



Office of Professional & Occupational Regulation

Real Estate Commission
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MEMORANDUM

To: Real Estate Commission Member
From: Catherine E. Pendergast, Director
Date: August 18, 2022
Subject: Remote Participation Policy

Changes have been made to the remote participation law, 1 M.R.S. § 403-B. The following documents are attached for your review:

- A markup of the current law to see the changes made (effective August 8)
- The bills that changed the law
- The original template that went to boards for consideration
- The template for the declaration of emergency
- Policy adopted September 16, 2021

Does the board want to make any updates to the current policy?

§403-B. Remote participation in public proceedings

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

[PL 2021, c. 290, §1 (NEW).]

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

A. After notice and hearing the body has adopted a written policy governing the conditions upon which members of the body and the public may participate in a public proceeding of that body by remote methods; [PL 2021, c. 290, §1 (NEW).]

(1) If a public body has not adopted a policy authorizing remote methods of participation under this section and if the chair of the body determines that an emergency or urgent issue exists that prevents the public body from meeting in person to adopt a policy, the chair may call a meeting of the body in which the members may participate by remote methods. Notice of the meeting must include information about how the public can participate in the meeting and the proposed policy or instructions on how to obtain a copy of the proposed policy in advance of the meeting. Once the meeting is convened, the members shall vote on whether to support the chair's determination that an emergency or urgent issue exists that prevents the public body from meeting in person.

(2) If 2/3 of the members vote in support of the chair's determination under subparagraph (1), after an opportunity for hearing, the members may vote on whether to adopt a policy authorizing remote methods of participation in public proceedings of the body under this section;

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

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

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

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

~~(4) The area of the public body's jurisdiction includes geographic characteristics that impede or slow travel, including but not limited to islands not connected by bridges; [PL 2021, c. 290, §1 (NEW).]~~

C. The policy adopted pursuant to paragraph A must provide members of the public a meaningful opportunity to attend by remote methods when members of the body participate by remote methods, and reasonable accommodations may be provided when necessary to provide access to individuals with disabilities; [PL 2021, c. 290, §1 (NEW).]

D. If the body allows or is required to provide an opportunity for public input during the proceeding, an effective means of communication between the members of the body and the public must be provided; [PL 2021, c. 290, §1 (NEW).]

E. Notice of the proceeding must be provided in accordance with section 406. When the public may attend by remote methods pursuant to paragraphs C and D, the notice must include the means by which members of the public may access the proceeding using remote methods. The notice must also identify a location for members of the public to attend in person. The body may ~~not determine that~~ limit public attendance at a proceeding ~~will be limited~~ solely to remote methods ~~except under the conditions in paragraph B, subparagraph (1) if there is an emergency or urgent situation that requires the body to meet only by remote methods;~~ [PL 2021, c. 290, §1 (NEW).]

F. A member of the body who participates in a public proceeding by remote methods is present for purposes of a quorum and voting; [PL 2021, c. 290, §1 (NEW).]

G. All votes taken during a public proceeding using remote methods must be taken by roll call vote that can be seen and heard if using video technology, and heard if using only audio technology, by the other members of the public body and the public; and [PL 2021, c. 290, §1 (NEW).]

H. The public body must make all documents and other materials considered by the public body available, electronically or otherwise, to the public who attend by remote methods to the same extent customarily available to members of the public who attend the proceedings of the public body in person, as long as additional costs are not incurred by the public body. The public body must make the proposed policy regarding remote participation available in advance of the meeting if meeting remotely under paragraph A, subparagraphs (1) and (2). [PL 2021, c. 290, §1 (NEW).]

[PL 2021, c. 290, §1 (NEW).]

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

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

[PL 2021, c. 290, §1 (NEW).]

4. Application. This section does not apply to:

A. The Legislature; or [PL 2021, c. 290, §1 (NEW).]

B. A public body to which specific statutory provisions for remote participation apply. [PL 2021, c. 290, §1 (NEW).]

[PL 2021, c. 290, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 290, §1 (NEW).

