1	L.D. 1511
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5	STATE OF MAINE
6	HOUSE OF REPRESENTATIVES
7	129TH LEGISLATURE
8	FIRST REGULAR SESSION
9 10 11	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"
12	Amend the bill by striking out the title and substituting the following:
13 14 15	'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'
16 17	Amend the bill by inserting after the enacting clause and before section 1 the following:
18	'PART A'
19	Amend the bill by inserting after section 7 the following:
20	'PART B
21	Sec. B-1. 1 MRSA §403-A is enacted to read:
22	§403-A. Remote participation in public proceedings
23 24 25 26 27 28 29 30	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.
31 32	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

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

- A. After notice and public hearing, the public body has adopted a written policy or rule that authorizes a member of the public body who is not physically present to participate in a public proceeding of that public body in a manner that allows all members to simultaneously hear and speak to each other during the public proceeding and allows members of the public attending the public proceeding at the location identified in the notice required by section 406 to hear all members of the public body. The policy may not allow remote participation in executive sessions. The policy must prohibit a member who is participating remotely from voting on an issue that was discussed in an executive session if the executive session immediately precedes the proceeding in which the vote is taken;
- B. For public bodies consisting of 3 or fewer members, at least one member is physically present at the location identified in the notice required by section 406; and, for public bodies of more than 3 members, a quorum is physically present at the location identified in the notice required by section 406, unless immediate action is imperative and physical presence of a quorum is not reasonably practicable within the period of time in which action must be taken. The determination that a quorum is not required under this paragraph must be made by the presiding officer of the public body and the facts supporting that determination must be included in the record of the meeting. A public body of 3 or more members may not consider matters other than those requiring immediate action in a public proceeding held pursuant to this subsection when a quorum is not physically present. Every member must be physically present for at least one proceeding each year;
- C. Each member of the public body who is participating in the public proceeding remotely identifies for the record all persons present at the location from which the member is participating. The member shall note for the record when any person enters or leaves the location throughout the course of the public proceeding:
- D. All votes taken during the public proceeding are taken by roll call;
- E. A member of the public body who is not physically present at the location identified in the notice required by section 406 does not participate and does not vote in an adjudicatory proceeding; and
 - F. Each member of the public body who is participating in the public proceeding remotely receives any documents or other materials presented or discussed at the public proceeding in advance or when made available at the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate an action of the body.
 - 2. State public bodies. The policy under subsection 1 applicable to a state public body must be adopted by the public body as a major substantive rule under the Maine Administrative Procedure Act.
 - 3. County and municipal public bodies. A county or municipality may by ordinance require stricter requirements than those set out in this section and may prohibit remote participation by any public body under its jurisdiction.

	COMMITTEE AMENDMENT " " to H.P. 1103, L.D. 1511
1	4. Elected public bodies. A public body consisting of elected members may adopt a
2	policy under subsection 1 only after the constituents of the public body have voted to
3	authorize the public body to adopt the remote participation policy. The public body must
4	provide notice and hold a hearing before adopting the remote participation policy.
5 6	5. Exceptions. The following public bodies are exempt from the provisions of this section and a member of the following bodies may participate in a public proceeding of
7	the public body when the member is not physically present:
8	A. The Finance Authority of Maine, as provided in Title 10, section 971;
9	B. The Commission on Governmental Ethics and Election Practices, as provided in
10	<u>Title 21-A, section 1002, subsection 2;</u>

- 11 C. The Maine Health and Higher Educational Facilities Authority, as provided in Title 22, section 2054, subsection 4; 12
- 13 D. The Maine State Housing Authority, as provided in Title 30-A, section 4723, 14 subsection 2, paragraph B;
- E. The Maine Municipal Bond Bank, as provided in Title 30-A, section 5951, 15 subsection 4; 16
- F. The Emergency Medical Services' Board, as provided in Title 32, section 88, 17 18 subsection 1, paragraph D; and
- 19 G. The Workers' Compensation Board, as provided in Title 39-A, section 151, subsection 5. 20

PART C 21

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- Sec. C-1. 1 MRSA §431, sub-§4 is enacted to read:
- 4. Remote participation. "Remote participation" means participation in a public 23 proceeding by a member of the body that is holding or conducting the public proceeding 24 while the member is not physically present at the location of the public proceeding 25 identified in the notice required by section 406. 26
 - 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
 - <u>D.</u> 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.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

22 SUMMARY

This amendment designates the contents of the bill as Part A. The amendment adds Parts B and C. Part B of the amendment does the following.

It clarifies when members of public bodies may participate remotely in public proceedings of those bodies. It prohibits a body subject to the Freedom of Access Act from allowing its members to participate in its public proceedings through telephonic, video, electronic or other similar means of communication unless the body has adopted a written policy that authorizes remote participation in a manner that allows all members to simultaneously hear and speak to each other during the public proceeding and allows members of the public attending the public proceeding at the location identified in the meeting notice to hear all members of the body.

It prohibits remote participation in executive session. It also prohibits a member who is participating remotely in a proceeding from voting on an issue that was discussed in executive session that immediately preceded the vote in the public proceeding.

It requires a quorum of the body to be physically present at the location identified in the meeting notice unless immediate action is imperative and physical presence of a quorum is not reasonably practicable within the period of time requiring action, or, for public bodies that consist of 3 or fewer members, at least one member of the public body must be physically present at the location identified in the meeting notice. It requires that each member of a public body subject to the Freedom of Access Act be physically present in at least one public proceeding each year.

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

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

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

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

It prohibits the Legislature from allowing its members to participate in its public proceedings through telephonic, video, electronic or other similar means of communication, but allows 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 to continue allowing remote participation at their public proceedings as currently authorized in law.

Part C of the amendment 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.

FISCAL NOTE REQUIRED

(See attached)