

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act Concerning Remote Participation in Public Proceedings**

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

### **PART A**

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

#### **§ 403-A. Remote participation in public proceedings**

**1. Remote participation.** This section governs participation in a public proceeding of a body subject to this subchapter by a member of that body when the member is not physically present. It is the intent of the Legislature that actions of those bodies be taken openly and their deliberations be conducted openly. Remote participation through telephonic, video, electronic or other similar means of communication may not be used to defeat the purposes of this subchapter as stated in section 401.

**2. Prohibition.** Except as provided in subsection 3, a body subject to this subchapter may not allow a member of the body to participate in any of its public proceedings through telephonic, video, electronic or other similar means of communication.

**3. Exceptions.** A member of the following bodies may participate in a public proceeding of the body when not physically present to the extent authorized in the respective statute:

A. The Finance Authority of Maine, as authorized in Title 10, section 971-A;

B. The Commission on Governmental Ethics and Election Practices, as authorized in Title 21-A, section 1002, subsection 2;

C. The Maine Health and Higher Educational Facilities Authority, as authorized in Title 22, section 2054, subsection 4-A;

D. The Maine State Housing Authority, as authorized in Title 30-A, section 4723, subsection 2, paragraph B-1;

E. The Maine Municipal Bond Bank, as authorized in Title 30-A, section 5951, subsection 4-A;

F. The Emergency Medical Services' Board, as authorized in Title 32, section 88, subsection 1, paragraph E; and

G. The Workers' Compensation Board, as authorized in Title 39-A, section 151, subsection 5-A.

### **PART B**

**Sec. B-1. 10 MRSA §971**, as amended by PL 1995, c. 117, Pt. C, §1, is repealed.

**Sec. B-2. 10 MRSA §971-A** is enacted to read:

**§ 971-A. Actions of the members**

**1. Quorum required.** Seven members of the authority constitute a quorum of the members. The affirmative vote of the greater of 5 members, present and voting, or a majority of those members present and voting is necessary for any action taken by the members. A vacancy in the membership of the authority does not impair the right of the quorum to exercise all powers and perform all duties of the members.

**2. Emergency meeting.** Notwithstanding any other provision of law, in a situation determined by the chief executive officer to be an emergency requiring action of the members on not more than 3 days' oral notice, an emergency meeting of the members may be conducted by telephone in accordance with the following.

A. A conference call to the members must be placed by ordinary commercial means at an appointed time.

B. The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting.

C. Public notice of the emergency meeting must be given in accordance with Title 1, section 406 and that public notice must include the time of the meeting and the location of a telephone with a speakerphone attachment that enables all persons participating in the telephone meeting to be heard and understood and that is available for members of the public to hear the business conducted at the telephone meeting.

This subsection is repealed July 1, 2020.

**Sec. B-3. 21-A MRSA §1002, sub-§2**, as amended by PL 2011, c. 389, §2, is further amended to read:

**2. Telephone meetings.** The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:

A. During the 28 days prior to an election when the commission is required to meet within 2 business days of the filing of any complaint with the commission; or

B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.

This subsection is repealed July 1, 2020.

**Sec. B-4. 22 MRSA §2054, sub-§4**, as amended by PL 2015, c. 449, §2, is further amended to read:

**4. Powers of authority.** The powers of the authority are vested in its members, and 5 members of the authority constitute a quorum at any meeting of the authority. A vacancy in the membership of the authority does not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. An action taken by the authority under this chapter may be authorized by resolution approved by a majority of the members present at any regular or special meeting, which resolution takes effect immediately, or an action taken by the authority may be authorized by a resolution circularized or sent to each member of the authority, which resolution takes effect at such time as a majority of the members have signed an assent to such resolution. Resolutions of the authority need not be published or posted. The authority may delegate by resolution to one or more of its members or its executive director such powers and duties as it considers proper.

~~The authority may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:~~

~~A. Each member can hear all other members, speak to all other members and, to the extent reasonably practicable, see all other members by videoconferencing or other similar means of communication during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all members participating from other locations by videoconferencing or other similar means of communication;~~

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

~~C. A member who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the member's attendance is not reasonably practical. The reason that the member's attendance is not reasonably practical must be stated in the minutes of the meeting; and~~

~~D. Each member who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding.~~

~~Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate an action taken by the authority at the public proceeding.~~

**Sec. B-5. 22 MRSA §2054, sub-§4-A** is enacted to read:

**4-A. Remote participation in meetings.** The authority may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:

A. Each member can hear all other members, speak to all other members and, to the extent reasonably practicable, see all other members by videoconferencing or other similar means of communication during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all members participating from other locations by videoconferencing or other similar means of communication;

B. Each member who is not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the member is participating;

C. A member who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the member's attendance is not reasonably practicable. The reason that the member's attendance is not reasonably practicable must be stated in the minutes of the meeting; and

D. Each member who is not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate an action taken by the authority at the public proceeding.