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STATE OF MAINE

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

—
H.P. 1323 - L.D. 1772

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

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

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

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

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

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

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

STATE OF MAINE

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

—
H.P. 1466 - L.D. 1971

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

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

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

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

(1) If a public body has not adopted a policy authorizing remote methods of participation under this section and if the chair of the body determines that an emergency or urgent issue exists that prevents the public body from meeting in person to adopt a policy, the chair may call a meeting of the body in which the members may participate by remote methods. Notice of the meeting must include information about how the public can participate in the meeting and the proposed policy or instructions on how to obtain a copy of the proposed policy in advance of the meeting. Once the meeting is convened, the members shall vote on whether to support the chair's determination that an emergency or urgent issue exists that prevents the public body from meeting in person.

(2) If 2/3 of the members vote in support of the chair's determination under subparagraph (1), after an opportunity for hearing, the members may vote on whether to adopt a policy authorizing remote methods of participation in public proceedings of the body under this section;

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

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

participation available in advance of the meeting if meeting remotely under paragraph A, subparagraphs (1) and (2).

DRAFT FOR DISCUSSION PURPOSES ONLY
NOT THE OFFICIAL POLICY OF OPOR OR BOARDS

Draft date: August 27, 2021

Board of _____ Remote Participation Policy

POLICY: In accordance with Title 1, Section 403-B of the Maine Revised Statutes, it is the policy of the Board of _____ (“the Board”) to allow Board members to participate remotely in Board meetings under certain circumstances and using certain methods of remote participation.

1. Board members are expected to be physically present for Board meetings except when being physically present is not practicable. Except as permitted by this Policy, only those Board members who are physically present at the physical location of a Board meeting may participate in the meeting.
2. Circumstances and conditions under which remote participation is permissible.
 - a. Existence of an emergency or urgent issue.
 - i. If, as determined by the Board chair following consultation with the Board Administrator, an emergency or urgent issue arises that requires the Board to immediately schedule a meeting to address the emergency or urgent issue, one or more Board members may participate in the meeting from a remote location.
 - ii. If, as determined by the Board chair, an emergency or urgent issue arises that requires the entire Board to meet remotely, the Board chair in consultation with the Board Administrator may authorize the Board to conduct a virtual meeting without a physical location. Board members would participate in such a virtual meeting from remote locations, and the public would be permitted to attend remotely.
 - b. Circumstances in which physical presence of Board member is not practicable. A Board member may participate in a Board meeting from a remote location under the following circumstances:
 - i. The Board member has an illness or other physical or mental condition that causes the member to face significant difficulties traveling to and attending the Board meeting or that is contagious and would pose a substantial health risk to others if the Board member attended in person;
 - ii. There is a reasonable chance that the Board member’s health or safety will be compromised by attending the Board meeting in person;
 - iii. The Board member will be absent from the State at the time of a meeting and face significant difficulties traveling to and attending the Board meeting in person;
 - iv. The Board member’s residence is more than 100 miles driving distance from the location of the in-person Board meeting;

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- v. The Board member's residence is on an island that is not connected to the mainland by a bridge; or
 - vi. When events or occurrences out of the control of the Board member or the effects of such events or occurrences make travel by the Board member to the physical location not practicable.
3. Form of remote participation. When one or more Board members will be participating remotely or the Board will be conducting a virtual meeting, the Board will schedule a meeting using an internet-based virtual meeting platform (e.g., Zoom) that provides simultaneous audio and video reception for all participants. The Board will provide access to the virtual meeting to Board members and the public.
4. Responsibilities of Board members who participate remotely. Any Board member who participates remotely must:
- a. Have the technology, including internet access, in their remote location sufficient to be seen and heard during the meeting and participate in the same capacity as those members physically present and be responsible for any costs associated with obtaining and maintaining the technology and equipment necessary to participate remotely.
 - b. Maintain decorum to the same extent as those Board members physically present. The Board Chair, in consultation with the Board Administrator and after an oral or written warning, may deny a Board member the option to participate remotely pursuant to this Policy if the member has failed to comply with this subsection on more than one occasion.
5. Procedures applicable when Board members participate remotely.
- a. A member of the Board who participates from a remote location in accordance with this Policy is present for purposes of a quorum and voting.
 - b. If any Board member is participating in a Board meeting from a remote location, all votes taken by the Board during the meeting must be taken by roll call vote that can be seen and heard by the other members of the Board and the public.
 - c. If any Board member is participating from a remote location, the Board shall make all non-confidential documents and other materials, electronic or otherwise, considered by it during the meeting available to the public who attend by remote means to the same extent customarily available to members of the public who attend Board meetings in person, so long as no additional costs are incurred by the Board.

