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Date: (Filing No. H- )

**JUDICIARY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
129TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1103, L.D. 1511, Bill, “An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions”

Amend the bill by striking out the title and substituting the following:

**'An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions and To Address Remote Participation by Members of Public Bodies'**

Amend the bill by inserting after the enacting clause and before section 1 the following:

**'PART A'**

Amend the bill by inserting after section 7 the following:

**'PART B'**

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

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

It is the intent of the Legislature that actions of public bodies subject to this subchapter be taken openly and their deliberations be conducted openly. This section governs participation in a public proceeding of such a public body by a member of that public body when the member is not physically present. Remote participation, which means 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. The Legislature may not allow its members to participate remotely in public proceedings of the Legislature.

**1. Remote participation; requirements.** Except as provided in subsection 5, a public body subject to this subchapter may not allow a member of the public body to

**COMMITTEE AMENDMENT**

1 participate remotely in any of its public proceedings unless the participation is in  
2 accordance with this subchapter and:

3 A. After notice and public hearing, the public body has adopted a written policy or  
4 rule that authorizes a member of the public body who is not physically present to  
5 participate in a public proceeding of that public body in a manner that allows all  
6 members to simultaneously hear and speak to each other during the public proceeding  
7 and allows members of the public attending the public proceeding at the location  
8 identified in the notice required by section 406 to hear all members of the public  
9 body. The policy may not allow remote participation in executive sessions. The  
10 policy must prohibit a member who is participating remotely from voting on an issue  
11 that was discussed in an executive session if the executive session immediately  
12 precedes the proceeding in which the vote is taken;

13 B. For public bodies consisting of 3 or fewer members, at least one member is  
14 physically present at the location identified in the notice required by section 406; and,  
15 for public bodies of more than 3 members, a quorum is physically present at the  
16 location identified in the notice required by section 406, unless immediate action is  
17 imperative and physical presence of a quorum is not reasonably practicable within the  
18 period of time in which action must be taken. The determination that a quorum is not  
19 required under this paragraph must be made by the presiding officer of the public  
20 body and the facts supporting that determination must be included in the record of the  
21 meeting. A public body of 3 or more members may not consider matters other than  
22 those requiring immediate action in a public proceeding held pursuant to this  
23 subsection when a quorum is not physically present. Every member must be  
24 physically present for at least one proceeding each year;

25 C. Each member of the public body who is participating in the public proceeding  
26 remotely identifies for the record all persons present at the location from which the  
27 member is participating. The member shall note for the record when any person  
28 enters or leaves the location throughout the course of the public proceeding;

29 D. All votes taken during the public proceeding are taken by roll call;

30 E. A member of the public body who is not physically present at the location  
31 identified in the notice required by section 406 does not participate and does not vote  
32 in an adjudicatory proceeding; and

33 F. Each member of the public body who is participating in the public proceeding  
34 remotely receives any documents or other materials presented or discussed at the  
35 public proceeding in advance or when made available at the public proceeding if the  
36 transmission technology is available. Failure to comply with this paragraph does not  
37 invalidate an action of the body.

38 **2. State public bodies.** The policy under subsection 1 applicable to a state public  
39 body must be adopted by the public body as a major substantive rule under the Maine  
40 Administrative Procedure Act.

41 **3. County and municipal public bodies.** A county or municipality may by  
42 ordinance require stricter requirements than those set out in this section and may prohibit  
43 remote participation by any public body under its jurisdiction.





1 It requires that each member of a public body subject to the Freedom of Access Act  
2 be physically present in at least one public proceeding each year.

3 It requires that each member participating remotely identify all persons present at the  
4 remote location, that all votes be taken by roll call and that members participating  
5 remotely receive documents or other materials presented or discussed at the public  
6 proceeding in advance or when made available at the meeting, if the technology is  
7 available. The amendment prohibits members who are not physically present at the  
8 meeting location from participating and voting in adjudicatory proceedings.

9 It requires that a state public body adopt its remote participation policy as a major  
10 substantive rule under the Maine Administrative Procedure Act.

11 It authorizes municipalities and counties to impose stricter requirements than are  
12 provided in this amendment and allows municipalities and counties to prohibit the use of  
13 remote participation by any public body under their jurisdictions. The stricter  
14 requirements or the prohibition must be imposed through the adoption of an ordinance by  
15 the municipality or the county.

16 It provides that an elected public body may adopt a remote participation policy only  
17 after the constituency of the elected public body has voted to authorize the body to adopt  
18 the policy.

19 It prohibits the Legislature from allowing its members to participate in its public  
20 proceedings through telephonic, video, electronic or other similar means of  
21 communication, but allows the Finance Authority of Maine, the Commission on  
22 Governmental Ethics and Election Practices, the Maine Health and Higher Educational  
23 Facilities Authority, the Maine State Housing Authority, the Maine Municipal Bond  
24 Bank, the Emergency Medical Services' Board and the Workers' Compensation Board to  
25 continue allowing remote participation at their public proceedings as currently authorized  
26 in law.

27 Part C of the amendment amends the Freedom of Access Act to require the joint  
28 standing committee of the Legislature having jurisdiction over judiciary matters to  
29 conduct a review of any proposed statutory authorization of remote participation or  
30 change in accessibility with respect to public proceedings.

31 **FISCAL NOTE REQUIRED**

32 **(See attached)**