Access to records

Each agency that maintains a system of records shall—

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual’s record in the accompanying person’s presence;

(2) permit the individual to request amendment of a record pertaining to him and—

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either—

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official’s determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and
provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Agency requirements

Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual’s rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include—

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;
(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and
(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) Agency rules

In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall--

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) Civil remedies

Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of,
or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the
action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) Rights of legal guardians

For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) Criminal penalties

Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(j) General exemptions

The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.
At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific exemptions

The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (l) and (f) of this section if the system of records is—

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: Provided, however, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be
exempted from a provision of this section.

(i) Archival records.

(1) Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m) Government contractors

(1) When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(e) of title 31 shall not be considered a contractor for the purposes of this section.

(n) Mailing lists

An individual’s name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) Matching agreements

(1) No record which is contained in a system of records may be disclosed to a recipient
agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying—

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to—

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel, that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.
(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall—

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if—

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) Verification and opportunity to contest findings

(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until—

(A)(i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that—

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

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(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of—

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

(q) Sanctions

(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless—

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) Report on new systems and matching programs.

Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) Biennial report.
The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report—

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(i) Effect of other laws

(1) No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) Data Integrity Boards.

(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency’s implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board—

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;
(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including—

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding
approval of such agreement.

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that—

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) In the reports required by paragraph (3)(D), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

(v) Office of Management and Budget responsibilities

The Director of the Office of Management and Budget shall—

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

(w) Applicability to Bureau of Consumer Financial Protection

Except as provided in the Consumer Financial Protection Act of 2010, this section shall apply with respect to the Bureau of Consumer Financial Protection.
The following section originally was part of the Privacy Act but was not codified; it may be found at § 552a (note).

Sec. 7(a) (1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) the provisions of paragraph (1) of this subsection shall not apply with respect to--

(A) any disclosure which is required by Federal statute, or
(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

The following sections originally were part of Pub. L. No. 100-503, the Computer Matching and Privacy Protection Act of 1988; they may be found at § 552a (note).

Sec. 6 Functions of the Director of the Office of Management and Budget

(b) Implementation Guidance for Amendments – The Director shall, pursuant to section 552a(v) of Title 5, United States Code, develop guidelines and regulations for the use of agencies in implementing the amendments made by this Act not later than 8 months after the date of enactment of this Act.

Sec. 9 Rules of Construction

Nothing in the amendments made by this Act shall be construed to authorize

(1) the establishment or maintenance by any agency of a national data bank that combines, merges, or links information on individuals maintained in systems of records by other Federal agencies;

(2) the direct linking of computerized systems of records maintained by Federal agencies;

(3) the computer matching of records not otherwise authorized by law; or

(4) the disclosure of records for computer matching except to a Federal, State, or local agency.

[335]
Sec. 10 Effective Dates.

(a) In General – Except as provided in subsection (b), the amendments made by this Act shall take effect 9 months after the date of enactment of this Act.

(b) Exceptions – The amendment made by sections 3(b) [Notice of Matching Programs – Report to Congress and the Office of Management and Budget], 6 [Functions of the Director of the Office of Management and Budget], 7 [Compilation of Rules and Notices], and 8 [Annual Report] of this Act shall take effect upon enactment.
RIGHT TO KNOW ADVISORY COMMITTEE

Thursday, October 12, 2017

Review of LD 1586: An Act To Implement Recommendations of the Right to Know Advisory Committee Concerning Remote Participation in Public Proceedings

1. Background of 2015 RTKAC process
   a. Used LD 258 (126th Legislature) as a starting point
   b. Survey of RTKAC members' preferences
   c. Worksheet of potential bill language

2. Summary of LD 1586
   ■ Allows a body subject to the Freedom of Access Act, except a publicly-elected body, to conduct a public proceeding through telephonic, video, electronic or other similar means of communication only if:
     • The body has adopted a written policy on remote participation;
     • Notice of the meeting has been provided;
     • A quorum of the body is physically present at the meeting location (unless there is a public health emergency or other emergency declared by the Governor);
     • Each member of the body can hear and speak to all other members, and the public in attendance can hear all members;
     • Each remote member identifies anyone else at the remote location
     • All votes are taken by roll call; and
     • Materials to be discussed at the meeting have been received by remote members, and materials presented at the meeting can be made available to remote members if possible.
   ■ Prohibits remote members from participating in executive sessions
   ■ Prohibits remote members from voting in quasi-judicial proceedings on any issue concerning testimony or other evidence provided during the proceeding
   ■ Requires at least one meeting annually where no members participate remotely

3. Public hearing testimony on LD 1586
   a. Proponents supported concept of remote participation, but many expressed concern that it would not allow publicly-elected officials to participate remotely
   b. Opponents opposed the prohibition on remote participation by publicly-elected officials
   c. Testimony neither for nor against expressed concern about the requirement that a quorum be physically present, the prohibition on participating remotely in an executive session, and the requirement that at least one meeting involve no remote participation annually
4. Current practices in state government
   a. Workers Compensation Board
   b. Public Utilities Commission

5. Other states
   a. States that are silent on remote participation: Arkansas, Maine, Michigan, Pennsylvania, Washington, Wisconsin
   b. States that expressly prohibit remote participation: Louisiana, Ohio
   c. States that have general policy statements allowing remote participation in special circumstances: Alabama, Massachusetts
   d. States that include “electronic access” in their definitions or public meetings:
      Arizona, Connecticut, Kansas, Montana, New Jersey, New York, South Carolina, West Virginia
   e. Remaining states specifically allow remote participation and define circumstances and procedures, including New Hampshire, Vermont and Rhode Island
An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies

Reported by Representative PRIEST of Brunswick 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.

MILLICENT M. MacFARLAND
Clerk
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. Public proceedings through other means of communication

This section governs public proceedings, including executive sessions, during which public or governmental business is discussed or transacted through telephonic, video, electronic or other similar means of communication.

1. Requirements. A body subject to this subchapter may conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or governmental business through telephonic, video, electronic or other similar means of communication only if the following requirements are met:

A. The body has adopted a policy that authorizes a member of the body who is not physically present to participate in a public proceeding through telephonic, video, electronic or other similar means of communication in accordance with this section.

The policy may establish circumstances under which a member may participate when not physically present;

B. Notice of the public proceeding has been given in accordance with section 406;

C. Except as provided in subsection 3, a quorum of the body is assembled physically at the location identified in the notice required by section 406;

D. Each member of the body participating in the public proceeding is able to hear all the other members and speak to all the other members during the public proceeding, and members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations;

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

F. All votes taken during the public proceeding are taken by roll call vote; and

G. Each member who is not physically present and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. 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 the action of a body in a public proceeding.

2. Voting; judicial or quasi-judicial proceeding. A member of a body who is not physically present and who is participating in a judicial or quasi-judicial public proceeding through telephonic, video, electronic or other similar means of
communication may not vote on any issue concerning testimony or other evidence
provided during the judicial or quasi-judicial public proceeding.

3. Exception to quorum requirement. A body may convene a public proceeding
by telephonic, video, electronic or other similar means of communication without a
quorum under subsection 1, paragraph C if:

A. An emergency has been declared in accordance with Title 22, section 802,
subsection 2-A or Title 37-B, section 742;

B. The public proceeding is necessary to take action to address the emergency; and

C. The body otherwise complies with the provisions of this section to the extent
practicable based on the circumstances of the emergency.

4. Annual meeting. If a body conducts one or more public proceedings pursuant to
this section, it shall also hold at least one public proceeding annually during which
members of the body in attendance are physically assembled at one location and where no
members of the body participate by telephonic, video, electronic or other similar means
of communication from a different location.

PART B

Sec. B-1. 10 MRSA §384, sub-§5 is enacted to read:

5. Meetings. The board shall have a physical location for each meeting.
Notwithstanding Title 1, section 403-A, board members may participate in meetings by
teleconference. Board members participating in the meeting by teleconference are not
entitled to vote and are not considered present for the purposes of determining a quorum,
except in cases in which the chair of the board determines that the counting of members
participating by teleconference and the allowance of votes by those members is necessary
to avoid undue hardship to an applicant for an investment.

Sec. B-2. 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 Notwithstanding Title 1, section 403-A, the board
may use video conferencing 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 video conferencing, 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-3. 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 Notwithstanding Title 1, section 403-A, 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 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.

SUMMARY

This bill implements the majority recommendation of the Right To Know Advisory Committee.

Part A authorizes the use of remote-access technology to conduct public proceedings. Subject to the following requirements, it authorizes a body to conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or government business through telephonic, video, electronic or other similar means of communication.

1. The body must adopt a policy that authorizes such participation and establishes the circumstances under which a member may participate when not physically present.

2. Notice of any proceeding must be provided in accordance with the Freedom of Access Act.

3. A quorum of the body must be physically present, except that under certain emergency circumstances, a body may convene a public proceeding by telephonic, video, electronic or other similar means of communication without a quorum assembled physically at one location.

4. Members of the body must be able to hear and speak to each other during the proceeding.

5. A member who is participating remotely must identify the persons present in the location from which the member is participating.

6. All votes taken during the public proceeding must be taken by roll call vote.
7. Each member who is not physically present and who is participating through
telephonic, video, electronic or other similar means of communication must have
received, prior to the proceeding, any documents or other materials that will be discussed
at the public proceeding, with substantially the same content as those documents actually
presented.

8. A member of a body who is not physically present may not vote on any issue
concerning testimony or other evidence provided during the public proceeding if it is a
judicial or quasi-judicial proceeding.

9. If a body conducts one or more public proceedings using remote-access
technology, the body must also hold at least one public proceeding annually during which
all members of the body in attendance are physically assembled at one location.

Under current law, the following state agencies are authorized to use remote-access
technology to conduct meetings: the Finance Authority of Maine, the Commission on
Governmental Ethics and Election Practices, the Emergency Medical Services' Board and
the Workers' Compensation Board. Part B provides a specific exemption from the new
requirements for the Small Enterprise Growth Board, the Emergency Medical Services'
Board and the Workers' Compensation Board.
<table>
<thead>
<tr>
<th>Question</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Should remote participation be available to elected officials?</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>2. Should remote participation be available to members of a public body with statewide jurisdiction?</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>3. Should remote participation be available to members of a public body with less than statewide jurisdiction?</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>4. Should a member’s ability to participate remotely be contingent upon the occurrence of a specified event? (An amendment to LD 1241, currently in the Judiciary Committee, would require either: (1) illness of the member; (2) weather that makes driving hazardous; or (3) unexpected traffic delays or vehicle breakdowns when the member is traveling to the meeting.)</td>
<td></td>
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<tr>
<td>5. Should remote participation be permitted in quasi-judicial proceedings?</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>6. If a member is permitted to participate remotely in a quasi-judicial proceeding, should the member participating remotely be allowed to vote?</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>7. Should a quorum be required to be physically present at the noticed meeting location?</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>8. Should a member be permitted to participate remotely only if participation by that member is needed for a quorum?</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>9. If members of a body are permitted to participate remotely, should they be allowed to participate remotely in executive sessions of the body?</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>10. Should remote participation in executive sessions be permitted if the language from LD 1809 is included, specifically addressing the circumstances under which the executive session may be conducted to ensure privacy?</td>
<td>5</td>
<td>2</td>
</tr>
</tbody>
</table>

*Note: Many YES/NO answers were qualified on other conditions being met*
Sec. 1. 1 MRSA §403-A is enacted to read:

§403-A. Public proceedings through other means of communication

1. Requirements. A body subject to this subchapter may conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or governmental business through telephonic, video, electronic or other similar means of communication only if the following requirements are met:

A. The body has adopted a written policy that authorizes a member of the body who is not physically present to participate in a public proceeding through

telephonic, video, electronic or other similar means of communication in accordance with this section.

OR

combined audio and video means of communication in accordance with this section.

The policy may establish circumstances under which a member may participate when not physically present.

OR

The policy must establish criteria that must be met before a member may participate when not physically present.

If the policy allows a member who is not physically present to participate in an executive session, the policy must specifically address the circumstances under which the executive session may be conducted to ensure privacy.

OR

The policy may not allow a member who is not physically present to participate in an executive session;

B. Notice of the public proceeding has been given in accordance with section 406;

C. Except as provided in subsection 3, a quorum of the governing body is assembled physically at the location identified in the notice required by section 406;
D. Each member of the body participating in the public proceeding is able to hear all the other members and speak to all the other members during the public proceeding, and members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations:

[No additional language regarding ability of members participating remotely to view visual materials as they are presented or receive them before or during the proceeding]

OR

If documents or materials that include pictures, graphs, illustrations or other information presented in a visual format are part of the discussion, either the communications technology used must ensure that all members can see the documents and materials while the documents and materials are being discussed or the documents and materials must be provided to all members not physically present before or during the proceeding:

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

F. All votes taken during the public proceeding are taken by roll call vote; and

G. Each member who is not physically present and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. 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 the action of a body in a public proceeding.