This Policy was adopted by the Board on [DATE] following a public hearing held on [DATE].

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NOT THE OFFICIAL POLICY OF OPOR OR COMMISSION

Date of draft: August 27, 2021

Real Estate Commission Remote Participation Policy

POLICY: In accordance with Title 1, Section 403-B of the Maine Revised Statutes, it is the policy of the Maine Real Estate Commission (“the Commission”) to allow Commission members to participate remotely in Commission meetings under certain circumstances and using certain methods of remote participation.

1. Commission members are expected to be physically present for Commission meetings except when being physically present is not practicable. Except as permitted by this Policy, only those Commission members who are physically present at the physical location of a Commission meeting may participate in the meeting.
2. Circumstances and conditions under which remote participation is permissible.
 - a. Existence of an emergency or urgent issue.
 - i. If, as determined by the Commission chair following consultation with the Director, an emergency or urgent issue arises that requires the Commission to immediately schedule a meeting to address the emergency or urgent issue, one or more Commission members may participate in the meeting from a remote location.
 - ii. If, as determined by the Commission chair, an emergency or urgent issue arises that requires the entire Commission to meet remotely, the Commission chair in consultation with the Director may authorize the Commission to conduct a virtual meeting without a physical location. Commission members would participate in such a virtual meeting from remote locations, and the public would be permitted to attend remotely.
 - b. Circumstances in which physical presence of Commission member is not practicable. A Commission member may participate in a Commission meeting from a remote location under the following circumstances:
 - i. The Commission member has an illness or other physical or mental condition that causes the member to face significant difficulties traveling to and attending the Commission meeting or that is contagious and would pose a substantial health risk to others if the Commission member attended in person;
 - ii. There is a reasonable chance that the Commission member’s health or safety will be compromised by attending the Commission meeting in person;
 - iii. The Commission member will be absent from the State at the time of a meeting and face significant difficulties traveling to and attending the Commission meeting in person;

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- iv. The Commission member's residence is more than 100 miles driving distance from the location of the in-person Commission meeting;
 - v. The Commission member's residence is on an island that is not connected to the mainland by a bridge; or
 - vi. When events or occurrences out of the control of the Commission member or the effects of such events or occurrences make travel by the Commission member to the physical location not practicable.
3. Form of remote participation. When one or more Commission members will be participating remotely or the Commission will be conducting a virtual meeting, the Commission will schedule a meeting using an internet-based virtual meeting platform (e.g., Zoom) that provides simultaneous audio and video reception for all participants. The Commission will provide access to the virtual meeting to Commission members and the public.
4. Responsibilities of Commission members who participate remotely. Any Commission member who participates remotely must:
- a. Have the technology, including internet access, in their remote location sufficient to be seen and heard during the meeting and participate in the same capacity as those members physically present and be responsible for any costs associated with obtaining and maintaining the technology and equipment necessary to participate remotely.
 - b. Maintain decorum to the same extent as those Commission members physically present. The Commission Chair, in consultation with the Director and after an oral or written warning, may deny a Commission member the option to participate remotely pursuant to this Policy if the member has failed to comply with this subsection on more than one occasion.
5. Procedures applicable when Commission members participate remotely.
- a. A member of the Commission who participates from a remote location in accordance with this Policy is present for purposes of a quorum and voting.
 - b. If any Commission member is participating in a Commission meeting from a remote location, all votes taken by the Commission during the meeting must be taken by roll call vote that can be seen and heard by the other members of the Commission and the public.
 - c. If any Commission member is participating from a remote location, the Commission shall make all non-confidential documents and other materials, electronic or otherwise, considered by it during the meeting available to the public who attend by remote means to the same extent customarily available to members of the public who attend Commission meetings in person, so long as no additional costs are incurred by the Commission.

