

**Right to Know Advisory  
Committee** September 13, 2018  
Meeting Summary

Convened 4:04 p.m., Room 438, Maine State House, Augusta

Present:

Sen. Lisa Keim  
Rep. Chris Babbidge  
Jim Campbell  
Stephanie Grinnell  
Judy Meyer  
Paul Nicklas  
Linda Pistner  
Eric Stout

Absent:

Suzanne Goucher  
Richard LaHaye  
Mary-Anne LaMarre  
Chris Parr  
Luke Rossignol  
William Shorey

Staff:

Peggy Reinsch

**Welcome and Introductions**

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

**Review of Advisory Committee's recommendations**

Staff reviewed the recommendations the Advisory Committee made at the end of 2017 that are contained in the 12th Annual Report. The Advisory Committee recommended two pieces of legislation and created a subcommittee to look at penalties and enforcement.

- **Mandatory FOA training for public officials.** Current law requires that certain state, regional and local elected officials participate in FOA training on a regular basis. The Advisory Committee recommended that officials who have the same duties as those elected officials participate in the training, even though they are appointed rather than elected. LD 1821, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Freedom of Access Training for Public Officials, received a majority ought to pass as amended report from the Judiciary Committee. Because the bill was interpreted as requiring a local unit of government to expand or modify that unit's activity so as to necessitate additional expenditures from that unit's local revenues, the bill was identified as imposing a local government mandate under the Constitution of Maine, Article IX, Section 21. To avoid having to provide funding for what was determined to be an "insignificant" cost, the majority of the Judiciary Committee included a "Mandate Preamble" in the Committee Amendment to exempt the bill from the funding requirement. Legislation that includes a Mandate Preamble requires a 2/3 vote of the elected members of the House and Senate. Although a majority of the House voted in favor of the bill as amended, the affirmative votes did not reach the 2/3 threshold and the bill was not enacted. (Judiciary Committee vote: 10 Ought to Pass as Amended, 3 Ought Not to Pass; Senate enacted with 2/3; House failed to enact as emergency 80-68)
  
- **Remote participation by members of public bodies.** The Judiciary Committee discussed the Advisory Committee's recommendations about authorizing the remote participation of members of public bodies when appropriate policies have been adopted by the public bodies. The Judiciary

Committee directed that two bills on remote participation be prepared for printing and public hearing: One, based on the RTKAC's recommendations (LD 1832, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation); and the other, prohibiting remote participation of public bodies and phasing out the existing authorization for the six entities that are now statutorily authorized to use the practice (LD 1831, An Act Concerning Remote Participation in Public Proceedings). After the public hearings on the bills, the Judiciary Committee reported both bills out with a majority Ought Not To Pass. A minority of the committee voted to amend LD 1832 to limit the use of remote participation, prohibit its use in executive session, require the policy to be approved by the constituency of the public body, and to phase out the existing statutory authorization to require every entity using remote participation to adopt a compliant policy. A minority of the committee voted to adopt LD 1831 as written. The Senate and the House of Representatives accepted the Ought Not To Pass reports on both bills. (LD 1831 Judiciary Committee vote 10 Ought Not to Pass, 3 Ought to Pass; Senate and House accepted ONTP) (LD 1832 Judiciary Committee vote 10 Ought Not to Pass, 3 Ought to Pass as Amended; Senate and House accepted ONTP)

- Subcommittee on penalties. The Subcommittee on penalties met twice during the legislative session and was staffed by Adam Bohanan, the Maine School of Law extern for the Public Access Ombudsman. The Subcommittee looked at the existing penalties and the enforcement process included in the Freedom of Access Act in Title 1, sections 409 and 410. The Subcommittee reviewed extensive materials on penalties, attorney's fees and processes in other states. The Subcommittee recommended that the full Advisory Committee consider adopting changes concerning:
  - Increasing the fine, which is currently \$500, maybe as a tiered schedule;
  - Requiring the individual public actor to be responsible for paying the fine, rather than the employing governmental agency;
  - Directing that the fine go to the person aggrieved, not the General Fund;
  - Removing the "bad faith" standard for attorney's fees, and requiring the court to award reasonable attorney's fees and litigation expenses to the party who substantially prevails;
  - Providing an alternative dispute resolution (ADR) option before filing a court action to enforce the law; and
  - Aligning the language concerning the protection of public access to public records and public proceedings.