2. Voting; judicial or quasi-judicial proceeding. A member of a body who is not physically present and who is participating in a judicial or quasi-judicial public proceeding through telephonic, video, electronic or other similar means of communication may not vote on any issue concerning testimony or other evidence provided during the judicial or quasi-judicial public proceeding.

[No additional language regarding quasi-judicial proceedings]

OR

For the purposes of this subsection, "quasi-judicial proceeding" means a proceeding in which the governing body is obligated to objectively determine facts and draw
conclusions from the facts so as to provide the basis of an official action when that action may affect the legal rights, duties or privileges of specific persons.

3. **Exception to quorum requirement.** A body may convene a public proceeding by telephonic, video, electronic or other similar means of communication without a quorum under subsection 1, paragraph C if:

A. **An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742.**

B. **The public proceeding is necessary to take action to address the emergency; and**

C. **The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency.**

OR

A. **An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742.**

   (1) **The public proceeding is necessary to take action to address the emergency; and**

   (2) **The governing body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency; or**

B. **The governing body is expressly authorized by its governing statute to convene a public proceeding by combined audio and video means of communication with less than a quorum of the body assembled physically at the location identified in the notice required by section 406.**

4. **Annual meeting.** If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other similar means of communication from a different location.
An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings

Reported by Representative HOBBINS of Saco 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
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. Public proceedings through other means of communication

1. Requirements. A body, except a publicly elected body, subject to this subchapter may conduct a public proceeding through telephonic, video, electronic or other similar means of communication only if the following requirements are met:

A. The body has adopted a written policy that authorizes a member of the body who is not physically present to participate in a public proceeding. The policy must establish criteria that must be met before a member may participate when not physically present. The policy may not allow a member who is not physically present to participate in an executive session;

B. Notice of the public proceeding has been given in accordance with section 406;

C. A quorum of the body is assembled physically at the location identified in the notice required by section 406, except that a body may convene a public proceeding by telephonic, video, electronic or other similar means of communication without a quorum if:

1) An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

2) The public proceeding is necessary to take action to address the emergency;

3) The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency;

D. Each member of the body who is participating in the public proceeding is able to hear all the other members and speak to all the other members during the public proceeding, and members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations;

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

F. All votes taken during the public proceeding are taken by roll call vote; and

G. Each member of the body who is not physically present and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding any documents or other materials that will be discussed or presented at the public proceeding, with substantially the same content as those documents actually discussed or presented. 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 the action of a
body in a public proceeding.

2. Voting; quasi-judicial proceeding. A member of a body who is not physically
present and who is participating in a quasi-judicial public proceeding through telephonic,
video, electronic or other similar means of communication may not vote on any issue
concerning testimony or other evidence provided during the quasi-judicial public
proceeding. For the purposes of this subsection, "quasi-judicial proceeding" means a
proceeding in which the governing body is obligated to objectively determine facts and
draw conclusions from the facts so as to provide the basis of an official action when that
action may affect the legal rights, duties or privileges of specific persons.

3. Annual meeting. If a body conducts one or more public proceedings pursuant to
this section, it shall also hold at least one public proceeding annually during which
members of the body in attendance are physically assembled at one location and where no
members of the body participate by telephonic, video, electronic or other similar means
of communication from a different location.

PART B

Sec. B-1. 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 video conferencing and other
technologies to conduct its business but is not exempt from Title 1, chapter 13,
subchapter I subject to the requirements of Title 1, section 403-A. Members of the
board, its subcommittees or its staff may participate in a meeting of the board,
subcommittees or staff via video conferencing, 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-2. 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 but is
not subject to the requirements of Title 1, section 403-A. 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.

SUMMARY

Part A of this bill allows members of a body subject to the Freedom of Access Act to participate in meetings of the body through telephonic, video, electronic or other similar means of communication under certain conditions; however, the bill does not allow members of publicly elected bodies to participate in public proceedings unless physically present. The body must have adopted a written policy authorizing remote participation with criteria that must be met before a member may participate remotely, but the policy may not allow a member to participate remotely in an executive session of the body. The bill also requires that notice of the proceeding must be given as if no members were participating remotely, each member of the body must be able to hear and speak to all other members, members of the public must be able to hear all members of the body, each member participating remotely must identify anyone else present at the location from which the member is participating, documents or materials discussed or presented at the proceeding must have been received by or transmitted to members participating remotely and all votes must be taken by roll call vote. A member who is not physically present may not vote in a quasi-judicial proceeding of the body. A quorum of the body must be physically present unless an emergency has been declared and the proceeding is necessary to address the emergency. If the body conducts proceedings with members participating remotely, the body must also hold at least one proceeding annually where no members participate remotely.

Under current law, the following state agencies are authorized to use remote-access technology to conduct meetings: the Finance Authority of Maine, the Commission on Governmental Ethics and Election Practices, the Emergency Medical Services’ Board and the Workers’ Compensation Board. Part B provides a specific exemption from the new requirements for the Emergency Medical Services’ Board and the Workers’ Compensation Board and does not affect the existing authority of those agencies or the Finance Authority of Maine or the Commission on Governmental Ethics and Election Practices to use remote-access technology to conduct meetings.
JUDICIARY

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

STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT “ ” to H.P. 1077, L.D. 1586, Bill, “An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings”

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

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

§403-A. Remote participation in public proceedings

1. Written policy required; posted. A body subject to this subchapter may conduct a public proceeding in which one or more members participate remotely through telephonic, video, electronic or other similar means of communication only if the body first adopts a written policy that governs remote participation and that explicitly describes how the policy meets the principles of this subchapter. The body shall make the policy available on its publicly accessible website, if any, and shall post a copy of the policy at the site of the proceeding included in the notice under section 406 in which one or more members participate remotely.

2. Policy contents. The policy adopted under subsection 1 must address under what circumstances a member may participate remotely, whether a quorum is required to physically assemble, whether the body may conduct an executive session when a member is participating remotely, the regular, quasi-judicial or other proceedings in which a member participating remotely may vote and how the body will ensure that members of the public in attendance at the site of the proceeding included in the notice under section 406 can hear or see and hear the members who are participating remotely.

3. Policy provided to Public Access Ombudsman; review. A body shall submit a copy of the policy adopted under subsection 1 to the Public Access Ombudsman, appointed pursuant to Title 5, section 200-1, subsection 1, who shall make all the policies received available to the public and submit them annually to the advisory committee.'
SUMMARY

This amendment is the minority report of the Joint Standing Committee on Judiciary.

This amendment replaces the bill, which restricts which public bodies may conduct public proceedings when one or more members are participating remotely through telephonic, video, electronic or other similar means of communication. Instead, this amendment provides that any body subject to the Freedom of Access Act may conduct a public proceeding in which one or more members participate remotely through telephonic, video, electronic or other similar means of communication, but only if the body first adopts a written policy that governs the remote participation and that explicitly describes how the policy meets the principles of the Freedom of Access Act. The policy must address under what circumstances a member may participate remotely, whether the body may conduct an executive session when a member is participating remotely, whether a quorum must physically assemble, the proceedings in which a member participating remotely may vote and how the body will ensure that members of the public in attendance at the site of the proceeding included in the notice can hear or see and hear the members who are participating remotely.

A body that adopts a remote participation policy must make the policy available on the body's publicly accessible website and must post a copy at the location of each meeting during which one or more members participate remotely.

A body that adopts a remote participation policy must send a copy of the policy to the Public Access Ombudsman, who will make all the policies received available to the public and submit them annually to the Right To Know Advisory Committee.

FISCAL NOTE REQUIRED

(See attached)
127th Maine Legislature, Second Regular Session

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

LD 1586, HP 1077
Fiscal Status Fiscal Impact
Final Disposition Accepted Majority (ONTP) Report, Apr 11, 2016

C-A (H-660) Fiscal Status Fiscal Impact

Amendments to LD 1586

Status In Committee
Referred to Committee on Judiciary on Feb 11, 2016.
Latest Committee Action: Reported Out, Apr 8, 2016, ONTP/OTP-AM
Latest Committee Report: Apr 8, 2016, MAJ: Ought Not To Pass, MIN: Ought To Pass As Amended

Public Hearings

Wednesday, February 24, 2016 10:00 AM, State House, Room 438

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Work Sessions

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Mar 2, 2016 Work Session Held
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**Affected Statute Titles and Sections**

None listed at this time.

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Testimony of Senator Chris Johnson in Support of LD 1586, An Act to Implement The Recommendations of the RTKAC Concerning Remote Participation

Good morning Senator Burns, Representative Hobbins, and members of the Joint Standing Committee on the Judiciary. I am Senator Chris Johnson, representing State Senate District 13, in the Mid-coast region. I am testifying in support of LD 1586 and offering an amendment which you should already have before you. It has been distributed to interested parties and posted publicly in the hope that all who testify today could do so with knowledge of the amendment I propose.

It is high time Maine brought statutory certainty to the question of whether boards can allow members to participate remotely. I applaud the work of the Right to Know Advisory Committee in proposing legislation that balances the public’s right to know with the realities of modern lives and modern modes of communication. We are no longer in the days of letters being the best way to communicate between cities or continents. Telegrams are no longer the most effective and most immediate. Phone calls are no longer scratchy very low fidelity party line communication. Skype and other audio/video calls are widely available. Today we have ubiquitous capacity to communicate not just words, but also inflection, sounds, and two-way video. It is time to catch up with the reality of modern communication.

A shortcoming of the proposed legislation is that it excludes all publicly elected boards. That’s a problem that would if passed create a presumption that much of the remote participation currently practiced by select boards and others around the state are no longer legal. And that would likely prevent passage of a bill to bring legal certainty regarding remote participation.

But the shortcoming can be fixed, and the amendment which I present does so while addressing the dominant objection raised in earlier considerations of remote participation legislation. That objection was the concern that when members are elected, the electorate should have a right to face their elected members at board meetings. This amendment allows remote participation for publicly elected boards under the same conditions as other boards, plus the requirement that the practice be authorized by the electorate of the board members. In other words if the people who elect the board members are OK with the board adopting a remote access policy and practice, then we as legislators should not interfere with their doing so.

Accordingly I ask that you consider LD 1586 with my amendment as a starting point for discussing the issues you hear today, and ask for an Ought-To-Pass-Amended report from the committee. It is time to bring certainty to whether remote participation is legal, and in doing so to be responsibly inclusive, to accommodate the many publicly elected boards who currently rely on remote participation while honoring the wishes of their electorate.

Thank you for your consideration.
AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE RIGHT TO KNOW ADVISORY COMMITTEE CONCERNING REMOTE PARTICIPATION IN PUBLIC PROCEEDINGS

Amend the bill in Section A-1 to read:

§403-A. Public proceedings through other means of communication

1. Requirements. A body except a publicly elected body, subject to this subchapter may conduct a public proceeding through telephonic, video, electronic or other similar means of communication only if the following requirements are met:

A. The body has adopted a written remote participation policy that authorizes a member of the body who is not physically present to participate in a public proceeding. The policy must establish criteria that must be met before a member may participate when not physically present. The policy may not allow a member who is not physically present to participate in an executive session.

The remote participation policy governing a publicly elected body is valid only if the electorate represented by the body votes to approve the policy or votes to authorize the body to adopt a policy. For a publicly elected body that represents more than one municipality the policy or the authorization to adopt a policy must be adopted through a referendum vote.

B. Notice of the public proceeding has been given in accordance with section 406;

C. A quorum of the body is assembled physically at the location identified in the notice required by section 406, except that a body may convene a public proceeding by telephonic, video, electronic or other similar means of communication without a quorum if:

1. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

2. The public proceeding is necessary to take action to address the emergency; and

3. The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency;

D. Each member of the body who is participating in the public proceeding is able to hear all the other members and speak to all the other members during the public proceeding, and members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations, or, upon request, by accommodations for persons who are deaf or hard of hearing, all members of the body and the public are afforded an ability to participate equivalent to hearing;
E. Each member of the body who is not physically present and who is participating through telephonic, video, electronic or other similar means of communication identifies the persons present at the location from which the member is participating;

F. All votes taken during the public proceeding are taken by roll call vote; and

G. Each member of the body who is not physically present and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding any documents or other materials that will be discussed or presented at the public proceeding, with substantially the same content as those documents actually discussed or presented. 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 the action of a body in a public proceeding.