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This Policy was adopted by the Commission on [DATE] following a public hearing held on [DATE].

DRAFT

Dear [Administrator/Executive Director],

In accordance with the “Board Member Remote Participation Policy” adopted by the Board on ___ and after consultation with you, I am directing that the ___ meeting of the Board be conducted virtually through exclusively remote participation pursuant to Section ___ of that policy. In support of this directive, I have determined that, based on the following circumstances, there exists an emergency or urgent issue which, pursuant to the policy, requires the Board to meet by entirely remote methods on ___:

1. The Secretary of the U.S. Department of Health and Human Services first proclaimed on January 31, 2020, and most recently renewed on July 19, 2021, the nationwide public health emergency (PHE) due to the continued consequences of the Coronavirus Disease 2019 (COVID-19) pandemic.
(<https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVID-19July2021.aspx>)
2. The Commissioner of the Maine Department of Health and Human Services declared on July 1, 2021 a health emergency due to the continued consequences of the COVID-19 pandemic, which shall remain in effect through the duration of the PHE declared by the Secretary of the U.S. Department of Health and Human Services.
(<https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/Public%20Health%20Emergency%20Declaration%206-30-21.pdf>)
3. The acting Secretary of the U.S. Department of Health and Human Services wrote a letter to all Governors on January 22, 2021 stating, “To assure you of our commitment to the ongoing response, we have determined that the PHE will likely remain in place for the entirety of 2021, and when a decision is made to terminate the declaration or let it expire, HHS will provide states with 60 days' notice prior to its termination.”
(<https://ccf.georgetown.edu/wp-content/uploads/2021/01/Public-Health-Emergency-Message-to-Governors.pdf>)
4. Efforts to combat the pandemic continue in Maine where, as of ___, ___ residents have been infected, ___ residents have been hospitalized with the virus, and ___ people have died from the virus since January 2020. (<https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/airborne/coronavirus/data.shtml>)
5. As of [date], the number of new COVID-19 infections in the State of Maine as confirmed by testing brings the seven-day average of new cases in the State to ___; the number of active cases statewide is ___; the number of current hospitalizations is ___ (with ___ in critical care); the number of validated vaccine breakthrough cases is ___; the total number of deaths is ___. (<https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/airborne/coronavirus/data.shtml>)
6. The new infections in the United States and the State of Maine involve the Delta variant, a highly contagious SARS-CoV-2 virus strain, which was first identified in India in

December 2020. The Delta variant has increased transmission, increased risk of hospitalization and fatality, decreased susceptibility to therapeutic agents, and has evaded natural or vaccine-induced immunity. As of August 18, 2021, the Delta variant represents 100 percent of all sequenced samples collected in Maine.

7. Also, as a result of the Delta variant and the increase in COVID-19 infections, the United States Centers for Disease Control and Prevention announced on July 27, 2021 that even fully vaccinated individuals should wear masks in indoor public settings in parts of the country that are experiencing a substantial or high transmission of COVID-19. The Maine Center for Disease Control and Prevention has also announced a similar policy. (<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>) (<https://www.maine.gov/governor/mills/news/state-maine-follows-updated-us-cdc-recommendations-face-coverings-indoor-public-settings-2021>)
8. As of __, __ of Maine's counties are now in the “substantial” or “high” transmission categories as defined by the U.S. Centers for Disease Control and Prevention. The U.S. C.D.C. recommends that people in __ Maine counties with “substantial” or “high” transmission wear face coverings in public indoor settings. (<https://covid.cdc.gov/covid-data-tracker/#county-view>)
9. An in-person meeting of the Board is foreseeably likely to result in individuals who may reside in counties with “substantial” or “high” transmission, or otherwise be at higher risk of exposure to the COVID-19 virus, including members of the Board, its staff, licensees, and members of the public, gathering indoors.
10. Conducting an in-person Board meeting on __ is not practicable due to the widespread rise in COVID-19 infections and the potential exposure to the COVID-19 virus to Board members and to members of the public. Therefore, *after consultation with you*, I have determined that there is an emergency such that the __ Board meeting shall be held entirely remotely as the best way to protect the safety and wellbeing of the members of the Board, its staff, licensees, and members of the public.