## Discussion

### Remote participation

Representative Babbidge expressed his appreciation for the work of the Advisory Committee on the subject of remote participation. He noted that the majority view in the Legislature appears to support the requirement that members attend public proceedings. One of his concerns is that legislating on remote participation will open the doors to more people participating remotely, even though in-person attendance should be the preferred practice. The issue had been discussed in caucus extensively. There hasn't been a good solution presented for island communities where both small populations and travel considerations make physical presence difficult at times.

Senator Keim suggested that the best way forward would be to have a legislative study, which would result in more legislators being involved in the issue and understanding the need for legislation.

### Recommendations on penalties and process

Judy Meyer chaired the Subcommittee on Penalties and reported on the discussions and the recommendations. The Advisory Committee agreed to look at changing the penalties, perhaps stepping up the fine amount for subsequent violations. Public Access Ombudsman Brenda Kielty reminded the Advisory Committee that the FOAA is remedial, not punitive, and that her role is generally to help figure out what the process is for individual situations and help the parties sort out what the law requires. Putting more emphasis on the penalty will push the statute to being focused more on punishment.

Ms. Meyer raised the issue of where the fine should be paid; current law provides that fines imposed for statutory violations go to the General Fund. Wouldn't it make sense for the fine to be paid to the aggrieved party? Paul Nicklas said he was a little concerned about raising the fine so much that it would create an incentive to bring suit when it wasn't really necessary; a countervailing change might be to open up attorney's fees to either side. Linda Pistner identified a concern about imposing monetary penalties when the case is really just a disagreement over the interpretation of the statute rather than a clearly inappropriate denial. Senator Keim asked how big a problem denial actually is, but Ms. Kielty does not collect data that would answer that question. Senator Keim said that changing the penalty makes sense, but what we really want is to make people comply. Mr. Nicklas agreed that the \$500 fine should be increased, and thought it worthwhile to explore a tiered structure, but thought giving people another chance to review before going to court (ADR?) may be most useful; it is not clear that changing the penalty structure will actually change behavior.

Eric Stout noted that the federal Privacy Act provides for penalties against the individual who violated the law, as do Iowa and New Hampshire. Mr. Nicklas was concerned that holding an individual public employee liable might not make sense.

Mr. Nicklas expressed interest in developing an alternative dispute option as a remedy before filing an action in court, noting that different entities have an appeal or fair hearing process in effect now. Court litigation is long and complicated and can be prohibitively expensive. The parties may want an opportunity to be heard by another group or person, rather than the formal court-based ADR. Ms. Kielty pointed out that when the Legislature created the Public Ombudsman Position, it intentionally put the resources in the front end, focusing on communication and education. It gets much more difficult for the Ombudsman once a denial (of a public record request) has happened; she works with agencies to determine what can and should be released, which is prior to a denial. Establishing a hearing step would formalize the process, and would seem to be based on her exercising more powers than she actually has. Once there is a violation and the court clock is ticking, it is not a good spot for the Ombudsman; she can't stop the clock. Plus, you don't want the ADR process to slow down the resolution of the request. Mr. Stout pointed out that sometimes agencies don't know how to efficiently extract information, resulting in an expensive estimate, which is a constructive denial.

#### Future meetings

The members agreed to discuss penalties and ADR options at the next meeting; staff will provide the charts prepared for the subcommittee and identify options for discussion.