This subsection is repealed July 1, 2020.

**Sec. B-6. 30-A MRSA §4723, sub-§2, ¶B**, as amended by PL 2015, c. 449, §3, is further amended to read:

B. The Maine State Housing Authority, as authorized by Title 5, chapter 379, must have 10 commissioners, 8 of whom must be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over economic development and to confirmation by the Legislature. The 9th commissioner is the Treasurer of State who serves as an ex

officio voting member. The Treasurer of State may designate the Deputy Treasurer of State to serve in place of the Treasurer of State. The 10th commissioner is the director of the Maine State Housing Authority who serves as an ex officio nonvoting member. At least 3 gubernatorial appointments must include a representative of bankers, a representative of elderly people and a resident of housing that is subsidized or assisted by programs of the United States Department of Housing and Urban Development or of the Maine State Housing Authority. In appointing the resident, the Governor shall give priority consideration to nominations that may be made by tenant associations established in the State. Of the 5 remaining gubernatorial appointments, the Governor shall give priority to a representative involved in the housing business and a representative of people with disabilities. The powers of the Maine State Housing Authority are vested in the commissioners. The commissioners may delegate such powers and duties to the director of the Maine State Housing Authority as they determine appropriate.

The Governor shall appoint the chair of the commissioners from among the 8 gubernatorial appointments. The chair serves as a nonvoting member, except that the chair may vote only when the chair's vote will affect the result. The commissioners shall elect a vice-chair of the commissioners from among their number.

Following reasonable notice to each commissioner, 5 commissioners of the Maine State Housing Authority constitute a quorum for the purpose of conducting its business, exercising its powers and for all other purposes, notwithstanding the existence of any vacancies. Action may be taken by the commissioners upon a vote of a majority of the commissioners present, unless otherwise specified in law or required by its bylaws.

~~The Maine State Housing Authority may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:~~

~~(1) Each commissioner can hear all other commissioners, speak to all other commissioners and, to the extent reasonably practicable, see all other commissioners by videoconferencing or other similar means of communication during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all commissioners participating from other locations by videoconferencing or other similar means of communication;~~

~~(2) Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the commissioner is participating;~~

~~(3) A commissioner who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the commissioner's attendance is not reasonably practical. The reason that the commissioner's attendance is not reasonably practical must be stated in the minutes of the meeting; and~~

~~(4) Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the commissioner not physically present during the public proceeding if the transmission technology is available. Failure to comply with this subparagraph does not invalidate an action taken by the Maine State Housing Authority at the public proceeding.~~

**Sec. B-7. 30-A MRS §4723, sub-§2, ¶B-1** is enacted to read:

B-1. The Maine State Housing Authority may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:

(1) Each commissioner can hear all other commissioners, speak to all other commissioners and, to the extent reasonably practicable, see all other commissioners by videoconferencing or other similar means of communication during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all commissioners participating from other locations by videoconferencing or other similar means of communication;

(2) Each commissioner who is not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the commissioner is participating;

(3) A commissioner who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the commissioner's attendance is not reasonably practicable. The reason that the commissioner's attendance is not reasonably practicable must be stated in the minutes of the meeting; and

(4) Each commissioner who is not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with

substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the commissioner not physically present during the public proceeding if the transmission technology is available. Failure to comply with this subparagraph does not invalidate an action taken by the Maine State Housing Authority at the public proceeding.

This paragraph is repealed July 1, 2020.

**Sec. B-8. 30-A MRS §5951, sub-§4**, as amended by PL 2015, c. 449, §4, is further amended to read:

**4. Officers of board; exercise of powers.** The board of commissioners shall elect one of its members as chair and one as vice-chair and shall appoint an executive director who also serves as both secretary and treasurer. The powers of the bank are vested in the commissioners of the bank in office from time to time. Three commissioners of the bank constitute a quorum at any meeting of the commissioners. Action may be taken and motions and resolutions adopted by the bank at any meeting by the affirmative vote of at least 3 commissioners of the bank. A vacancy in the office of commissioner of the bank does not impair the right of a quorum of the commissioners to exercise all the powers and perform all the duties of the bank.

