

MAINE STATE LEGISLATURE

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Date: 6/18/19

Majority
JUDICIARY

L.D. 1511
(Filing No. H-641)

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5 STATE OF MAINE
6 HOUSE OF REPRESENTATIVES
7 129TH LEGISLATURE
8 FIRST REGULAR SESSION

9 COMMITTEE AMENDMENT "A" to H.P. 1103, L.D. 1511, Bill, "An Act To
10 Implement the Recommendations of the Right To Know Advisory Committee
11 Concerning Public Records Exceptions"

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

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

16 Amend the bill by inserting after the enacting clause and before section 1 the
17 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 It is the intent of the Legislature that actions of public bodies subject to this
24 subchapter be taken openly and their deliberations be conducted openly. This section
25 governs participation in a public proceeding of such a public body by a member of that
26 public body when the member is not physically present. Remote participation, which
27 means participation through telephonic, video, electronic or other similar means of
28 communication may not be used to defeat the purposes of this subchapter as stated in
29 section 401. The Legislature may not allow its members to participate remotely in public
30 proceedings of the Legislature.

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

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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 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 5. Exceptions. The following public bodies are exempt from the provisions of this
6 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 Title 21-A, section 1002, subsection 2;
- 11 C. The Maine Health and Higher Educational Facilities Authority, as provided in
12 Title 22, section 2054, subsection 4;
- 13 D. The Maine State Housing Authority, as provided in Title 30-A, section 4723,
14 subsection 2, paragraph B;
- 15 E. The Maine Municipal Bond Bank, as provided in Title 30-A, section 5951,
16 subsection 4;
- 17 F. The Emergency Medical Services' Board, as provided in Title 32, section 88,
18 subsection 1, paragraph D; and
- 19 G. The Workers' Compensation Board, as provided in Title 39-A, section 151,
20 subsection 5.

21 **PART C**

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

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

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

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

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

COMMITTEE AMENDMENT "A" to H.P. 1103, L.D. 1511

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)**



129th MAINE LEGISLATURE

LD 1511

LR 2400(03)

**An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning
Public Records Exceptions**

Fiscal Note for Bill as Amended by Committee Amendment *A. (H-641)*

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Any additional costs to affected departments or agencies are assumed to be minor and can be absorbed within existing budgeted resources.