**Right to Know Advisory Committee**  
**December 5, 2017**  
**Meeting Summary**

Convened 1:02 p.m., Room 438, Maine State House, Augusta

Present:  
Sen. Lisa Keim  
Rep. Chris Babbidge  
James Campbell  
Richard LaHaye  
Mary Ann Lynch  
Judy Meyer  
Paul Nicklas  
Linda Pistner  
Eric Stout

Absent:  
Stephanie Grinnell  
Suzanne Goucher  
Mary-Anne LaMarre  
Chris Parr  
Luke Rossignol  
William Shorey

Staff:  
Craig Nale and Colleen McCarthy Reid

**Welcome and Introductions**

The Chair of the Advisory Committee, Sen. Lisa Keim, convened the meeting; members introduced themselves.

**Review of draft legislation to amend training provisions in the Freedom of Access Act to require officials to complete training when appointed to offices for which training is currently required if elected**

The Advisory Committee reviewed draft legislation to amend the training provisions in the Freedom of Access Act (1 MRSA §412) to require officials to complete training when appointed to offices for which training is currently required if elected.

The Advisory Committee unanimously approved (9-0 of members present) the draft bill and voted to recommend the proposed legislation in its annual report. The Advisory Committee also agreed that the draft legislation would be recommended as a separate bill if any other proposed legislation is recommended to the Judiciary Committee.

In his comments to the Advisory Committee prior to the meeting, Mr. Parr suggested that the publicly accessible website made available to public officials for the purposes of FOAA training be clarified that text messages and email communications “received or prepared for use in connection with the transaction of public or governmental business or [that] contain information relating to the transaction of public or governmental business” constitute public records under FOAA. The Advisory Committee agreed that this issue was separate from the changes to the training requirements and could be addressed at a later time if necessary.
Formation of subcommittee to discuss penalty provisions in the Freedom of Access Act

At the November 15th meeting, the Advisory Committee agreed to form a subcommittee to discuss the penalty provisions in the Freedom of Access Act, but deferred action to appoint the subcommittee chair and members.

The Advisory Committee unanimously voted (9-0 of members present) to name Judy Meyer chair of the Subcommittee. Rep. Babbidge, Eric Stout, Chris Parr, Luke Rossignol and Linda Pistner agreed to serve as members of the subcommittee.

Discussion of remote participation by members of public bodies; review of potential draft legislation

The Advisory Committee reviewed draft legislation related to remote participation by members of public bodies in public proceedings. The draft legislation was based on straw votes taken by members and discussion of previous proposals at prior meetings. Linda Pistner also suggested revisions to the draft proposal for the Advisory Committee’s consideration.

The draft proposal as presented at the meeting did the following:

- Allows bodies subject to the Freedom of Access Act to conduct public proceedings through telephonic, video or other electronic means of communication when the body has adopted a written policy that authorizes remote participation in a manner that allows all members to simultaneously hear and speak to each other during the proceeding and allows members of the public attending the proceeding at the noticed location to hear all members of the body;
- If the policy allows remote participation in executive sessions, the policy must establish procedures and requirements that ensure the privacy of the executive session;
- Requires a quorum of the body to be physically present at the noticed meeting location unless immediate action is imperative and physical presence of a quorum is not reasonably practical within the period of time requiring action;
- Requires each member participating remotely to identify all persons present at the remote location, that all non-unanimous votes are taken by roll call, and that remote participants receive documents or other materials presented or discussed at the proceeding in advance or when made available at the meeting, if the technology is available;
- Prohibits the Legislature from conducting public proceedings and allowing members to participate in public proceedings through telephonic, video or other electronic means of communication, but without restrictions on the use of technology to enhance access for the public to listen to and observe the Legislature’s proceedings; and
- Provides specific exemptions from the new remote participation requirements for state agencies that are authorized to use remote-access technology to conduct meetings.

Rep. Babbidge told the Advisory Committee that he is uncomfortable with remote participation and concerned that it will become the norm or expectation; he felt that requiring a member’s physical presence at a meeting should be the expectation. Rep. Babbidge also raised concerns that authorizing remote participation in law lessens a member of a body’s accountability for that member’s decisions; that members may not have full access to all relevant materials if participating remotely; and that it is inappropriate for executive sessions to be conducted with some members participating remotely.