All members are requested to send their recommendations for topics for the Advisory Committee to staff, and the Advisory Committee will decide what to focus on for the rest of this year's meetings.

The Advisory Committee's recommendations from the most recent report will be on the table:

- Training for all public officials, not just those elected; and

- Remote participation, perhaps to be the focus of a legislative study.

Public Records Exception Subcommittee will meet on a date to be determined via email.

An email forwarded to the Advisory Committee raises the issue of providing access to electronic records, as well as how the FOAA address accessing information within electronic records that also contain confidential and proprietary information or that providing access to could jeopardize security.

Senator Keim raised the concern of the propriety of one person who requests records and then posts them publicly on the internet.

The meeting was adjourned at 5:31 p.m.

## Right to Know Advisory Committee

October 2, 2018

Meeting Summary

Convened 9:00 a.m., Room 438, Maine State House, Augusta

**Present:**

Sen. Lisa Keim  
Rep. Chris Babbidge  
Amy Beveridge  
Elaine Clark  
Suzanne Goucher  
Richard LaHaye  
Mary-Anne LaMarre  
Judy Meyer  
Paul Nicklas  
Linda Pistner  
Eric Stout

**Absent:**

Jim Campbell  
Stephanie Grinnell  
Chris Parr  
Luke Rossignol  
William Shorey

**Staff:**

Peggy Reinsch  
Craig Nale

### **Welcome and Introductions**

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

### **Discussion of remedies available under the Freedom of Access Act**

Staff reviewed the work of the Remedies Subcommittee, which met twice during the spring of 2018 and consisted of Judy Meyer and Luke Rossignol. Ms. Meyer informed the Advisory Committee that the subcommittee recommends an increase in the civil penalty from the current amount of \$500 per willful violation of the Freedom of Access Act to a tiered penalty of \$500 for a first violation, \$1,000 for a second violation and \$1,500 for a third violation, for example, would both account for inflation since the \$500 amount was established in 1987 and encourage compliance with the FOAA. Ms. Meyer also shared the subcommittee's consideration that the fine be paid to the aggrieved party rather than to the State.

The Advisory Committee compared the civil penalty in Title 1, section 410 to the appeals process available in section 409 and the availability of other remedies in private litigation. The Advisory Committee discussed whether an increased civil penalty would achieve greater compliance with the FOAA; the Advisory Committee also discussed the difficulty of imposing strict time periods for responses to requests for records as well as the role of the public access ombudsman in keeping responses to requests for records timely and resolving potential disputes before any formal legal action becomes necessary.

At the request of the Advisory Committee, Brenda Kielty, the Public Access Ombudsman, shared her experience facilitating the resolution of disputes involving requests for documents and emphasized the effectiveness of allocating resources to assisting compliance rather than punishing noncompliance. Ms. Kielty also explained the advisory nature of the ombudsman role: she cannot compel compliance under current law. Members of the Advisory Committee questioned whether some intermediate administrative

process undertaken by the ombudsman to either formally or informally adjudicate disputes might incentivize compliance by providing a forum for disputes that might not otherwise cause the complainant to initiate an action in court. Questions arose over releasing questionably-confidential documents in the course of that process, what timeliness standards would apply in the absence of definite periods enacted into law, what level of deference a determination by the ombudsman would receive, and whether the existing period for appealing a refusal, denial or failure to produce documents would be enlarged.

The Advisory Committee returned to the initial recommendation to increase the civil penalty and establish tiers of fines for successive violations. Mr. Nicklas suggested that the civil penalty provision in section 410 be amended to provide for a \$500 fine for the first violation, a \$1,000 fine for the second violation and \$2,000 for the third violation. After a brief discussion, Mr. Nicklas added that the period for calculating cumulative violations would occur on a four-year rolling basis. Ms. Clark abstained from the informal vote of support for this recommendation, but all other members of the Advisory Committee who were present voted in favor.