2. Voting: quasi-judicial proceeding. A member of a body who is not physically present and who is participating in a quasi-judicial public proceeding through telephonic, video, electronic or other similar means of communication may not vote on any issue concerning testimony or other evidence provided during the quasi-judicial public proceeding. For the purposes of this subsection, "quasi-judicial proceeding" means a proceeding in which the governing body is obligated to objectively determine facts and draw conclusions from the facts so as to provide the basis of an official action when that action may affect the legal rights, duties or privileges of specific persons.

3. Annual meeting. If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other similar means of communication from a different location.

(No change to Part B)

SUMMARY

This amendment authorizes a public-elected body to allow remote participation of its members only if the electorate the body represents either approves a remote participation policy or authorizes the body to adopt a remote participation policy. If the body covers more than one municipality, the adoption or approval must be done through a referendum vote.

This amendment also provides for accommodations for person who are deaf or hard of hearing when members of a body are participating remotely.
Maine Freedom of Information Coalition

P.O. Box 232 • Augusta, ME 04332-0232 • info@mfoic.org

MAINE FREEDOM OF INFORMATION COALITION
IN SUPPORT OF L.D. 1586:
AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE RIGHT TO KNOW ADVISORY COMMITTEE CONCERNING REMOTE PARTICIPATION IN PUBLIC PROCEEDINGS

Sen. Burns, Rep. Monaghan, members of the Joint Standing Committee on Judiciary, my name is Judith Meyer. I am a vice president of the Maine Freedom of Information Coalition, which is a coalition of interested friends of freedom of information, including attorneys, librarians, political advocacy groups and Maine’s press. I am also a member of the Right to Know Advisory Committee and the managing editor of the Sun Journal in Lewiston. I appear before you today in support of L.D. 1586, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Remote Participation in Public Proceedings.

An opportunity for appointed bodies to employ remote technology. It is not a mandate, preserving local choice for public bodies. You don’t want to do it? Don’t do it.

Tradition of public proceedings is wholly preserved through the physical quorum requirement, maintaining access to public proceedings. We can still see and hear government in action.

Confidentiality of the executive session is preserved by banning remote participation. No leaks.

Roll call provides accountability. We know where our officials stand.

Requirement for all participants to have access to documents ensures awareness of discussion items. Everyone has the information they need to make informed decisions.

Narrowly drafted to include appointed bodies and exclude elected officials. Elected officials shouldn’t be calling in their jobs because constituents expect full and effective representation. So, they should represent.

No votes on quasi-judicial proceedings. Your rights won’t be affected by someone who can’t see you.

Bodies already expressly permitted by statute to participate through remote technology are grandfathered. Everyone else will have to follow standard requirements.

The MFOIC has one concern, and that is the requirement for the person participating remotely to identify the people present at the remote location. That is not a requirement in the physical location, so must it be a requirement in the remote one?

MFOIC does not support any amendment that would expand the allowance to participate by remote technology to elected officials.
MAINE SCHOOL MANAGEMENT ASSOCIATION

TESTIMONY ON

L.D. 1586

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE RIGHT TO KNOW ADVISORY COMMITTEE CONCERNING REMOTE PARTICIPATION IN PUBLIC PROCEEDINGS

Senator Burns, Representative Hobbins and members of the Judiciary Committee. I am Connie Brown, executive director of Maine School Management Association, and am submitting this testimony on behalf of the Maine School Boards Association and Maine School Superintendents Association in support of an amended version of L.D. 1586 that would allow the provisions of the bill to apply to school boards.

Our associations support allowing remote participation by school board members, with parameters, because we believe it will help us attract well-rounded boards with varied experience. Business people who have to travel might be more willing to run, for example, if they knew they could call in on those occasions when they have to be on the road.

Remote participation also would allow a board member who is temporarily housebound to keep up with the board’s work or accommodate those times when there is critical business on the agenda and a Maine blizzard raging outside.

Our associations would advise boards to adopt policies that lay out the parameters around remote participation to make sure technology is used to support open communication and not be an impediment to it. We believe remote participation should be the necessary exception, not the rule.

Our one concern about the amendment is the process by which voters would approve remote participation. We think this process needs to be more clearly delineated.
OPENING:

GOOD MORNING SENATOR BURNS AND REPRESENTATIVE HOBBS AND THE MEMBERS OF THE JUDICIARY COMMITTEE.

MY NAME IS LEONARD BLANCHETTE. I AM THE GENERAL MANAGER FOR THE BRUNSWICK SEWER DISTRICT.

I AM HERE TO TESTIFY IN FAVOR OF LD 1586:

AN ACT TO IMPLEMENT RECOMMENDATIONS OF THE RIGHT TO KNOW ADVISORY COMMITTEE CONCERNING REMOTE PARTICIPATION IN PUBLIC PROCEEDINGS.

TESTIMONY

SOME OF MY COLEAQUES IN THE WATER AND WASTEWATER UTILITY SECTOR BELIEVE THAT THIS BILL IS UNNECESSARY DUE TO A BELIEF THAT THE RIGHT TO HAVE REMOTE PARTICIPATION OF ITS BOARD MEMBERS IS NOT IN VIOLATION OF ANY LAW.

THAT BELIEF IS THE REASON I, AND MY BOARD MEMBERS, WISH TO SEE THIS BILL PASS. I THINK MY COLEAQUES BELIEFS ARE BASED ON THE LEGAL AXIOM THAT UNLESS IT IS SPECIFICALLY PROHIBITED, IT IS ALLOWED. MY BOARD ON THE OTHER HAND, WHILE RECEIVING TRAINING ON THE FREEDOM OF ACCESS ACT, HEARD THAT IT IS THE OPINION OF THE ATTORNEY GENERAL’S OFFICE THAT REMOTE PARTICIPATION FOR OUR BOARD MEMBERS IS NOT ALLOWED.

THIS NEEDS TO BE CLEARLY SPELLED OUT IN LAW SO THAT THIS CONTINUING MISUNDERSTANDING BY THE MANY BOARDS OF MAINE’S WATER AND WASTEWATER UTILITIES IS FINALLY RESOLVED. LD 1586 IS A STEP IN THIS DIRECTION. THE EXCEPTION IS THAT NOT ALL WATER AND WASTEWATER BOARD MEMBERS ARE APPOINTED AS THEY ARE FOR THE BRUNSWICK SEWER DISTRICT. WE WOULD RECOMMEND THAT THIS BILL BE AMENDED TO INCLUDE ELECTED BOARD MEMBERS OF WATER AND WASTEWATER BOARDS.

THANK YOU.
Testimony of the Maine Municipal Association

In Opposition to LD 1586

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

February 24, 2016

Senator Burns, Representative Hobbins, members of the Judiciary Committee, my name is Garrett Corbin and I am testifying in opposition to LD 1586 on behalf of the Maine Municipal Association at the direction of our 70-member Legislative Policy Committee. Our Policy Committee's opposition centers solely on the legislation's incongruous distinction between elected and appointed officials. Only one other state makes such a distinction in their law. The majority of U.S. states explicitly allow the use of remote participation in public proceedings for elected and appointed board members.

MMA supported LD 258, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies, which was introduced in the 126th Legislature. It seemed fair to require all public bodies to play by the same fundamental rules while allowing each entity to set the specific terms that made sense, subject to reasonable parameters appropriate and necessary for the conduct of public proceedings.

LD 1586 represents a step backwards from LD 258. Without any fact-based justification, this bill allows the use of remote technology in meetings of public bodies comprised of appointed officials, while universally prohibiting any remote participation whatsoever in public meetings by elected officials. This distinction directly discriminates against elected boards, without reason.

MMA would not oppose LD 1586 if the five words "except a publicly elected body" were removed from the first sentence of the bill.
The vast majority of Maine’s elected public bodies are local. To some members of our Policy Committee, LD 1586’s prohibition on any and all elected official remote participation appears to create a solution in search of a problem given that no specific examples of municipal misuse of remote participation have ever, to MMA’s knowledge, been brought to the Right to Know Advisory Committee’s or Judiciary Committee’s attention.

As far as we know, the only actual instance of abuse of remote participation is one 1978 vote conducted entirely over the phone by county officials to expend public funds on a certain project. Nearly forty years later, this type of entirely telephonic and publicly inaccessible meeting is widely understood to be impermissible under Maine’s Freedom of Access Act. Aside from the Legislature’s Appropriations and Financial Affairs Committee’s annually increased utilization of closed-door meetings on major state budget matters, MMA has been unable to find a single report in Maine in this century of elected officials making private what would have properly been a public deliberation. Meanwhile, the use of remote technology has become commonplace in, and widely accepted by, today’s society.

Based on the experience of MMA’s Legal Department, which has for decades fielded questions from municipal officials regarding Maine’s Freedom of Access Act, remote participation is typically only needed under exceptional circumstances whereby one or more members of an elected 3-person board is physically unable to attend. For hundreds of municipalities in this state, the three-member select board is the municipal manager, requiring the presence of two members to act. Issues like ice storms, hospitalizations, ferries running off schedule, or a call out for a fire or rescue emergency all give rise to the need to utilize an offsite participation capacity to function, particularly with respect to time-sensitive matters.

In addition to select boards, there are numerous local government entities that would be impacted. These include not only school boards but also the elected planning boards, conservation commissions, utilities districts, library boards, road committees, health and/or hospital boards, airport boards, and others. In some cases, such as a charter commission, the board may be comprised of both elected and appointed members. It is unclear whether LD 1586’s prohibition would apply to these boards in their entirety, or only their elected members. If the latter, it is hard for MMA to appreciate a justifiable basis for such a distinction.

An appropriate balance must be found between the need of governmental entities to conduct meetings in order to serve the public and the need of the public to freely access those meetings. From the municipal perspective, if the general parameters established in this bill were applied equally to all public bodies, they would create a level playing field of reasonable remote meeting rules to be followed not just by some, but by all.
February 24, 2016

Testimony in Opposition to LD 1586 An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings

LD 1586, as written, would prohibit members of publicly elected bodies from participating in public proceedings unless physically present. Public bodies that are not elected would be authorized to conduct public proceedings through telephonic, video, electronic or other similar means of communication only if specific, prescriptive requirements are met; however a member would not be allowed to participate remotely in an executive session of the body.

Maine Water Utilities Association represents and advocates for the water profession in Maine. For a number of reasons, and as elaborated below, we are opposed to LD 1586.

We have raised an issue relative to remote participation in the past and we raise it today. At face value one could presume that this bill is before us because remotely participating in meetings, including executive sessions, is in violation of statute. The FOAA Ombudsman has weighed in on this issue in the past and has stated that the current use of conference calls, Go To Meeting, Skype, etc. by our members is not in violation of statute. Some of our members have paid for legal opinions which have told them the same thing. The Attorney General’s Office has been asked – several times – to come forth with an opinion. The answer has always been that we “advise people not to do this”. We would expect that if we were in violation of the law, the AG’s Office could - and would - make us aware of that fact. Advice is not an opinion.

So, to us, this bill presents a solution where there has been no problem. The bill does not address any real issues, yet it has the potential to create many. We are not opposed to implementing remote participation technology; in fact many of our members have done that. This bill (and the proposed amendment) would add unnecessary layers of red tape where there has never been an issue before. Our members strive for effective and efficient operations. The mandates being proposed in the bill and the amendment are counter to that objective. That, in and of itself, is reason enough for us to oppose the bill.

We will discuss the provisions of the bill and the amendment separately but combine the two where it makes the most sense to discuss them that way.

As noted in our first paragraph, the bill would prohibit members of publicly elected bodies from participating in public proceedings unless physically present; the amendment strikes that. Either way, what is proposed would prohibit public bodies from continuing to practice protocol they might be utilizing to govern their organizations.

Boards could conduct public proceedings through telephonic, video or other similar means of communication if the body adopts a written policy that authorizes a member who is not physically present to participate in the public proceeding. Some of the written policy provisions are as follows:
A member who is not physically present could not participate in an executive session.

A quorum of the body must be assembled physically at the location identified in the meeting notice except that public proceedings through telephonic, video or other similar means of communication could be conducted without a quorum if:

In the event of an actual or threatened epidemic or public health threat the Department of Health and Human Services declares that a health emergency exists and adopts emergency rules for the protection of the public health relating to procedures for the isolation and placement of infected persons for purposes of care and treatment or infection control, or

A disaster or civil emergency exists or appears imminent, and the Governor declares a state of emergency in the State or any section of the State,

And, if we are reading this correctly, the public proceeding must be necessary to take action to address the health emergency or the disaster or civil emergency.