Members discussed how to address adjudicatory proceedings and executive sessions. Members agreed to add language to the draft to prohibit remote participation by a member at an adjudicatory hearing. With regard to executive sessions, members expressed support for the language in the draft as proposed, which
leaves the decision to each body as to whether remote participation is permitted, but requires that the policy establish procedures for the privacy of any executive session.

The Advisory Committee discussed the draft proposal’s language that would allow bodies to convene meetings without a quorum physically present when immediate action is necessary. Members agreed that the language should be revised to clarify that when a meeting is convened without a physical quorum, the discussion at that meeting should be limited to the topic requiring immediate attention.

Ms. Meyer questioned whether the draft proposal’s requirement that each member participating remotely identify all persons present at that location would require, for example, that a member participating from an airport identify every person at the airport. After some discussion and agreement that this is not the intent of the language, the Advisory Committee decided that the provision is sufficient to achieve disclosure of those present who might interact with the participant and would not require identifying each individual present when not practical. The Advisory Committee did agree that the disclosure of persons present should be included in the record of the meeting, and that the obligation to disclose continues throughout the meeting.

At Mr. Parr’s suggestion, members also discussed whether to include a provision in the draft legislation to sunset the provisions in current law that authorize certain state agencies to conduct meetings through remote participation or whether to recommend separate legislation. Members agreed not to recommend proposed legislation at this time, but agreed that the Advisory Committee should first contact each state agency to get more information from these agencies and discuss the current provisions in law.

Members also talked about the provision in the draft prohibiting remote participation by the Legislature and whether the draft should further prohibit other elected bodies from allowing remote participation. While previous proposals did contain language distinguishing elected bodies, the Advisory Committee agreed to move forward with the proposal as drafted. Ms. Meyer indicated to the Advisory Committee that the Maine Press Association would not support the draft proposal before the Legislature on this basis.

Mr. Stout also observed that the Legislature already broadcasts House and Senate sessions via video web links and its committee hearings and work sessions via audio web links. This long-standing practice should be encouraged to enhance public access to Legislature’s committee and chamber sessions. The Advisory Committee agreed that the limiting language in the draft legislation is intended to prohibit the Legislature from conducting meetings away from public view and from permitting elected members from participating in proceedings when not physically present.

After further discussion of the proposal and suggested changes, the Advisory Committee decided to make refinements to:

- Amend the first paragraph to affirmatively state that remote participation is prohibited unless the requirements laid out in Section 403-A are met;
- Add language to reinforce the purposes of the Freedom of Access Act and to reaffirm that the remote participation requirements may not be used to defeat the purposes of FOAA;
- Require that a body adopt a policy on remote participation “after public notice and hearing”;
- Clarify that a body may adopt a written policy or rule related to remote participation;
- Add a provision to prohibit remote participation in adjudicatory proceedings;
- Clarify that, if a body conducts a proceeding without a physical quorum present, that the body may take action at that proceeding only on the matters for which immediate action is imperative;
- Require that a member participating remotely must identify all persons for the record that are present at the location from which the member is participating and clarify that the obligation to disclosure is continuous throughout the proceeding.
• Add specific references to state agencies that are already authorized to use remote-access technology to conduct meetings exempting those agencies from the remote participation requirements in the new proposed Section 403-A and remove Part B of the draft bill.

The Advisory Committee unanimously voted (9-0 of members present) to recommend the draft legislation related to remote participation for consideration by the Judiciary Committee with the changes summarized above.

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

Staff reviewed a discussion draft that could be used as a template by the Legislature when considering legislation addressing access to records and personal information related to licensed professionals. The discussion draft, based in part on draft amendments suggested to LD 1267, would protect as confidential certain categories of personal information and allow limited disclosure of that confidential information under certain conditions and to certain authorized entities. The draft would also clarify that disclosure of personal information designated as confidential should be permitted in the aggregate as long as an individual could not be identified.

The Advisory Committee agreed that it had not had sufficient time to consider this issue and make recommendations to the Judiciary Committee. The Advisory Committee took no further action.

**Draft report**

Staff distributed a preliminary draft report and then discussed the process for reviewing the final draft report before submission and submitting any recommendations for revision. No additional meetings are planned before the Advisory Committee’s annual reporting deadline of January 15, 2018. The final draft report will be distributed via e-mail. Minor technical suggestions and edits may be made over email, but if there are any substantive concerns or concerns that the report does not reflect the Advisory Committee’s recommendations, such discussions would have to be held in a public meeting.

The meeting was adjourned at 3:11 p.m.