There will be no physical location where members of the public may attend this meeting. The Board will continue to provide members of the public a meaningful opportunity to attend the meeting remotely via Zoom as it has successfully done since April of 2020. Please post this determination to the Board website and update the agenda to include the Zoom information as soon as possible.

Real Estate Commission Remote Participation Policy

POLICY: In accordance with Title 1, Section 403-B of the Maine Revised Statutes, it is the policy of the Real Estate Commission (“the Commission”) to allow Commission members to participate remotely in Commission meetings under certain circumstances and using certain methods of remote participation.

1. Commission members are expected to be physically present for Commission meetings except when being physically present is not practicable. Except as permitted by this Policy, only those Commission members who are physically present at the physical location of a Commission meeting may participate in the meeting.
2. Circumstances and conditions under which remote participation is permissible.
 - a. Existence of an emergency or urgent issue.
 - i. If, as determined by the Commission chair following consultation with the Director, an emergency or urgent issue arises that requires the Commission to immediately schedule a meeting to address the emergency or urgent issue, one or more Commission members may participate in the meeting from a remote location.
 - ii. If, as determined by the Commission chair, an emergency or urgent issue arises that requires the entire Commission to meet remotely, the Commission chair in consultation with the Director may authorize the Commission to conduct a virtual meeting without a physical location. Commission members would participate in such a virtual meeting from remote locations, and the public would be permitted to attend remotely.
 - b. Circumstances in which physical presence of Commission member is not practicable. A Commission member may participate in a Commission meeting from a remote location under the following circumstances:
 - i. The Commission member has an illness or other physical or mental condition that causes the member to face significant difficulties traveling to and attending the Commission meeting or that is contagious and would pose a substantial health risk to others if the Commission member attended in person;
 - ii. There is a reasonable chance that the Commission member’s health or safety will be compromised by attending the Commission meeting in person;
 - iii. The Commission member will be absent from the State at the time of a meeting and face significant difficulties traveling to and attending the Commission meeting in person;
 - iv. The Commission member’s residence is more than 100 miles driving distance from the location of the in-person Commission meeting;

- v. The Commission member's residence is on an island that is not connected to the mainland by a bridge; or
 - vi. When events or occurrences out of the control of the Commission member or the effects of such events or occurrences make travel by the Commission member to the physical location not practicable.
3. Form of remote participation. When one or more Commission members will be participating remotely or the Commission will be conducting a virtual meeting, the Commission will schedule a meeting using an internet-based virtual meeting platform (e.g., Zoom) that provides simultaneous audio and video reception for all participants. The Commission will provide access to the virtual meeting to Commission members and the public.
4. Responsibilities of Commission members who participate remotely. Any Commission member who participates remotely must:
- a. Have the technology, including internet access, in their remote location sufficient to be seen and heard during the meeting and participate in the same capacity as those members physically present and be responsible for any costs associated with obtaining and maintaining the technology and equipment necessary to participate remotely.
 - b. Maintain decorum to the same extent as those Commission members physically present. The Commission Chair, in consultation with the Director and after an oral or written warning, may deny a Commission member the option to participate remotely pursuant to this Policy if the member has failed to comply with this subsection on more than one occasion.
5. Procedures applicable when Commission members participate remotely.
- a. A member of the Commission who participates from a remote location in accordance with this Policy is present for purposes of a quorum and voting.
 - b. If any Commission member is participating in a Commission meeting from a remote location, all votes taken by the Commission during the meeting must be taken by roll call vote that can be seen and heard by the other members of the Commission and the public.
 - c. If any Commission member is participating from a remote location, the Commission shall make all non-confidential documents and other materials, electronic or otherwise, considered by it during the meeting available to the public who attend by remote means to the same extent customarily available to members of the public who attend Commission meetings in person, so long as no additional costs are incurred by the Commission.

This Policy was adopted by the Commission on September 16, 2021 following a public hearing held on September 16, 2021.