~~The board of commissioners may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:~~

~~A. Each commissioner can hear all other commissioners, speak to all other commissioners and, to the extent reasonably practicable, see all other commissioners by videoconferencing or other similar means of communication during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all commissioners participating from other locations by videoconferencing or other similar means of communication;~~

~~B. Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the commissioner is participating;~~

~~C. A commissioner who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the commissioner's attendance is not reasonably practical. The reason that the commissioner's attendance is not reasonably practical must be stated in the minutes of the meeting; and~~

~~D. Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the~~

~~commissioner not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate an action taken by the bank at the public proceeding.~~

**Sec. B-9. 30-A MRSA §5951, sub-§4-A** is enacted to read:

**4-A. Remote participation.** The board of commissioners may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:

A. Each commissioner can hear all other commissioners, speak to all other commissioners and, to the extent reasonably practicable, see all other commissioners by videoconferencing or other similar means of communication during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all commissioners participating from other locations by videoconferencing or other similar means of communication;

B. Each commissioner who is not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the commissioner is participating;

C. A commissioner who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the commissioner's attendance is not reasonably practicable. The reason that the commissioner's attendance is not reasonably practicable must be stated in the minutes of the meeting; and

D. Each commissioner who is not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the commissioner not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate an action taken by the bank at the public proceeding.

This subsection is repealed July 1, 2020.

**Sec. B-10. 32 MRSA §88, sub-§1, ¶D**, as amended by PL 2007, c. 274, §19, is further amended to read:

D. A majority of the members appointed and currently serving constitutes a quorum for all purposes and no decision of the board may be made without a quorum present. A majority vote of those present and voting is required for board action, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable vote from

at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members. ~~The board may use video conferencing and other technologies to conduct its business but is not exempt from Title 1, chapter 13, subchapter 1. Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via video conferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.~~

**Sec. B-11. 32 MRSA §88, sub-§1, ¶E** is enacted to read:

E. The board may use videoconferencing and other technologies to conduct its business but is not exempt from Title 1, chapter 13, subchapter 1. Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via videoconferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this paragraph constitutes presence in person at such meeting.

This paragraph is repealed July 1, 2020.

**Sec. B-12. 39-A MRSA §151, sub-§5**, as amended by PL 2003, c. 608, §9, is further amended to read:

**5. Voting requirements; meetings.** The board may take action only by majority vote of its membership. The board may hold sessions at its central office or at any other place within the State ~~and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology.~~ Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

**Sec. B-13. 39-A MRSA §151, sub-§5-A** is enacted to read:

**5-A. Remote participation.** The board shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology.

This subsection is repealed July 1, 2020.

## PART C

**Sec. C-1. 1 MRSA §431, sub-§4** is enacted to read:

**4. Remote participation.** "Remote participation" means participation in a public proceeding by a member of the body that is holding or conducting the public proceeding while the member is not physically present at the location of the public proceeding identified in the notice required by section 406.

**Sec. C-2. 1 MRSA §435** is enacted to read:

**§ 435. Review of proposed remote participation authorization**

**1. Procedures before legislative committees.** Whenever a legislative measure containing a new remote participation authorization or a change that affects the accessibility of a public proceeding is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among the members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed remote participation authorization or proposed change that affects the accessibility of a public proceeding may not be enacted into law unless review and evaluation pursuant to subsection 2 have been completed.

**2. Review and evaluation.** Upon referral of a proposed remote participation authorization or proposed limitation on accessibility from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred. The review committee shall use the following criteria to determine whether the proposed remote participation authorization should be enacted:

- A. Geographic distribution of members;
- B. Demonstrated need based on emergency nature of action;
- C. Demonstrated need based on exigent circumstances, such as a natural disaster or an emergency declaration by the Governor directly related to the activities of the body; and
- D. Any other criteria that assist the review committee in determining the value of the proposed remote participation authorization as compared to the public's interest in all members participating.

**3. Report.** The review committee shall report its findings and recommendations on whether the proposed remote participation authorization or proposed limitation on accessibility to public proceedings should be enacted to the joint standing committee of the Legislature having jurisdiction over the proposal.

## SUMMARY

This bill is in response to recommendations contained in the Right To Know Advisory Committee's 12th annual report concerning remote participation in public proceedings by members of public bodies that are subject to the Freedom of Access Act. The bill expressly prohibits a member of a body subject

to the Freedom of Access Act from participating in the body's public proceedings if the member is not physically present.

Part A prohibits a member of a public body from participating in a public proceeding when that member is not physically present at the location of the public proceeding as indicated in the required public notice. The members of 7 specific public bodies are currently statutorily authorized to participate remotely in the public proceedings of those bodies, and they may continue to do so as long as the statutes still authorize such participation. The 7 bodies are the Finance Authority of Maine, the Commission on Governmental Ethics and Election Practices, the Maine Health and Higher Educational Facilities Authority, the Maine State Housing Authority, the Maine Municipal Bond Bank the Emergency Medical Services' Board and the Workers' Compensation Board.

Part B amends the statutes enabling remote participation for the 7 bodies to repeal the authorization for remote participation July 1, 2020.

Part C amends the Freedom of Access Act to 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.