Envision a water district with a three member Board of Trustees. If a trustee is away and another is sick (but could call in) these statutory requirements would prevent the board from having a quorum and voting on matters unless DHHS declares a health emergency or the Governor declares a state of emergency. Setting aside, for a moment, the notion that DHHS or the Governor would come to our rescue in this situation, it is puzzling to us that, apparently, one of our agenda items must be to develop an action plan to address what conceivably could be a statewide epidemic or local or statewide disaster or civil emergency.

The amendment proposes a referendum in order to ratify a remote participation policy. We have one member district that serves 10 communities. Another serves 7 communities and others serve 2 – 5 communities. These elected officials can adopt multi-million dollar budgets, levy taxes and rates/charges, take property by eminent domain, serve in quasi-judicial capacities, and perform other necessary functions, yet this amendment would prohibit them from adopting a policy without voter authority.

We suspect that these districts might not even consider a policy that would require them to coordinate a referendum among multiple member communities. Such an outcome, we feel, would infringe on an elected trustee’s duty to provide representation to constituents.

We understand, and generally agree with, the intent of the proposed provision whereby everyone, regardless of their location, can hear and speak to the other members. However, we believe that the proposed provision that each member of the body who is not physically present and who is participating through telephonic, video, electronic or other similar means of communication identifies the persons present at the location from which the member is participating crosses a line that should not even be encroached upon. Specifically, this requirement would turn someone’s living room into a public space – actually more of a public space than the meeting location because the general public present at that location might choose not to be, and (we believe) could not be compelled to be, identified.
Based on our observations in this room over the past few summers, and albeit limited discussions we have had with Right to Know Advisory Committee members plus some of the members of this committee, it appears to us that the primary objective of this bill (and the amendment) is to adopt legislation which passes muster with the Right to Know Advisory Committee.

We do appreciate the commitment of the RTK committee members to their tasks. Among their duties and powers, as stated in their enabling legislation, is that they may make recommendations for changes in the statutes to improve the laws. We would argue that, implicit in that charge, is the basic tenant that they first do no harm.

What is being proposed in LD 1586 and the proposed committee amendment will adversely impact the ability of public bodies (and the smaller one in particular) to effectively and efficiently perform their functions.

Technology has left lawmakers far behind in this instance. To reduce the effectiveness of remote participation by making it so cumbersome undermines the spirit of unhindered public access, in reality making meetings less accessible by members.

Our association has spent considerable time over the past couple of weeks discussing this legislative initiative. We even considered the possibility of offering our own amendment. Towards the end of last week, after we had analyzed the bill, the amendment and the projected impacts, we came to the conclusion that the best outcome would be for the committee to report this bill out as Ought Not to Pass.

We respectfully ask that you do that.

Jeffrey L. McNelly
Executive Director
February 23, 2016

Senator David Burns, Chair
Representative Barry Hobbins, Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333

Subject: LD 1586, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings

Dear Senator Burns, Representative Hobbins, and Members of the Judiciary Committee,

The Maine Water Environment Association (MEWEA) represents more than 600 members, including towns and sewer districts, who are on the front line of keeping the waters of Maine clean, in part through our diligent operation of sewer systems, including underground utilities. The mission of MEWEA is to promote professional environmental management practices to protect and improve the waters and related environments of the State of Maine. Consistent with this mission, the Association is offering this testimony in opposition to LD 1586.

MEWEA supports allowing remote participation in meetings. Many of our members have small boards, some appointed and some elected, and have difficulty attracting and keeping qualified people to serve on those boards. Our concern with LD 1586 is not that it will allow remote participation, but just the opposite. It would end remote participation for all of our members with elected Boards.

You may hear some testimony today that current law does not permit remote participation. That is not the case. Current law is silent on the issue and Boards may choose to allow it, an option many pursue. Many of our Boards have legal opinions to that effect. LD 1586, as written, would prohibit remote participation for all elected boards. Therefore, MEWEA must oppose it.

MEWEA is aware that an amendment has been distributed that would allow elected boards to use remote participation. That is an improvement, but it still falls short of a proposal that MEWEA could support.
We recommend two additional changes to the bill. First, board members participating remotely should count toward a quorum. Some MEWEA members literally have 3 person boards and gathering a quorum can be difficult. Some are currently counting remotely participating members toward a quorum and there have been no complaints. This is an unnecessary restriction on the use of remote participation.

Second, there is no need for a referendum to establish a remote participation policy. Again, many boards have currently adopted remote participation policies without public complaint. Remote participation should be decided by a board like any other policy question. A referendum will be a time consuming waste of resources and, for multi-municipal entities, an administrative headache. Every board was given specific authority when it was created. Please let them exercise that authority.

MEWEA is in agreement with two limits on remote participation that are contained in the proposed amendment. We agree that the issues raised in Executive Session are sensitive and complex enough that they require an in person discussion. We also agree that an annual in person meeting is a reasonable requirement.

To summarize: MEWEA opposes the bill in its current form. We can support the bill if it is amended to:
  1. Allow remote participation for elected boards;
  2. Allow those participating remotely to count toward a quorum; and
  3. Allow boards to adopt a remote participation policy using their usual process. No referendum is necessary.

Thank you for your attention and consideration, we look forward to your work session on the bill, and we'll be available should you have any questions or if you would like further input.

Sincerely,

[Signature]

Timothy Haskell
Chair, Government Affairs Committee
Maine Water Environment Association
TESTIMONY OF THE PORTLAND WATER DISTRICT IN OPPOSITION TO
LD 1586 — AN ACT TO IMPLEMENT RECOMMENDATIONS OF THE RIGHT TO KNOW ADVISORY
COMMITTEE CONCERNING REMOTE PARTICIPATION IN PUBLIC PROCEEDINGS

Senator Burns, Representative Hobbins, and members of the Judiciary Committee, I am Donna
Katsiaficas, and I am the Corporate Counsel for the Portland Water District. I am here to testify
in opposition to LD 1586 - "An Act to Implement the Recommendations of the Right to Know
Advisory Committee Concerning Remote Participation in Public Proceedings."

The Portland Water District is a quasi-municipal utility authorized by State charter to provide
water service to over 200,000 people in eleven Greater Portland communities, and wastewater
treatment and interception services to six of those communities. The affairs of the District are
managed by a Board of Trustees composed of eleven members, all popularly elected at
municipal elections by a plurality of the voters from the towns and cities that they represent.
Trustees are elected for a five-year term.

The Board of Trustees meets in public session twice a month — in a workshop on the second
Monday of each month, and in a business meeting on the fourth Monday of each month.
Notices of Trustee meetings are published on the District website (PWD.org) and published in
the Portland Press Herald. The meeting agenda is sent to the town and city managers of District
member communities. At the beginning of each year, a notice is published in the Portland Press
Herald reminding the public of the Board’s schedule of meetings for the year. In addition,
business meetings are broadcast on public access cable TV. Meeting minutes are also available
to the public on the District’s website.

I provide this information about the District’s governance and meetings to illustrate that there
is ample opportunity for public participation and public notice of the District’s activities, and
that its operations are transparent.

The Portland Water District supports the concept of remote meetings, but opposes LD 1586 as
drafted because it does not apply to publicly elected officials. Again, our Trustees are elected,
not appointed. Therefore, as drafted, this bill would not allow the District’s Trustees to
participate in a public meeting unless physically present. Allowing appointed Trustees to meet
with remote participation while disallowing elected Trustees the same opportunity makes no
sense. If the concern is that elected trustees will not attend public meetings, voters who are
unhappy with the attendance of their elected representatives can express that displeasure at a
public meeting, or at the ballot box. However, Customers who are unhappy with the attendance of an appointed Trustee, who could attend a meeting remotely under this bill, would have no recourse for removal of that Trustee.

The District has a quorum requirement of six Trustees to conduct business. With a full Board of eleven, the District recognizes that it is unlikely that remote participation would be required to conduct business; however, in the event of an emergency, the District should not forego its ability to conduct a meeting with remote participation simply because its Trustees are elected.

The amendment to the bill proposes a referendum in order to ratify a remote participation policy. The District serves ten member communities and one non-member. Presumably the amendment would require a referendum in all ten communities. What is not clear is whether the referendum must pass by a plurality of the votes in each municipality, or whether a plurality of the voters in the combined ten municipalities is sufficient. In any event, the cost of such a referendum in ten communities could be substantial and the effort to coordinate such a referendum difficult. Our Trustees vote on water rate changes, authorize bond indebtedness, and conduct the District's business without public referendum. Surely our Trustees could be trusted to enact a reasonable policy, after public hearing, for the remote participation of members without the need for a referendum.

Technology has made the conduct of the public's business much easier, and allows opportunity for public participation in ways never contemplated before. We suggest that the bill and amendment before you do not recognize these improvements in technology and their ability to make the conduct of the public's business more efficient, and urge you to reject this bill and its amendment. We would welcome legislation or further changes to this bill and its amendment that would make remote meetings available to elected officials such as our Trustees upon their adoption of a suitable policy.

Thank you for your consideration.

Donna M. Katsiafas
Corporate Counsel
February 12, 2016

Honorable Senator David Burns, Senate Chair
Honorable Representative Barry Hobbins, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333

RE: LD 1586 Remote Participation in Public Proceedings

Dear Senator Burns and Representative Hobbins:

The Southern Maine Regional Water Council (SMRWC) urges you to oppose LD 1586. This legislation seeks to prohibit elected officials, including water district Trustees, from remotely participating in a meeting. For Maine’s many quasi-municipal water utilities, this bill presents a solution where there has been no problem. Such legislation is often wrought with unintended consequences, which are clearly apparent in this bill.

Some SMRWC members have used remote participation to enable elected Trustees to participate in meetings for over 20 years. Meeting materials are sent to the Trustee in advance, either through postal mail or email. The remotely attending Trustee is capable of fully participating in all discussions and debates that occur via a conference phone. None of our members can recall any issues that have arisen at any time due to remote participation.

Our member-utility Trustees are elected by voters to represent the ratepayers of the water system. SMRWC feels that prohibiting a time tested method of participation, which has proven both effective and at times necessary, would infringe on an elected Trustee’s duty to provide such representation to constituents. Many water utilities only have three Trustees. Preventing participation of even one has a significant impact on ratepayer representation. Also, many of our Trustees are retired and may travel to warmer areas during some of the winter months. Passage of LD 1586 would make it challenging, if not impossible to physically gather a quorum; possibly preventing important business from taking place. SMRWC also does not agree with the distinction the bill makes between appointed and elected boards. We believe that remote participation is a reasonable accommodation and tool to provide elected officials. It enables better participation and thereby better constituent representation. Please report out LD 1586 Ought Not to Pass.

Sincerely,

Normand Labbe, President
Boothbay Region
Water District

PO Box 520, Boothbay, ME 04537  207-633-4723  Fax 207-633-7921

24 February 2016

From: General Manager
To: Judiciary Committee

Subj: Boothbay Region Water District Testimony in Opposition to LD 1586 An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings

My name is Jonathan Ziegler and I am the General Manager of the Boothbay Region Water District and I am representing my duly elected board of trustees. In addition, I am also representing the 5 Rivers Regional Water Council, comprised of the Bath Water District, Brunswick Topsham Water District, Wiscasset Water District, Great Salt Bay Sanitary District, Richmond Utility District, Bowdoinham Water District and the Boothbay Region Water District. Both organizations are urging the committee vote Ought Not to Pass on LD 1586.

The Boothbay Region Water District’s service area encompasses the towns of Boothbay, Boothbay Harbor and Southport of which the town of Boothbay Harbor median age is 59 years old. Many of Boothbay Harbor’s well-seasoned citizenry are retired professionals with a lifetime of experience and an eager willingness to serve in elected positions. Many organizations within Maine have actively encouraged seniors to refocus, utilize their rich life experience through a myriad of senior initiatives to great success. I for one am very appreciative and an unintended beneficiary of that effort.

Since the inception of the Boothbay Region Water District at any given time the governing elected board has never had less than forty percent of its members either retired or well into second careers and for many years has been comprised exclusively of retirees. It is my experience that retirees bring much to the table and is a leading factor as to why the Boothbay Region Water District is considered to be among the best water districts in Maine.

Even though the summers along the mid-coast are idyllic, the winters are often cold, bleak and unforgiving. As expected, many of the region’s resident seniors pack up and head for warmer climates during the harsh winter months. Even with this annual migration, through readily available technology, many stay fully connected with their hometown and continue to remotely serve with great distinction. The last three-governors, and independent, democrat and republican, have championed revolutionizing and improving technological communication capabilities in Maine and the legislature has followed suit. It is now commonplace in Maine to have access to high-speed, high-definition, high-capacity communication at a reasonable expense.
Because it is currently legal, for nearly a decade during the winter months the Boothbay Region Water District has had at least one trustee remotely access the regular trustee meetings. During this time the public has been well served. With the aid of high speed fiber optic cable, Skype and other free software, the public has been able to see and speak with the trustee who is accessing the meeting remotely and vise-versa. In the grand scheme the technology is cheap, readily available and very dependable. This makes the prohibition of elected bodies having members access and participate remotely as outlined in this legislation all the more absurd.