A number of Advisory Committee members acknowledged that further consideration of remedies within the FOAA should occur. Mr. Stout and Ms. Meyer agreed to form a subcommittee to discuss various options to encourage compliance and to develop more refined issues for the full Advisory Committee to consider. Other members of the Advisory Committee were invited to join the subcommittee or attend those subcommittee meetings.

Advisory Committee members also expressed interest in gaining further thoughts on this topic from the specific interest group each member represents to share at a future meeting. In addition, members expressed interest in reviewing trends in complaints to the public access ombudsman for insight into whether certain agencies or officials are typically the subject.

#### **Discussion of requirement to review existing public records exceptions in Titles 1-7**

Staff reviewed the requirement in Title 1, sections 432 and 433 to review existing public records exceptions in Titles 1 through 7 prior to 2019. A subcommittee formed in 2017 to undertake this task, but the work of that subcommittee continues into 2018. Ms. Clark volunteered to join the subcommittee. Staff briefly described the process and agreed to schedule a meeting of the subcommittee.

#### **Other potential topics for future discussion**

Senator Keim invited members to share concerns the Advisory Committee might discuss in future meetings. Mr. Nicklas suggested the Advisory Committee discuss the request from the Judiciary Committee of the Legislature regarding criminal history record information. Ms. LaMarre suggested that the Advisory Committee consider whether a recent decision of a Pennsylvania trial court regarding the confidentiality of surveillance video from a public school may be relevant in Maine. The Advisory Committee informally agreed to consider these topics at a future meeting.

The date of the third meeting of the Advisory Committee will be set by email.

The meeting adjourned at 12:02.

## **Right to Know Advisory Committee**

November 19, 2018

Meeting Summary

Convened 9:00 a.m., Room 438, Maine State House, Augusta

### **Present:**

Sen. Lisa Keim  
Rep. Chris Babbidge  
Amy Beveridge  
Jim Campbell  
Elaine Clark  
Stephanie Grinnell  
Mary-Anne LaMarre  
Judy Meyer  
Paul Nicklas  
Chris Parr  
Linda Pistner  
Eric Stout

### **Absent:**

Suzanne Goucher  
Richard LaHaye  
Luke Rossignol  
William Shorey

### **Staff:**

Peggy Reinsch  
Craig Nale

### **Welcome and Introductions**

The Chair of the Advisory Committee, Senator Lisa Keim, convened the meeting at 9:02 a.m.; members introduced themselves.

### **Reports of Subcommittees**

Representative Babbidge reported that the Public Records Exceptions Subcommittee has been working through the public records exceptions to review this cycle, and the process has been good. The Subcommittee had planned to finish its work on Friday, November 16th, but had to cancel the meeting because of the weather. They expect to finish in one more meeting and will present all the recommendations to the full Advisory Committee at that time.

Judy Meyer reported that the Remedies Subcommittee, tasked with looking at alternative dispute resolution and possible administrative appeal procedures, was unable to find a meeting date that could accommodate more than three people. Knowing that they would not finalize this work this year anyway, they decided to start working in earnest next year.

### **Discussion of issues identified for review**

#### **School surveillance cameras**

Staff provided a summary of the question and explained the federal Family Educational Rights and Privacy Act of 1974 (FERPA) which restricts the sharing of “education records.” Case law in other jurisdictions has focused on different elements of the factual situations, providing only cursory guidance. Although the federal law prohibits the release of records that are maintained by the school and that are directly related to students, the federal law would not limit states in designating as confidential even more

