

**RIGHT TO KNOW ADVISORY COMMITTEE
REMOTE PARTICIPATION SUBCOMMITTEE**

Wednesday, October 19, 2022

1:00 pm

Remote Meeting via Zoom

Public Access through Maine Legislature's livestream:

<https://legislature.maine.gov/Audio/#438>

1. Introductions
2. Subcommittee Discussion
3. Planning for next meeting
4. Adjourn

**CURRENT LAW RELATING TO REMOTE PARTICIPATION IN PUBLIC PROCEEDINGS:
1 MRSA §403-B**

(reflects changes through 130th Legislature, Second Regular Session)

§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.

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.

(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. [PL 2021, c. 666, §1 (RP).]

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;

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;

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 limit public attendance at a proceeding solely to remote methods if there is an emergency or urgent situation that requires the body to meet only by remote methods;

F. A member of the body who participates in a public proceeding by remote methods is present for purposes of a quorum and voting;

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

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).

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.

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.

4. Application. This section does not apply to:

A. The Legislature; or

B. A public body to which specific statutory provisions for remote participation apply.

**Right to Know Advisory Committee: Remote Participation Subcommittee
Overview of Bills Related to Remote Participation Considered in 130th Legislature**

| LD | Title | Committee Report | Floor Action | Result |
|-------------------------|---|---|--|--|
| LD 32 | An Act Regarding Remote Participation in Public Proceedings | OTP-A | Engrossed as Amended by Committee Amendment “A” and Senate Amendment “A” | Emergency Enacted as Public Law 2021, chapter 290; effective June 21, 2021 |
| LD 668 | An Act To Ensure Public Accountability While Implementing a Practical Approach to Remote Participation | ONTP | ONTP | ONTP |
| LD 746 | An Act Regarding Remote Participation in Municipal Meetings | ONTP | ONTP | ONTP |
| LD 1578 | An Act to Permit Remote Access for Public Proceedings | ONTP | ONTP | ONTP |
| LD 1772 | An Act To Amend the Remote Meeting Law in Maine's Freedom of Access Act | Divided Report: OTP-A (8); OTP-A (6) | Accepted Majority Report/Comm. Am. “A”/ Engrossed as Amended by Committee Amendment “A” | Enacted as Public Law 2021, chapter 666* |
| LD 1971 | An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Remote Participation | OTP-A | Engrossed as Amended by Committee Amendment “A” | Enacted as Public Law 2021, chapter 611* |

*Effective August 8, 2022, general effective date for laws enacted in the Second Regular Session of the 130th Legislature

Right to Know Advisory Committee: Remote Participation Subcommittee

Potential issues/suggestions for changes to 1 MRSA Section 403-B Relating to Remote Participation

*** These potential issues/suggestions for changes were developed based on review of legislation proposed during 130th Legislature, discussions in the Judiciary Committee during the 130th Legislature and suggestions made to the Right to Know Advisory Committee

- Maintain requirement from prior law that members of a public body be physically present at meetings except in emergency or urgent circumstances
- Maintain requirement from prior law that members of the public be able to have a location to attend a meeting in person unless meeting is fully remote
- Extend application to proceedings of the Legislature
- Require that a quorum of members be physically present
- Require that members participating remotely identify for the record all persons present at the location from which the member is participating
- Prohibit a member participating remotely from participating and voting in an adjudicatory proceeding
- Require state agencies to adopt remote participation policies as major substantive rule under the Maine Administrative Procedures Act
- Require the Joint Standing Committee of the Legislature having jurisdiction over judiciary matters to conduct a review of any proposed statutory authorization of remote participation or change in accessibility with respect to public proceedings
- Clarify language in final paragraph of section 403-B, subsection 2:
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.
- Allow incarcerated persons to participate in Legislative and other public proceedings remotely (this issue will be discussed by the full Right to Know Advisory Committee based on decision at 9/15 meeting)
- Consider financial assistance or grants to public bodies to assist with remote participation technology
- Consider development of a clearinghouse for the public to access remote participation policies of public bodies



SAMPLE POLICY

INSTRUCTIONS FOR

Sample REMOTE PARTICIPATION IN PUBLIC PROCEEDINGS POLICY

MMA Legal Services has drafted the following sample policy authorizing remote participation in public proceedings pursuant to [1 M.R.S. §403-B](#).

This sample is intended to serve as a basic template for a municipal body wishing to adopt a remote participation policy for its members. For purposes of this sample, the terms “municipal body” and “body” refer to the select board or council, and other municipal boards, committees, subcommittees, panels, or commissions subject to the requirements of Maine’s Freedom of Access Act (FOAA).