There is no problem here, the system actually works, and works well. Why is the legislature pushing legislation that will effectively disenfranchise many of Maine's senior citizens or those with physical disabilities which make attending public meetings in person sometimes difficult or impossible, but otherwise are more than capable to serve through the plethora of technology that exists to make it so? This does not make sense!

As was offered last year during my testimony objecting to a similar legislative initiative, on behalf of the board of trustees I would like to extend an invitation each committee member to the next regularly scheduled board of trustee meeting on March 8, 2016 at 6:00 pm. at the district offices located at 184 Adams Pond Road, Boothbay so that you can see for yourselves how effectively an excellent board of elected officials operates with a member remotely accessing.

The elected board of trustees of the Boothbay Region Water District representing the towns of Boothbay, Boothbay Harbor and Southport strongly urge the committee to vote Ought Not to Pass on LD 1586 An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings.

Thank you,

Jonathan R. Ziegler
General Manager
February 24, 2016

Honorable David C. Burns, Senate Chair
Honorable Barry J. Hobbins, House Chair
Judiciary Committee
100 State House Station
Augusta, Maine 04333

Re: LD 1586, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings

Dear Senator Burns and Representative Hobbins:

The Public Utilities Commission (Commission) testifies neither for nor against LD 1586, An Act To Implement Recommendations of the Right to Know Advisory Committee Concerning Remote Participation in Public Proceedings. The bill would allow members of a body subject to Maine’s Freedom of Access Act (FOAA) to participate in public proceedings via remote access technology under certain conditions.

The Commission’s Adjudicatory Proceedings

Much of the Commission’s work occurs in adjudicatory or quasi-adjudicatory proceedings. Like a court, the Commission adjudicates cases, takes testimony, subpoenas witnesses and records, issues decisions and orders and holds public and evidentiary hearings. The Commission acts on hundreds of cases and rulemakings each year. Cases are the subject of sometimes voluminous prefiled testimony and adjudicatory hearings in front of the Commissioners and staff. The proceedings are very similar to litigation in a court case and are governed by the Administrative Procedures Act and the Commission’s Rules of Practice and Procedure (Chapter 110 of the Commission’s rules).

Much of the testimony and evidence relied upon by the Commission is presented in technical conferences and evidentiary hearings presided over by a Hearing Examiner (a Commission attorney). The Hearing Examiner makes rulings during these conferences and hearings as a judge would. Each Commissioner reviews the record in each case prior to deciding the case at its public deliberations.
The Commission addresses approximately 400 cases annually. Due to the large volume of cases, there are occasions where technical and/or evidentiary hearings are held simultaneously making it impossible for Commissioners to attend all such hearings. All three Commissioners typically do attend both rulemaking hearings and evidentiary hearings in adjudicatory cases. Some adjudicatory cases, such as rate cases, may take up to nine months (statutory deadline for a decision) and include many hearings and conferences of the parties to the case.

The Commission’s three Commissioners typically deliberate and vote on cases once a week. Deliberations are open to the public, but only the Commissioners and Commission staff, if asked a question, participate at deliberations. Again, like a court, the Commissioners each state their position on the case and vote. Parties to the case and the public are not permitted to participate. However, parties have participated in the proceeding leading up to the decision (which includes testimony, discovery, technical conferences, evidentiary hearings, briefs and reply briefs, a staff recommendation referred to as an Examiner’s Report and written comments on the Examiner’s Report).

Notice of the Commission’s deliberative sessions is posted on the Commission’s website and all parties and interested persons to cases to be deliberated are notified of the deliberation the week before. The Commission broadcasts its deliberations over the internet (both video and audio) and they are also recorded and archived on our website so anyone interested can watch and listen to the deliberations as, or after, they occur.

**Commission Statutes and Policies**

Title 35-A M.R.S. § 108-A, of the Commission’s governing statutes, establishes that a quorum of two of three Commissioners is necessary for the Commission to act. In rare circumstances, a Commissioner may need to call into its public deliberations, typically due to weather or attendance at a regional utility meeting. The Commission’s telebridge is connected to the sound system in our hearing room so anyone participating by phone can be heard in the room and clearly recorded. As noted below, in these rare cases, a Commissioner participating remotely has all relevant documents related to cases being deliberated. In addition to Commission deliberations, it also could be necessary for two Commissioners to call into an evidentiary hearing or other meeting which meets Maine’s FOAA definition of public meeting.

The Commission has a policy, adopted in July of 2013, for Commissioner participation in hearings and deliberations remotely by telephonic, video, electronic or other similar means. Specifically, the policy provides that one or more Commissioners may participate in deliberations remotely if the following requirements are met:

1) Notice of the deliberations has been provided pursuant to 1 M.R.S. § 406 and 35-A M.R.S. § 108-A;

2) The Commission’s sound system is operating in a manner that allows all Commissioners to hear and speak to each other during the deliberations;

3) The Commission’s sound system is operating in a manner that allows persons attending deliberations to hear all Commissioners participating in the deliberations; and
4) Any Commissioner participating remotely has all documents or materials to be discussed at the deliberations.

The policy provides that if these requirements have been met, the deliberations and any votes that take place will be treated in the same manner as if the Commissioner was attending in person. With respect to hearings presided over by Hearing Examiners, the policy provides that a Commissioner may participate in hearings remotely and that participating in a hearing remotely is the same as if the Commissioner was attending in person.

Legislative Background:

Last session the Commission submitted LD 448, An Act Regarding the Use of Remote-access Technology at Public Meetings of the Public Utilities Commission for the Legislature’s consideration. A public hearing was held on the bill in the Judiciary Committee on April 1, 2015 and on April 9 the Committee voted not to pass on the bill intending to address the issue raised by LD 448 when it considered LD 1241, An Act to Increase Government Efficiency. The Commission testified on LD 1241 and prior bills dealing with the use of remote access technology by State agencies.

As the Committee is aware, some State agencies have language regarding the ability to use remote-access technology to conduct meetings in their governing statutes. For example, the Workers Compensation Board’s statutes provide that the Board shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology, and the Emergency Medical Services’ Board’s statutes provide that the board may use video conferencing and other technologies to conduct its business. LD 448 would have added similar language to the Commission’s governing statutes.

LD 1586

Section 403-A(1) would allow members of a body subject to FOAA to participate in meetings through telephonic, video electronic or other similar means of communications under certain conditions. The body must have adopted a written policy authorizing remote participation with criteria that must be met before a member may participate remotely, but the policy may not allow a member to participate remotely in an executive session. As noted above, the Commission has a policy regarding the use of remote participation.

Section 403-A (1) would also require that a quorum of the body must be physically present unless an emergency has been declared (e.g., disasters or a public health epidemic) and the proceeding is necessary to address the emergency. With respect to the Commission’s public deliberations of cases, we understand this language to mean that a Commissioner could participate and vote on cases remotely provided there is a quorum of the other two Commissioners physically present at deliberations. We note that the Commission already meets the majority of the other requirements for remote participation in LD 1586 (notice of the proceeding, each Commissioner is able to hear and speak with other Commissioners and members of the public in attendance are able to hear the Commissioners participating

1 39-A M.R.S. § 151(5).
2 32 M.R.S. § 88(1)(D).
remotely, documents discussed at the proceeding must have been received by or transmitted to members participating remotely and all votes must be taken by roll call vote). The final requirement, that a Commissioner participating remotely must identify anyone else present at their location can easily be added to the Commission’s procedure.

Section 403-A (2) can be interpreted in two different ways. Both of these interpretations are of concern to the Commission. First, the language can be read to prevent a Commissioner that is participating remotely in a deliberative session from actually voting on the matters before the Commission. If this is a correct interpretation, then, in effect, a Commissioner would not be able to participate in a deliberative session remotely. Second, the language can be read to mean that a Commissioner who is not physically present at an evidentiary hearing in a case cannot vote on evidence presented at that hearing at a future deliberative session. If this is a correct reading of the language, then Commissioners would have to attend in person every session in every proceeding in which potential evidence may be presented. As discussed above, the Commission’s Hearing Examiners preside over these hearings and typically rule on evidentiary issues. If this language means that a Commissioner who heard evidence remotely could not ultimately vote on the issues of the case issue several months later, then essentially a requirement would be created that all Commissioners attend all of these sessions. This would have a serious impact on the Commission’s ability to process cases in a timely manner and to meet its statutory deadlines for processing cases.

The Commission looks forward to working with the Committee on LD 1586 and I would be happy to respond to any questions the Committee has at this time. The Commission will also be present at the work session should the Committee have any additional questions in its consideration of this bill.

Sincerely,

[Signature]

Carlisle J. T. McLean
Commissioner

cc: Judiciary Committee Members
    Energy, Utilities and Technology Committee Members
    Margaret Reincsh, Legislative Analyst
    Deirdre Schneider, Legislative Analyst
Testimony of the University of Maine System

LD 1586, An Act to Implement the Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Meetings

February 24, 2016

Senator Burns, Representative Hobbins, and Members of the Joint Standing Committee on Judiciary. I am Alison Sucy, Assistant Director of Government Relations for the University of Maine System. I am here today to testify neither for nor against LD 1586, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Remote Participation in Public Meetings.

The University of Maine System fully supports the public’s right to participate in Board of Trustees meetings, whether full board meetings or committee meetings. We already have policies reflective of many of those outlined in LD 1586 regarding meetings conducted through telephonic, video, electronic or other similar means of communication.

Our major concern is the physical presence requirement in Part A, Section 403-A(1)(C). We have related concerns about the annual physical presence requirement in Section 403-A(3) and the executive session physical presence requirement in Section 403-A(1)(A).

Section 403-A(1)(C)
The Bylaws of the System require that the Board must meet a minimum of once a quarter. Currently the Board is meeting 6 times a year. In addition, we have 6 standing committees that meet regularly.

Our 16 Board members come from all corners of the state. While a physical presence at our Board meetings is generally the norm, requiring a quorum to be physically at the location of all standing committee meetings would be extremely challenging. It would be nearly impossible to carry out the current level of Board engagement with a physical presence requirement due to the number of committee meetings and the time and travel commitments necessary.

We have adopted policies for quorums and physical presence at meetings. Our bylaws for standing committees and quorum requirements of full Board meetings are as follows:
3.1(h) Standing Committees Committee meetings held at time other than a regular meeting of the Board may be conducted using interactive technology and all members participating by such technology shall be considered as present, count towards the quorum, and are eligible to vote provided there is a physical location designated as the meeting site for inclusion of the public and that each Trustee must be able to clearly see or hear and understand the proceedings in process and the public is able to see or hear the Trustees participating by interactive technology.

4.6 Quorum A Trustee who cannot be in physical attendance may participate and vote by telephone, Polycom, or other similar interactive technology where the Chair has determined on the record that the physical presence of the non-attending Trustee is prevented by an exceptional occasion which makes it inadvisable or impossible to attend the meeting. The presence of the non-attending Trustee in this manner shall be counted towards a quorum. In order to exercise this option the Trustee must be able to clearly hear and understand the proceedings in process and the public must be able to hear clearly the non-attending Trustee.

We believe that the language adopted by our Trustees strikes the right balance between the public’s right to have full access to all UMS Board, committee and sub-committee meetings and the unique challenges of scheduling regular meetings with Trustees scattered in all corners of Maine. To that end, we ask that you consider removing the physical presence requirement in Part A, Section 403-A(1)(C).

Section 403-A(3)
Relatedly, we are concerned that a perhaps unintended consequence of proposed Section 403-A(3)—which would require all members of a public body to physically assemble in the same location at least once annually—will have the unintended effect of denying a member the ability to participate in the meeting at all if he or she is unable, through no fault of his or her own, to travel to the designated meeting location on the designated day. While we routinely have full Board meetings with no members participating remotely, there cannot be a guarantee that all Board members will be able to travel to a particular meeting set as the “in presence” annual meeting called for by this provision. We would thus encourage that this provision be an aspirational goal but not a legal mandate.

Section 403-A(1)(A)
Finally, Section 403-A(1)(A) would apparently bar a Board or committee member from participating in an otherwise lawful executive session simply because he or she was participating remotely. Currently, the University System permits members who are unable to travel to the physical meeting location to participate fully in executive session, if one is called under 1 MRSA Section 405, just as they are permitted to participate in the public portion of the meeting.