records, and only applies to schools that receive federal funding. Mary-Anne LaMarre expressed her strong feelings about making sure videos that capture students' images are not available to shooters or stalkers, and would like to see specific protection from public release in the law. Jim Campbell noted that school districts are recording a lot of video or maintaining other types of non-video surveillance of students not covered by FERPA, and that the records could be disseminated in ways never expected. There was general agreement that the subject is important and should be examined in detail. Chris Parr moved and Ms. LaMarre seconded that the Advisory Committee recommend to the Judiciary Committee that school surveillance videos be designated confidential. The Advisory Committee discussed whether they had spent enough time examining the issue to make a concrete recommendation that would provide comprehensive coverage while allowing for exceptions, such as for law enforcement purposes. The Advisory Committee voted on the motion, which failed 3-9. (Voting in favor: Ms. LaMarre, Mr. Parr and Mr. Stout; Voting against: Senator Keim, Representative Babbidge, Ms. Beveridge, Mr. Campbell, Ms. Clark, Ms. Grinnell, Ms. Meyer, Mr. Nicklas and Ms. Pistner.) Linda Pistner moved that the Advisory Committee inform the Judiciary Committee that this is a significant issue, which the Advisory Committee did not have enough time to fully examine, and that the Advisory Committee will provide whatever assistance requested should the Judiciary Committee pursue school surveillance issue concerns. Ms. LaMarre seconded the motion and the Advisory Committee voted 12-0 in favor.

### **Public access to government databases**

Concerns about the public being able to access databases created and maintained by government entities was raised as an issue to the Advisory Committee by both a bill presented to the Judiciary Committee last year, and through public commenters. John Pelletier, Chair of the Criminal Law Advisory Commission (CLAC) reported on CLAC's discussion about LD 1658 and accessing the data in the State Bureau of Identification's criminal history record database. One question is whether the statute (25 MRSA §1541) should be amended to prohibit bulk data transfers by providing that the name and date-of-birth request mentioned in §1541 is the only way to access SBI records. Ms. Meyer reiterated her testimony against LD 1658 when it was before the Judiciary Committee, explaining that she has a problem with making records that are public individually not public when they are in bulk. Concerns were raised that it isn't appropriate to make money off the taxpayer's investment in building the databases, and that care should be taken to ensure that data is accurate and not stale. Part of the stewardship of a government agency is to ensure the accuracy and validity of records; the rights of the individual must be balanced with the rights of the public and the First Amendment. The Advisory Committee did not make specific recommendations concerning databases due to time constraints, voting 11-1 (Mr. Nicklas voted against, interested in something more concrete), but Mr. Stout summed up by noting the tension between protecting personally-identifiable information while still retaining statistically useful data.

### **Study on remote participation**

The Advisory Committee has recommended some version of legislation addressing the issue of remote participation every year for several years. Senator Keim suggested that instead of proposing actual statutory language on remote participation, perhaps it makes sense to propose that the Legislature study remote participation, and thereby involve many more senators and representatives in the discussion, which could lead to actual resolution. The new study group could use the most recent legislation (LD 1832) as a starting point. The Advisory Committee voted 12-0 to include the study as a recommendation.

### **Joint select committee on government transparency and data privacy policy issues**

Mr. Parr recommended that the Advisory Committee send a letter to the Legislative Council recommending the creation of a joint select committee on government transparency and data privacy issues to provide a single committee to handle – and therefore concentrate on – complex issues of transparency and privacy. It would result in more involvement of legislators and give them more time to delve into, understand and make policy decisions on very complicated issues that affect everyone in one way or another. The joint select committee could investigate privacy concerns while the Right to Know

Advisory Committee focuses more on access to government information. There was a concern that such a joint select committee would look like an end-run around the Judiciary Committee, but at the same time it could work during the legislative session. In the interests of keeping the conversation happening, Mr. Parr moved that the topic be added to the Advisory Committee's 2019 agenda, Mr. Stout seconded and the Advisory Committee voted 12-0 in favor.

#### **Possible legislation for the 129th Legislature**

The Advisory Committee stood by its earlier agreement to recommend again legislation making training mandatory for government employees who are appointed rather than elected, as recommended by the Advisory Committee in 2017 and provided in LD 1821 considered in the Second Regular Session of the 128th Legislature.