Note: *the current law allows a municipal body a great deal of flexibility in determining the criteria applicable for remote participation by its members. This sample includes blank areas that must be completed and contains text in italics should be modified or replaced as needed. Each municipal body should tailor the policy to meet its needs. Consultation with the municipal attorney is recommended prior to enacting the policy.*

The statute provides that a policy adopted by a municipal body applies to “boards or committees within the jurisdiction” of that body unless the board or committee adopts its own remote meetings policy. 1 M.R.S. § 403-B(2). Note that it is not clear whether the authority to adopt a policy for multiple boards and committees applies only to subcommittees of the body that enacts a policy or to all other boards and committees within the same municipality. However, the statute specifically allows each municipal body to adopt its own policy. Also remember that different boards and committees serve different functions, may operate with differing levels of formality, and may be subject to differing legal requirements that would impact recommended remote participation procedures. If a municipal body chooses to adopt a remote participation policy that is intended to apply to multiple boards and committees, MMA Legal Services recommends that body consult with the municipal attorney to determine which board and committees may be subject to the policy, and to include specific sections for each board or committee to which it applies addressing the needs and requirements applicable to each board or committee.

[NAME OF MUNICIPALITY & BODY]
REMOTE PARTICIPATION IN PUBLIC PROCEEDINGS POLICY

Pursuant to 1 M.R.S. § 403-B, and after public notice and hearing, the [*name the body adopting the policy*] hereby adopts the following policy governing the participation, via remote methods, of members of [*either the body and/or of the following boards and committees...*] and the public in the public proceedings or meetings of [*the body and/or following boards and committees...*]. As used herein, “remote methods” means telephonic or video technology (i.e., audio and/or visual systems) that allow simultaneous reception of information and may also include other means necessary to accommodate disabled persons. Public proceedings may not be conducted by text-only means such as e-mail, text messages, or chat functions.

In accordance with the public policies underlying Maine’s Freedom of Access Act, it is the intention of this body to conduct its business open to public observation.

I. Remote Participation by Members. Members of the body must be physically present for public proceedings at the public meeting location, except when authorized to participate by remote methods under this policy.

a. When remote participation is authorized. Members of the body may participate via remote methods in the following circumstances:

[The policy should list the specific conditions upon which body members may use remote participation. For example:

1. when a medical condition of the member or family makes attendance impracticable
2. when traveling
3. when unexpectedly outside the municipality
4. based on each member’s own convenience, etc.]

b. Notice to chair or presiding officer. A member must notify the chair or presiding officer of the body [*state notice requirements, e.g., as far in advance as possible; at least __ days in advance, etc.*] if the member will be unable to physically attend a meeting of the body.

The chair or presiding officer will make a determination that remote participation by the individual member meets the criteria for remote participation stated above.

c. Public access. The public will be provided a meaningful opportunity to attend the meeting via remote methods when any member of the body participates via remote methods. Reasonable accommodations will be provided to any individual with a disability upon request. Members of the public will also be provided an opportunity to attend the meeting in-person.

II. Remote Only Participation. The public body named above may meet solely by remote means if an emergency or urgent situation requires that all members of the body meet only by remote methods. In that circumstance, public attendance may be restricted to remote access only at the public proceeding.



SAMPLE POLICY

- b. The chair or presiding officer, in consultation with other members if appropriate and possible, is authorized to make a determination that an emergency or urgent situation requires the body to meet only by remote methods and to limit public attendance at the proceeding to remote means only. The chair or presiding officer's determination will be put in writing and attached to the record of the meeting. Public notice of the determination will be provided as soon as practicable consistent with subsection III.
 - c. Reasonable accommodations will be provided to any individual with a disability upon request.
- III. Public Notice. Notice of all body meetings will be provided in accordance with 1 M.R.S. § 406 and any applicable charter, ordinance, policy, or bylaw. When the public may attend via remote methods, notice will include the means by which members of the public may access the meeting by remote methods and will provide a method for disabled persons to request necessary accommodation to access the meeting. The notice will identify the time of the meeting as well as a location where the public may attend the meeting in person, unless in-person participation is limited in a case of emergency under Section II.
- IV. Documents and Materials Made Available. The body will make all documents and materials to be considered by the body available, electronically or otherwise, to the public who attend remotely to the same extent customarily available to the public who attend in person, provided no additional costs are incurred by the body.
- V. Roll Call Vote. All votes taken during a meeting using remote methods will be by roll call vote that can be seen and heard if using video technology, or heard if using audio technology only, by other members of the body and the public.
- VI. Public Input. If the body allows or is required to provide an opportunity for public input during the public proceeding, an effective means of communication between the members of the body, participating by remote methods and in-person, and the public, participating by remote methods and in-person, must be provided.

[The policy should then identify the methods of communication the body can use to facilitate public comment. For example:

- a. *The body will accept written comments from the public prior to the meeting, which will be read at a subsequent meeting.*
- b. *The body will make microphones available at the in-person location which will ensure those meeting by remote methods can hear the public comment and speakers to allow those meeting in-person to hear public comments from those meeting remotely. Other accommodations will be made upon request.]*

This policy will remain in force indefinitely unless amended or rescinded.

Dated: _____

Signed: _____

Rev. 10/4/2022



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