Given the important subjects that Maine’s Freedom of Access Act authorizes members of a public body to properly discuss in executive session—legal or labor relations matters, for example—we urge you to permit a member who is lawfully able to remotely participate in the public portion of a meeting to equally participate in a lawful executive session of that meeting.

Thank you for the opportunity to testify and for considering our concerns.
February 24, 2016

The Honorable Senator Burns, Chair
The Honorable Representative Hobbins, Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333

RE: LD 1586, An Act To Implement Recommendations of the Right to Know Advisory Committee Concerning Remote Participation in Public Proceedings

Dear Chairs Burns and Hobbins and Members of the Committee:

This letter addresses LD 1586, An Act to Implement Recommendations of the Right to Know Advisory Committee Concerning Remote Participation in Public Proceedings. The Maine Community College System (MCCS) requests consideration of the following.

State law requires that the MCCS Board of Trustees attempt to “achieve statewide geographical representation.” 20-A MRSA 12705(2). And the MCCS Board has such representation, with members from Lebanon and Kennebunk to Calais to Fort Fairfield.

The Board is also required by law to hold at least six regular meetings per year. 20-A MRSA 12705(2). Notice of these meetings is given in advance, and these meeting are always “open to the press and the public, except by vote of the Board for discussion of those matters which are permitted by law to be discussed in executive session.” MCCS Bylaw 4.6. These regular meetings are also always in person, and the Board’s Bylaws expressly state the preference that the members should attend in person: “A trustee who cannot be in physical attendance may participate and vote by telephone, Polycom, or other similar interactive technology” only if “the Chair determines that the trustee’s physical presence is prevented by an exceptional circumstance which makes it inadvisable or impossible to so participate.” MCCS Bylaw 4.8

When attendance at a regular meeting is not possible, or when there is a need for a special meeting of the Board or its Committees, our rules provide that the Board “may meet by use of interactive technology provided that there is a physical location designated as the meeting site for inclusion of the public; that each trustee can see or hear and understand the proceedings in process; and provided further that the public is able to see or hear the trustees participating by interactive technology. All Board members participating by such technology shall be considered present, counted for the quorum and eligible to vote.” MCCS Bylaw 4.5.
Joint Standing Committee on Judiciary
February 24, 2016
Page Two

The above approach works very well; it enables MCCS to meet its fiduciary obligation to make thoughtful and timely decisions, and to do so in compliance with Maine’s Freedom of Access Act.

Part A, section 1, paragraph A of this bill would prohibit a member of a board who is not physically present to participate in an executive session. This prohibition would seriously hinder the MCCS Board of Trustees’ ability to conduct business. Board items that are discussed in executive session are often items that are time sensitive in nature and require thoughtful and prompt action. MCCS’ ability to conduct meetings in executive session through remote means ensures timely action on key matters all the while respecting the geographical, professional, and personal constraints of our board members who may not always be able to drive 4-5 hours for what would amount to a half hour long meeting.

Because our Board is truly a statewide entity, MCCS requests being exempt from the requirements of this bill, just as other statewide boards such as the Finance Authority of Maine are exempt.

Thank you for your consideration. As always, I am available should you have any questions or would like to discuss this matter further.

 Truly yours,

Derek P. Langhauser
Interim President and General Counsel
Maine Community College System
to prior notice of the intent to discuss official business must meet the requirements of the Open Meetings Laws.

La. Atty. Gen. Op. No. 84-0395: A "public body" includes any committee or subcommittee of a city governing authority, and the fact that a committee cannot make a final decision on a matter does not remove meetings of that committee from the ambit of the open meetings requirements. It was found, "In conclusion, a working committee of a municipality constitutes a public body when it meets to discuss matters over which it has authority or advisory power, even if the committee takes no binding action."

La. R.S. 42:14  Meetings of public bodies to be open to the public

A. Every meeting of any public body shall be open to the public unless closed pursuant to R.S. 42:16, R.S. 42:17, or R.S. 42:18.

B. Each public body shall be prohibited from utilizing any manner of proxy voting procedure, secret balloting, or any other means to circumvent the intent of R.S. 42:12 through R.S. 42:23.

C. All votes made by members of a public body shall be viva voce and shall be recorded in the minutes, journal, or other official, written proceedings of the body, which shall be a public document.

D. Except school boards, which shall be subject to R.S. 42:15, each public body conducting a meeting which is subject to the notice requirements of R.S. 42:19(A) shall allow a public comment period at any point in the meeting prior to action on an agenda item upon which a vote is to be taken. The governing body may adopt reasonable rules, regulations, and restrictions regarding such comment period.

La. Atty. Gen. Op. No. 13-0221: The mayor of a Lawrason Act municipality has the authority to control which items appear on the agenda for a meeting of the municipality. This authority may be delegated to a municipal officer or employee as the mayor deems necessary and advisable. The public comment period at a meeting of a public body must occur at the beginning of the meeting, prior to action on an agenda item upon which a vote is to be taken.

La. R.S. 42:15  School board meetings: public comment

A. Notwithstanding any other law to the contrary, each school board subject to the provisions of this Chapter, except as provided in Subsection B of this Section, shall allow public comment at any meeting of the school board prior to taking any vote. The comment period shall be for each agenda item and shall precede each agenda item.

B. The Orleans Parish School Board, at any meeting of the school board, shall provide an opportunity for public comment subject to reasonable rules, regulations, and restrictions as adopted by the school board.

C. For purposes of this Section, a comment period for all comments at the beginning of a meeting shall not suffice to meet the requirements of Subsection A or Subsection B of this Section.
121.22 Public meetings - exceptions.

(A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.

(B) As used in this section:

(1) "Public body" means any of the following:

(a) Any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution;

(b) Any committee or subcommittee of a body described in division (B)(1)(a) of this section;

(c) A court of jurisdiction of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use when meeting for the purpose of the appointment, removal, or reappointment of a member of the board of directors of such a district pursuant to section 6115.10 of the Revised Code, if applicable, or for any other matter related to such a district other than litigation involving the district. As used in division (B)(1)(c) of this section, "court of jurisdiction" has the same meaning as "court" in section 6115.01 of the Revised Code.

(2) "Meeting" means any prearranged discussion of the public business of the public body by a majority of its members.

(3) "Regulated individual" means either of the following:

(a) A student in a state or local public educational institution;

(b) A person who is, voluntarily or involuntarily, an inmate, patient, or resident of a state or local institution because of criminal behavior, mental illness, an intellectual disability, disease, disability, age, or other condition requiring custodial care.

(4) "Public office" has the same meaning as in section 149.011 of the Revised Code.

(C) All meetings of any public body are declared to be public meetings open to the public at all times. A member of a public body shall be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting.

The minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under division (G) or (J) of this section.

(D) This section does not apply to any of the following:

(1) A grand jury;

(2) An audit conference conducted by the auditor of state or independent certified public accountants with officials of the public office that is the subject of the audit;
Part I  
ADMINISTRATION OF THE GOVERNMENT

Title III  
LAWS RELATING TO STATE OFFICERS

Chapter 30A  
STATE ADMINISTRATIVE PROCEDURE

Section 20  
MEETINGS OF A PUBLIC BODY TO BE OPEN TO THE PUBLIC; NOTICE OF MEETING; REMOTE PARTICIPATION; RECORDING AND TRANSMISSION OF MEETING; REMOVAL OF PERSONS FOR DISRUPTION OF PROCEEDINGS; OFFICE HOLDERS TO CERTIFY RECEIPT OF OPEN MEETING LAW AND EDUCATIONAL MATERIALS

Section 20. (a) Except as provided in section 21, all meetings of a public body shall be open to the public.

(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to the meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of the meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.

For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies. For meetings of a regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or town within the district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in the places as the county commissioners shall designate for the purpose.

For meetings of a state public body, notice shall be filed with the attorney general by posting on a website under the procedures established for this purpose and a duplicate copy of the notice shall be filed with the regulations division in the state secretary's office.

The attorney general may prescribe or approve alternative methods of notice where the attorney general determines the alternative methods will afford more effective notice to the public.

(d) The attorney general may, by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided further, that a quorum of the body, including the chair, are present at the meeting location. The authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

[Subsection (e) effective until July 1, 2015. For text effective July 1, 2015, see below.]
(e) A local commission on disability may by majority vote of the commissioners at a regular meeting permit remote participation applicable to a specific meeting or generally to all of the commission's meetings; provided, however, that the commission shall comply with all other requirements of law and regulation.

[Subsection (e) as amended by 2015, 46, Sec. 52 effective July 1, 2015. See 2015, 46, Sec. 216. For text effective until July 1, 2015, see above.]

(e) A local commission on disability may by majority vote of the commissioners at a regular meeting authorize remote participation applicable to a specific meeting or generally to all of the commission's meetings. If a local commission on disability is authorized to utilize remote participation, a physical quorum of that commission's members shall not be required to be present at the meeting location; provided, however, that the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location. The commission shall comply with all other requirements of law.

(f) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting, the chair shall inform other attendees of any recordings.

(g) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

(h) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated under section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application under section 19. Unless otherwise directed or approved by the attorney general, the appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.
940 CMR: OFFICE OF THE ATTORNEY GENERAL

940 CMR 29.00: OPEN MEETINGS

Section
29.01: Purpose, Scope and Other General Provisions
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29.01: Purpose, Scope and Other General Provisions

(1) Purpose. The purpose of 940 CMR 29.00 is to interpret, enforce and effectuate the purposes of the Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25.

(2) Severability. If any provision of 940 CMR 29.00 or the application of such provision to any person, public body, or circumstances shall be held invalid, the validity of the remainder of 940 CMR 29.00 and the applicability of such provision to other persons, public bodies, or circumstances shall not be affected thereby.

(3) Mailing. All complaints, notices (except meeting notices), and other materials that must be sent to another party shall be sent by one of the following means: first class mail, email, hand delivery, or by any other means at least as expeditious as first class mail.

29.02: Definitions

As used in 940 CMR 29.00, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

County Public Body means a public body created by county government with jurisdiction that comprises a single county.

District Public Body means a public body with jurisdiction that extends to two or more municipalities.

Emergency means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.
Intentional Violation means an act or omission by a public body or a member thereof, in knowing violation of M.G.L. c. 30A, §§ 18 through 25. Evidence of an intentional violation of M.G.L. c. 30A, §§ 18 through 25 shall include, but not be limited to, that the public body or public body member: (a) acted with specific intent to violate the law; (b) acted with deliberate ignorance of the law's requirements; or (c) was previously informed by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General, pursuant to 940 CMR 29.07 or 940 CMR 29.08, that the conduct violates M.G.L. c. 30A, §§ 18 through 25. Where a public body or public body member has made a good faith attempt at compliance with the law, but was reasonably mistaken about its requirements, such conduct will not be considered an intentional violation of M.G.L. c. 30A, §§ 18 through 25.

Person means all individuals and entities, including governmental officials and employees. Person does not include public bodies.

Post Notice means to place a written announcement of a meeting on a bulletin board, electronic display, website, or in a loose-leaf binder in a manner conspicuously visible to the public, including persons with disabilities, at all hours, in accordance with 940 CMR 29.03.

Public Body has the identical meaning as set forth in M.G.L. c. 30A, § 18, that is, a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that "public body" shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

Qualification for Office means the election or appointment of a person to a public body and the taking of the oath of office, where required, and shall include qualification for a second or any subsequent term of office. Where no term of office for a member of a public body is specified, the member shall be deemed to be qualified for office on a biennial basis following appointment or election to office.

Regional Public Body means a public body with jurisdiction that extends to two or more municipalities.

Remote Participation means participation by a member of a public body during a meeting of that public body where the member is not physically present at the meeting location.

29.03: Notice Posting Requirements
(f) that minutes, records or other materials be made public; or

(g) other appropriate action.

Orders issued following a hearing shall be available on the Attorney General's website.

(4) A public body subject to an order of the Attorney General following a written determination issued pursuant to 940 CMR 29.07 shall notify the Attorney General in writing of its compliance with the order within 30 days of receipt of the order, unless otherwise indicated by the order itself. A public body need not notify the Attorney General of its compliance with an order requiring solely immediate and future compliance pursuant to 940 CMR 29.07(2)(b)(1) or 940 CMR 29.07(3)(a).

(5) A public body or any member of a body aggrieved by any order issued by the Attorney General under 940 CMR 29.07 may obtain judicial review of the order through an action in Superior Court seeking relief in the nature of certiorari. Any such action must be commenced in Superior Court within 21 days of receipt of the order.

29.08: Advisory Opinions

The Attorney General will generally not issue advisory opinions. However, the Attorney General may issue written guidance to address common requests for interpretation. Such written guidance will appear on the Attorney General's website.