#### **Final meetings of the Public records Exception Subcommittee and the Advisory Committee**

One additional meeting of the Public Records Subcommittee and then a final meeting of the full Advisory Committee will be scheduled to finish the assigned work and review the report.

The meeting was adjourned at 11:45 a.m.



## Right to Know Advisory Committee

December 3, 2018

Meeting Summary

Convened 1:18 p.m., Room 438, Maine State House, Augusta

### Present:

Senator Lisa Keim  
Representative Chris Babbidge  
Jim Campbell  
Elaine Clark  
Mary-Anne LaMarre  
Judy Meyer  
Paul Nicklas  
Chris Parr  
Linda Pistner  
Eric Stout

### Absent:

Amy Beveridge  
Suzanne Goucher  
Stephanie Grinnell  
Richard LaHaye  
Luke Rossignol  
William Shorey

### Staff:

Peggy Reinsch  
Craig Nale

### Welcome and Introductions

The Chair of the Advisory Committee, Senator Lisa Keim, convened the meeting at 1:18 p.m.; members introduced themselves.

### Report of Public Records Exceptions Subcommittee

Staff summarized the work of the Public Records Exceptions Subcommittee, which met three times to review the 92 identified public records exceptions in Titles 1 through 7-A of the Maine Revised Statutes. A chart (on white paper) listed all the provisions as well as the recommendations. The Advisory Committee agreed no discussion was necessary for statutory exceptions for which “no change” was recommended by the Subcommittee. Staff explained the recommended changes (language provided on yellow handout), and identified the existing provisions for which the Subcommittee recommends additional consideration. The Advisory Committee voted unanimously to approve the Subcommittee’s recommendations, with two changes from the proposed draft, indicated as follows.

Existing public records exceptions with recommended changes:

- (Ref #4) 1 MRSA §402, sub-§3, ¶C-1, sub-¶(1) (remove the listing of Social Security numbers as to what is confidential in communications with constituents because SSNs are already not public records)
- (Ref #12) 1 MRSA §402, sub-§3, ¶ K (delete requirement that a municipality adopt an ordinance in order to protect personally identifying information about minors that is obtained and maintained in the process of providing recreational or nonmandatory recreational programs or services)
- (Ref #14) 1 MRSA §402, sub-§3, ¶M – the Advisory Committee voted to amend ¶M to add “including records or information maintained to ensure government operations and technology continuity and enable disaster recovery” (¶M provides a public records exception for records and information about public agency technology infrastructure, systems and software)

- Ref ##30-34) 3 MRSA §997 – duplicative language to be removed from draft provided (OPEGA confidentiality of working papers)
- (Ref #48) 5 MRSA §4572, sub-§2, ¶C, sub-¶(2) (Maine Human Rights Act description of unlawful employment discrimination against a qualified individual with a disability; proposed amendment clarifies terminology about medical and disability information)
- (Ref #48) 5 MRSA §4572, sub-§2, ¶E (Maine Human Rights Act description of unlawful employment discrimination against a qualified individual with a disability; proposed amendment clarifies terminology about medical and disability information)
- (Ref # 49) 5 MRSA §4573, sub-§2 (Human Rights Act description of employer actions that are not unlawful employment discrimination; proposed amendment clarifies terminology about describing physical or mental disabilities)

Continue review and evaluation of the following existing public records exceptions:

- (Ref #6) 1 MRSA §402, sub-§3, ¶E (records used by or prepared for committees of the Maine Maritime Academy, the Maine Community College System and the University of Maine System: could exception be more narrowly tailored?)
- (Ref #11) Title 1, section 402, subsection 3, paragraph J (records used by an advisory organization: how broad is the application?)
- (Ref #16) 1 MRSA §402, sub-§3, ¶O (personal contact information of public employees other than elected officials: concern about use personal information in agency social media)
- (Ref # 24) 1 MRSA §538, sub-§3 (InforME subscriber information: needs more review because not sure of application)
- (Ref #27) 1 MRSA §1013, sub-§3-A (complaints alleging a violation of legislative ethics: should complaints be confidential indefinitely?)
- (Ref #35A) 4 MRSA §17, sub-§15, ¶C (court security records: inadvertently omitted from review list)
- (Ref #53) 5 MRSA §7070, sub-§2 (state employee’s personal information: possibly expand to include gender orientation and genetic information?)
- (Ref #73) 5 MRSA §244-E, sub-§2 (contents of a complaint to the State Auditor alleging fraud, waste, inefficiency or abuse: Auditor’s recommended amendment)
- (Ref ## 85 and 86) 7 MRSA §4204, sub-§10 and §4205, sub-§2 (nutrient management plans filed with DACF)
- (Ref #88) 7 MRSA §2992-A, sub-§1 (Maine Dairy Promotion Board: too broad?)
- (Ref #89) 7 MRSA §2998-B, sub-§1 (Maine Dairy and Nutrition Council: too broad?)
- (Ref #90) 7 MRSA §306-A, sub-§3 (agricultural development grant program, market research or development activities: concerned about enduring confidentiality)
- (Ref #92) 7 MRSA §951-A (minimum standards for planting potatoes: concerned about enduring confidentiality)

While reviewing the Subcommittee’s recommendations, the Advisory Committee also touched on the use of text messaging by public employees. Eric Stout gave an overview of federal and State practices, and noted that there is no record automatically created or maintained by any State system when text messages are sent or received. When government communications are received by text message or in personal email, the federal policy is for the employee to forward the communication to the employee’s government email and proceed from that as a base of communication. Governor LePage adopted the policy that Executive Branch employees are to use State email, not text messaging, for official communications. Brenda Kielty, the Public Access Ombudsman, includes the same cautions about text messaging in her training programs.

## **Draft Report**

The Advisory Committee did not discuss the Draft Report in detail, but focused on the proposed legislation that had previously been raised or discussed. Members will forward any technical corrections to the report to staff by email.

- **Penalties**

The Advisory Committee reviewed draft legislation amending the current penalties section (1 MRSA §410) to provide for a tiered schedule of fines, based on whether there had been a previous adjudication for a willful violation of the FOAA. The members voted to go forward with a revised draft, with Elaine Clark abstaining. The approved draft establishes maximum fines of \$500 for a willful violation of the FOAA, \$1,000 for a second willful violation within four years and \$2,000 for a third or subsequent willful violation within four years. A willful violation is considered subsequent only if it has been committed by the same agency after an adjudication within the previous four years. The Advisory Committee is looking forward to the public hearing on the proposal, which is a good way to gauge if there is any appetite for focusing on penalties and whether the changes would be practical.

- **Government employee training for appointed as well as elected public officials**

The Advisory Committee had already approved submitting the training proposal from 2017 to the 129th Legislature.

- **Proposed legislative study on remote participation**

Without submitting specific language, the Advisory Committee supports an opportunity for more legislators to understand the questions surrounding remote participation and formulate an appropriate response.

The Advisory Committee agreed that the other issues discussed in 2018 have not been fully developed and are not ready for recommendations, so the topics will be listed without recommendations.

Staff will update the draft report and send it by email to members; members will forward any corrections to the report to staff by email.

## **Conclusion**

Senator Keim and Representative Babbidge closed with a few final comments. Senator Keim, supporting the idea of getting more legislators involved in the subject matter in order to make statutory changes actually occur, mentioned that maybe it would be helpful to expand the membership of the Advisory Committee to include two more legislators. Representative Babbidge shared his thought that it is important that RTKAC as a group track and attend public hearings so that the diversity of the Advisory Committee – and therefore the strength of its recommendations – can be brought forth.

Senator Keim thanked the members for their hard work and participation.

The meeting was adjourned at 3:15 p.m.