29.09: Other Enforcement Actions

Nothing in 940 CMR 29.06 or 29.07 shall limit the Attorney General's authority to file a civil action to enforce M.G.L. c. 30A, §§ 18 through 25, pursuant to M.G.L. c. 30A, § 23(f).

29.10: Remote Participation

(1) Preamble. Remote participation may be permitted subject to the following procedures and restrictions. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. By promulgating 940 CMR 29.10, the Attorney General hopes to promote greater participation in government. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of the M.G.L. c. 30A, §§ 18 through 25, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

(2) Adoption of Remote Participation. Remote participation in meetings of public bodies is not permitted unless the practice has been adopted as follows:

(a) Local Public Bodies. The Chief Executive Officer, as defined in M.G.L. c. 4, § 7, must authorize or, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that authorization or vote applying to all subsequent meetings of all local public bodies in that municipality.
(b) Regional or District Public Bodies. The regional or district public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(c) Regional School Districts. The regional school district committee must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(d) County Public Bodies. The county commissioners must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of all county public bodies in that county.

(e) State Public Bodies. The state public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(f) Retirement Boards. A retirement board created pursuant to M.G.L. c. 32, § 20 or M.G.L. c. 34B, § 19 must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(g) Local Commissions on Disability. In accordance with M.G.L. c. 30A, § 20(c), a local commission on disability may by majority vote of the commissioners at a regular meeting authorize remote participation applicable to a specific meeting or generally to all of the commission's meetings. If a local commission on disability is authorized to utilize remote participation, a physical quorum of that commission's members shall not be required to be present at the meeting location; provided, however, that the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location. The commission shall comply with all other requirements of law.

(3) Revocation of Remote Participation. Any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) may revoke that adoption in the same manner.

(4) Minimum Requirements for Remote Participation.

(a) Members of a public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other, as required by M.G.L. c. 30A, § 20(d);

(b) A quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location, as required by M.G.L. c. 30A, § 20(d);
(c) Members of public bodies who participate remotely may vote and shall not be deemed absent for the purposes of M.G.L. c. 39, § 23D.

(5) Permissible Reason for Remote Participation. If remote participation has been adopted in accordance with 940 CMR 29.10(2), a member of a public body shall be permitted to participate remotely in a meeting, in accordance with the procedures described in 940 CMR 29.10(7), only if physical attendance would be unreasonably difficult.

(6) Technology.

(a) The following media are acceptable methods for remote participation. Remote participation by any other means is not permitted. Accommodations shall be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.

   i. telephone, internet, or satellite enabled audio or video conferencing;

   ii. any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another.

(b) When video technology is in use, the remote participant shall be clearly visible to all persons present in the meeting location.

(c) The public body shall determine which of the acceptable methods may be used by its members.

(d) The chair or, in the chair's absence, the person chairing the meeting, may decide how to address technical difficulties that arise as a result of utilizing remote participation, but is encouraged, wherever possible, to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If technical difficulties result in a remote participant being disconnected from the meeting, that fact and the time at which the disconnection occurred shall be noted in the meeting minutes.

(e) The amount and source of payment for any costs associated with remote participation shall be determined by the applicable adopting entity identified in 940 CMR 29.10(2).

(7) Procedures for Remote Participation.

(a) Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or, in the chair's absence, the person chairing the meeting, of his or her desire to do so and the reason for and facts supporting his or her request.
(b) At the start of the meeting, the chair shall announce the name of any member who will be participating remotely. This information shall also be recorded in the meeting minutes.

(c) All votes taken during any meeting in which a member participates remotely shall be by roll call vote.

(d) A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless presence of that person is approved by a simple majority vote of the public body.

(e) When feasible, the chair or, in the chair's absence, the person chairing the meeting, shall distribute to remote participants, in advance of the meeting, copies of any documents or exhibits that he or she reasonably anticipates will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting, and shall be listed in the meeting minutes and retained in accordance with M.G.L. c. 30A, § 22.

(8) Further Restriction by Adopting Authority. 940 CMR 29.10 does not prohibit any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) from enacting policies, laws, rules or regulations that prohibit or further restrict the use of remote participation by public bodies within that person or entity's jurisdiction, provided those policies, laws, rules or regulations do not violate state or federal law.

(9) Remedy for Violation. If the Attorney General determines, after investigation, that 940 CMR 29.10 has been violated, the Attorney General may resolve the investigation by ordering the public body to temporarily or permanently discontinue its use of remote participation.

29.11: Meeting Minutes

(1) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes, in accordance with M.G.L. c. 30A, § 22(a).

(2) Minutes of all open and executive sessions shall be created and approved in a timely manner. A “timely manner” will generally be considered to be within the next three public body meetings or within 30 days, whichever is later, unless the public body can show good cause for further delay. The Attorney General encourages public bodies to approve minutes at the next meeting whenever possible.

REGULATORY AUTHORITY 940 CMR 29.00: M.G.L. c. 30A, § 25(a) and (b).
Sec. 1-200. (Formerly Sec. 1-18a). Definitions. As used in this chapter, the following words and phrases shall have the following meanings, except where such terms are used in a context which clearly indicates the contrary:

1. “Public agency” or “agency” means:

(A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official, and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions, and for purposes of this subparagraph, “judicial office” includes, but is not limited to, the Division of Public Defender Services;

(B) Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law;

(C) Any “implementing agency”, as defined in section 32-222.

2. “Meeting” means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power. “Meeting” does not include: Any meeting of a personnel search committee for executive level employment candidates; any chance meeting, or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business; strategy or negotiations with respect to collective bargaining; a caucus of members of a single political party notwithstanding that such members also constitute a quorum of a public agency; an administrative or staff meeting of a single-member public agency; and communication limited to notice of meetings of any public agency or the agendas thereof. A quorum of the members of a public agency who are present at any event which has been noticed and conducted as a meeting of another public agency under the provisions of the Freedom of Information Act shall not be deemed to be holding a meeting of the public agency of which they are members as a result of their presence at such event.

3. “Caucus” means (A) a convening or assembly of the enrolled members of a single political party who are members of a public agency within the state or a political subdivision, or (B) the members of a multimember public agency, which members constitute a majority of the membership of the agency, or the other members of the agency who constitute a minority of the membership of the agency, who register their intention to be considered a majority caucus or minority caucus, as the case may be, for the purposes of the Freedom of Information Act, provided (i) the registration is made with the office of the Secretary of the State for any such public agency of the state, in the office of the clerk of a political subdivision of the state for any public agency of a political subdivision of the state, or in the office of the clerk of each municipal member of any multitown district or agency, (ii) no member is registered in more than one caucus at any one time, (iii) no such member’s registration is rescinded during the member’s remaining term of office, and (iv) a member may remain a registered member of the majority caucus or minority caucus regardless of whether the member changes his or her party affiliation under chapter 143.

4. “Person” means natural person, partnership, corporation, limited liability company, association or society.

5. “Public records or files” means any recorded data or information relating to the conduct of the public’s business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

6. “Executive sessions” means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (A) Discussion concerning the appointment, employment, performance, evaluation,
health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting; (B) strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof, because of the member’s conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled; (C) matters concerning security strategy or the deployment of security personnel, or devices affecting public security; (D) discussion of the selection of a site or the lease, sale or purchase of real estate by the state or a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would adversely impact the price of such site, lease, sale, purchase or construction until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; and (E) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210.

(7) “Personnel search committee” means a body appointed by a public agency, whose sole purpose is to recommend to the appointing agency a candidate or candidates for an executive-level employment position. Members of a “personnel search committee” shall not be considered in determining whether there is a quorum of the appointing or any other public agency.

(8) “Pending claim” means a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action in an appropriate forum if such relief or right is not granted.

(9) “Pending litigation” means (A) a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action before a court if such relief or right is not granted by the agency; (B) the service of a complaint against an agency returnable to a court which seeks to enforce or implement legal relief or a legal right; or (C) the agency’s consideration of action to enforce or implement legal relief or a legal right.

(10) “Freedom of Information Act” means this chapter.

(11) “Governmental function” means the administration or management of a program of a public agency, which program has been authorized by law to be administered or managed by a person, where (A) the person receives funding from the public agency for administering or managing the program, (B) the public agency is involved in or regulates to a significant extent such person’s administration or management of the program, whether or not such involvement or regulation is direct, pervasive, continuous or day-to-day, and (C) the person participates in the formulation of governmental policies or decisions in connection with the administration or management of the program and such policies or decisions bind the public agency. “Governmental function” shall not include the mere provision of goods or services to a public agency without the delegated responsibility to administer or manage a program of a public agency.

(P.A. 75-342, S. 1; P.A. 77-421; 77-609, S. 1, 8; P.A. 83-67, S. 1; 83-372; P.A. 84-546, S. 3, 173; P.A. 87-568, S. 1, 2; P.A. 90-307, S. 2, 5; P.A. 91-140, S. 1, 3; P.A. 93-195, S. 1; P.A. 95-79, S. 2, 189; P.A. 97-47, S. 1; P.A. 00-136, S. 1; P.A. 01-169, S. 1; P.A. 02-130, S. 17; P.A. 11-220, S. 1; P.A. 13-263, S. 7.)

History: P.A. 77-421 deleted reference to court of common pleas, probate court and juvenile court in Subsec. (a); P.A. 77-609 redefined “meeting” and “executive sessions”; P.A. 83-67 amended Subsec. (a) by including any state, municipal or district authority within the meaning of “agency” or “public agency”; P.A. 83-372 included within the definition of “agency” or “public agency” any committee formed by a body previously defined as an agency or public agency; P.A. 84-546 included committees of authorities in definition of “public agency”; P.A. 87-568 excluded from definition of “meeting” any “meeting of a personnel search committee for executive level employment candidates” and added Subsec. (f), defining “personnel search committee”; P.A. 90-307 added Subsec. (g) re exception to meeting provisions; P.A. 91-140 inserted new Subsecs. (g) and (h), defining “pending claim” and “pending litigation”, and relettered former Subsec. (g) as Subsec. (i); P.A. 93-195 inserted “, or created by,” in definition of “public agency” or “agency” in Subsec. (a); P.A. 95-79 redefined “person” to include a limited liability company, effective May 31, 1995; P.A. 97-47 replaced alphabetic Subdiv. indicators with numbers, transferred quorum provisions (formerly Subdiv. (i)) to Subdiv. (2), defining “meeting”, and
TITLE VI
PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 91-A
ACCESS TO GOVERNMENTAL RECORDS AND MEETINGS

Section 91-A:2

91-A:2 Meetings Open to Public. —

I. For the purpose of this chapter, a "meeting" means the convening of a quorum of the membership of a public body, as defined in RSA 91-A:1-a, VI, or the majority of the members of such public body if the rules of that body define "quorum" as more than a majority of its members, whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, subject to the provisions set forth in RSA 91-A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters. "Meeting" shall also not include:

(a) Strategy or negotiations with respect to collective bargaining;
(b) Consultation with legal counsel;
(c) A caucus consisting of elected members of a public body of the same political party who were elected on a partisan basis at a state general election or elected on a partisan basis by a town or city which has adopted a partisan ballot system pursuant to RSA 669:12 or RSA 44:2; or
(d) Circulation of draft documents which, when finalized, are intended only to formalize decisions previously made in a meeting; provided, that nothing in this subparagraph shall be construed to alter or affect the application of any other section of RSA 91-A to such documents or related communications.

[Paragraph II effective until January 1, 2017; see also paragraph II set out below.]

II. Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at such meetings. Minutes of all such meetings, including names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions, shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or town or guidelines or rules of order of any public body require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take...
precedence over the requirements of this chapter. For the purposes of this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday, excluding national and state holidays.

[Paragraph II effective January 1, 2017; see also paragraph II set out above.]

II. Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at such meetings. Minutes of all such meetings, including nonpublic sessions, shall include the names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions. Subject to the provisions of RSA 91-A:3, minutes shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or town or guidelines or rules of order of any public body require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter. For the purposes of this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday, excluding national and state holidays.

III. A public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body, subject to the provisions of this paragraph.

(a) A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical. Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.

(b) Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice as the location of the meeting. For purposes of this subparagraph, an "emergency" means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body, and the facts upon which that determination is based shall be included in the minutes of the meeting.

(c) Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear each other and speak to each other during the meeting, and shall be audible or otherwise discernable to the public in attendance at the meeting's location. Any member participating in such fashion shall identify the persons present in the location from which the member is participating. No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.

(d) Any meeting held pursuant to the terms of this paragraph shall comply with all of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

(e) A member participating in a meeting by the means described in this paragraph is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting shall be by roll call vote.
The Vermont Statutes Online

Title 01: General Provisions
Chapter 005: Common Law; General Rights
Subchapter 002: Public Information

(Cite as: 1 V.S.A. § 312)

§ 312. Right to attend meetings of public agencies

(a)(1) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting, except as provided under subdivision 313(a)(2) of this title. A meeting of a public body is subject to the public accommodation requirements of 9 V.S.A. chapter 199. A public body shall electronically record all public hearings held to provide a forum for public comment on a proposed rule, pursuant to 3 V.S.A. § 840. The public shall have access to copies of such electronic recordings as described in section 316 of this title.

(2) Participation in meetings through electronic or other means.

(A) As long as the requirements of this subchapter are met, one or more of the members of a public body may attend a regular, special, or emergency meeting by electronic or other means without being physically present at a designated meeting location.

(B) If one or more members attend a meeting by electronic or other means, such members may fully participate in discussing the business of the public body and voting to take an action, but any vote of the public body that is not unanimous shall be taken by roll call.

(C) Each member who attends a meeting without being physically present at a designated meeting location shall:

(i) identify himself or herself when the meeting is convened; and

(ii) be able to hear the conduct of the meeting and be heard throughout the meeting.

(D) If a quorum of the members of a public body attend a meeting without being physically present at a designated meeting location, the agenda required under subsection (d) of this section shall designate at least one physical location where a member of the public can attend and participate in the meeting. At least one member of the public body, or at least one staff or designee of the public body, shall be physically present at each designated meeting location.

(b)(1) Minutes shall be taken of all meetings of public bodies. The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting. Minutes shall include at least the following minimal information:

(A) all members of the public body present;

(B) all other active participants in the meeting;

(C) all motions, proposals, and resolutions made, offered, and considered, and what disposition is made of same; and

(D) the results of any votes, with a record of the individual vote of each member if a roll call is taken.

(2) Minutes of all public meetings shall be matters of public record, shall be kept by the clerk or secretary of the public body, and shall be available for inspection by any person and for purchase of copies at cost upon request after five calendar days from the date of any meeting. Meeting minutes shall be posted no later than five calendar days from the date of the meeting to a website, if one exists, that the public body maintains or has designated as the official website of the body. Except for draft minutes that have been substituted with updated minutes, posted minutes shall not be removed from the website sooner than one year from the date of the meeting for which the minutes were taken.

(c)(1) The time and place of all regular meetings subject to this section shall be clearly designated by statute, charter, regulation, ordinance, bylaw, resolution, or other determining authority of the public body, and this information shall be available to any person upon request. The time and place of all public hearings and meetings scheduled by all Executive Branch State agencies, departments, boards, or commissions shall be available to the public as required under 3 V.S.A. § 2222(c).

(2) The time, place, and purpose of a special meeting subject to this section shall be publicly announced at least 24 hours before the meeting. Municipal public bodies shall post notices of special meetings in or near the municipal clerk's office and in at least two other designated public places in the municipality, at least 24 hours before the meeting. In addition, notice shall be given, either orally or in writing, to each member of the public body at least 24 hours before the meeting, except that a member may waive notice of a special meeting.

(3) Emergency meetings may be held without public announcement, without posting of notices, and without 24-hour notice to members, provided some public notice thereof is given as soon as possible before any such meeting. Emergency meetings may be held only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention by the public body.

(4) Any adjourned meeting shall be considered a new meeting, unless the time and place for the adjourned meeting is announced before the meeting adjourns.

(5) A person may request in writing that a public body notify the person of special meetings of the public body. The request shall apply only to the calendar year in which it is made, unless made in December, in which case it shall apply also to the following year.

(d)(1) At least 48 hours prior to a regular meeting, and at least 24 hours prior to a special meeting, a meeting agenda shall be:

http://legislature.vermont.gov/statutes/section/01/005/00312
(A) posted to a website, if one exists, that the public body maintains or designates as the official website of the body; and

(B) in the case of a municipal public body, posted in or near the municipal office and in at least two other designated public places in the municipality.

(2) A meeting agenda shall be made available to a person prior to the meeting upon specific request.

(3)(A) Any addition to or deletion from the agenda shall be made as the first act of business at the meeting.

(B) Any other adjustment to the agenda may be made at any time during the meeting.

(e) Nothing in this section or in section 313 of this title shall be construed as extending to the Judicial Branch of the Government of Vermont or of any part of the same or to the Public Service Board; nor shall it extend to the deliberations of any public body in connection with a quasi-judicial proceeding; nor shall anything in this section be construed to require the making public of any proceedings, records, or acts which are specifically made confidential by the laws of the United States of America or of this State.

(f) A written decision issued by a public body in connection with a quasi-judicial proceeding need not be adopted at an open meeting if the decision will be a public record.

(g) The provisions of this subchapter shall not apply to site inspections for the purpose of assessing damage or making tax assessments or abatements, clerical work, or work assignments of staff or other personnel. Routine, day-to-day administrative matters that do not require action by the public body, may be conducted outside a duly warned meeting, provided that no money is appropriated, expended, or encumbered.

(h) At an open meeting the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting as long as order is maintained. Public comment shall be subject to reasonable rules established by the chairperson. This subsection shall not apply to quasi-judicial proceedings.

(i) Nothing in this section shall be construed to prohibit the Parole Board from meeting at correctional facilities with attendance at the meeting subject to rules regarding access and security established by the superintendent of the facility. (Amended 1973, No. 78, § 1, eff. April 23, 1973; 1979, No. 151 (Adj. Sess.), § 2; 1987, No. 256 (Adj. Sess.), § 2; 1997, No. 148 (Adj. Sess.), § 64, eff. April 29, 1998; 1999, No. 146 (Adj. Sess.), § 7; 2013, No. 143 (Adj. Sess.), § 2; 2015, No. 129 (Adj. Sess.), § 1, eff. May 24, 2016.)
§ 42-46-5 Purposes for which meeting may be closed – Use of electronic communications – Judicial proceedings – Disruptive conduct.

(a) A public body may hold a meeting closed to the public pursuant to § 42-46-4 for one or more of the following purposes:

(1) Any discussions of the job performance, character, or physical or mental health of a person or persons provided that such person or persons affected shall have been notified in advance in writing and advised that they may require that the discussion be held at an open meeting.

Failure to provide such notification shall render any action taken against the person or persons affected null and void. Before going into a closed meeting pursuant to this subsection, the public body shall state for the record that any persons to be discussed have been so notified and this statement shall be noted in the minutes of the meeting.

(2) Sessions pertaining to collective bargaining or litigation, or work sessions pertaining to collective bargaining or litigation.

(3) Discussion regarding the matter of security including, but not limited to, the deployment of security personnel or devices.

(4) Any investigative proceedings regarding allegations of misconduct, either civil or criminal.

(5) Any discussions or considerations related to the acquisition or lease of real property for public purposes, or of the disposition of publicly held property wherein advanced public information would be detrimental to the interest of the public.

(6) Any discussions related to or concerning a prospective business or industry locating in the state of Rhode Island when an open meeting would have a detrimental effect on the interest of the public.

(7) A matter related to the question of the investment of public funds where the premature disclosure would adversely affect the public interest. Public funds shall include any investment plan or matter related thereto, including, but not limited to, state lottery plans for new promotions.

(8) Any executive sessions of a local school committee exclusively for the purposes: (i) of conducting student disciplinary hearings; or (ii) of reviewing other matters which relate to the privacy of students and their records, including all hearings of the various juvenile hearing boards of any municipality; provided, however, that any affected student shall have been notified in advance in writing and advised that he or she may require that the discussion be held in an open meeting.
Failure to provide such notification shall render any action taken against the student or students affected null and void. Before going into a closed meeting pursuant to this subsection, the public body shall state for the record that any students to be discussed have been so notified and this statement shall be noted in the minutes of the meeting.

(9) Any hearings on, or discussions of, a grievance filed pursuant to a collective bargaining agreement.

(10) Any discussion of the personal finances of a prospective donor to a library.

(b) No meeting of members of a public body or use of electronic communication, including telephonic communication and telephone conferencing, shall be used to circumvent the spirit or requirements of this chapter, provided, however, these meetings and discussions are not prohibited.

(1) Provided, further however, that discussions of a public body via electronic communication, including telephonic communication and telephone conferencing, shall be permitted only to schedule a meeting.

(2) Provided, further however, that a member of a public body may participate by use of electronic communication or telephone communication while on active duty in the armed services of the United States.

(3) Provided, further however, that a member of that public body, who has a disability as defined in chapter 87 of title 42 and:

(i) Cannot attend meetings of that public body solely by reason of his or her disability; and

(ii) Cannot otherwise participate in the meeting without the use of electronic communication or telephone communication as reasonable accommodation, may participate by use of electronic communication or telephone communication in accordance with the process below.

(4) The governor's commission on disabilities is authorized and directed to:

(i) Establish rules and regulations for determining whether a member of a public body is not otherwise able to participate in meetings of that public body without the use of electronic communication or telephone communication as a reasonable accommodation due to that member's disability;

(ii) Grant a waiver that allows a member to participate by electronic communication or telephone communication only if the member's disability would prevent him/her from being physically present at the meeting location, and the use of such communication is the only reasonable accommodation; and

(iii) Any waiver decisions shall be a matter of public record.

(c) This chapter shall not apply to proceedings of the judicial branch of state government or probate court or municipal court proceedings in any city or town.

(d) This chapter shall not prohibit the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

History of Section.
October 11, 2017

Right to Know Advisory Committee
13 State House Station
Augusta, ME 04333-0013

Re: Remote Participation

To the Right to Know Advisory Committee:

The Maine Public Utilities Commission (MPUC) has monitored the work of the Right to
Know Advisory Committee including the meeting held on September 20, 2017. Based on this
meeting, it appears that there may be some misunderstanding regarding the use and
frequency of remote participation at the MPUC.

As the MPUC stated in testimony to the Judiciary Committee presented on April 1, 2015
and February 24, 2016, the MPUC has three full-time Commissioners and addresses
approximately 400 cases annually. As required by law (35-A M.R.S. § 108-A), the Commission
decides these cases through an open meeting referred to as “deliberations.” Notice of MPUC
deliberation sessions is posted on the MPUC website and parties and interested persons of
specific cases receive direct notice a week before the session. In addition, the MPUC
broadcasts its deliberations over the internet (both audio and video) and they are also recorded
and archived on the MPUC website.

On vary rare occasions (twice in the last two years), a single Commissioner may call in
for a deliberation session due to unique scheduling or special circumstances. In such an event,
members of the public can fully hear and monitor the complete discussion among all the
Commissioners.

This remote participation process has been reviewed by MPUC counsel who has
advised that the process is lawful. However, because the MPUC was aware that some State
agencies have specific language on the use of remote-access technology in their governing
statutes and there was some general confusion regarding the legality of other State agencies
deciding matters remotely, the MPUC submitted LD 448, An Act Regarding the Use of
Remote-access Technology at Public Meetings of the Public Utilities Commission, to clarify the
matter regarding its operations. The MPUC is not advocating for any particular policy outcome
on this matter; however, the MPUC does believe that it would be useful for the Legislature to
act to clarify the issue.
If you have any questions, please do not hesitate to contact us.

Sincerely,

Mark A. Vannoy, Chairman

On behalf of the Chairman and
R. Bruce Williamson, Commissioner
Maine Public Utilities Commission
REMOTE PARTICIPATION ISSUES

1. Are all state and local agencies covered by the FOAA eligible for the remote participation option or should distinctions be drawn among them?
   A. Based on the entity’s function
   B. Elected official members v. appointed members

2. Should the public served by a body have input or be required to approve a remote participation policy? Or is board/agency head written policy enough?

3. Possible conditions on permitting remote participation
   A. Quorum at the meeting location
   B. Voting only by those present
   C. Limitations on reason for absence, for ex., illness/weather, or should these be left up to the entity to decide
   D. Participation in executive sessions?
   E. Participation in adjudicatory matters?
   F. Access to materials available at the meeting
   G. A/V requirements, such as visibility of the remote participant

4. Should there be an emergency exception to complying with the requirements if it is the business of the entity that creates the emergency (rather than the personal circumstances of the member)?
ADDENDUM

The bodies covered by FOAA, as listed in 1 MRS § 402(2), are:

A. The Legislature and its committees and subcommittees;

B. Any board or commission of any state agency or authority.

This expressly includes the Board of Trustees (and any of its committees and subcommittees) of the University of Maine System, the Maine Maritime Academy and the Maine Community College;

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;

D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;

E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees;

F. Any advisory organization established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and

G. The committee meetings, subcommittee meetings and full membership meetings of any association that:

(1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and

(2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.

But only as to interscholastic sports and not including personnel issues, allegations of interscholastic athletic rule violations by participants.