

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 258

H.P. 195

House of Representatives, February 5, 2013

**An Act To Implement the Recommendations of the Right To Know
Advisory Committee Concerning Meetings of Public Bodies**

Reported by Representative PRIEST of Brunswick for the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

2 **PART A**

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

4 **§403-A. Public proceedings through other means of communication**

5 This section governs public proceedings, including executive sessions, during which
6 public or governmental business is discussed or transacted through telephonic, video,
7 electronic or other similar means of communication.

8 **1. Requirements.** A body subject to this subchapter may conduct a public
9 proceeding during which a member of the body participates in the discussion or
10 transaction of public or governmental business through telephonic, video, electronic or
11 other similar means of communication only if the following requirements are met:

12 A. The body has adopted a policy that authorizes a member of the body who is not
13 physically present to participate in a public proceeding through telephonic, video,
14 electronic or other similar means of communication in accordance with this section.
15 The policy may establish circumstances under which a member may participate when
16 not physically present;

17 B. Notice of the public proceeding has been given in accordance with section 406;

18 C. Except as provided in subsection 3, a quorum of the body is assembled physically
19 at the location identified in the notice required by section 406;

20 D. Each member of the body participating in the public proceeding is able to hear all
21 the other members and speak to all the other members during the public proceeding,
22 and members of the public attending the public proceeding in the location identified
23 in the notice required by section 406 are able to hear all members participating from
24 other locations;

25 E. Each member who is not physically present and who is participating through
26 telephonic, video, electronic or other similar means of communication identifies the
27 persons present at the location from which the member is participating;

28 F. All votes taken during the public proceeding are taken by roll call vote; and

29 G. Each member who is not physically present and who is participating through
30 telephonic, video, electronic or other similar means of communication has received
31 prior to the public proceeding any documents or other materials that will be discussed
32 at the public proceeding, with substantially the same content as those documents
33 actually presented. Documents or other materials made available at the public
34 proceeding may be transmitted to the member not physically present during the
35 public proceeding if the transmission technology is available. Failure to comply with
36 this paragraph does not invalidate the action of a body in a public proceeding.

37 **2. Voting; judicial or quasi-judicial proceeding.** A member of a body who is not
38 physically present and who is participating in a judicial or quasi-judicial public
39 proceeding through telephonic, video, electronic or other similar means of

1 communication may not vote on any issue concerning testimony or other evidence
2 provided during the judicial or quasi-judicial public proceeding.

3 **3. Exception to quorum requirement.** A body may convene a public proceeding
4 by telephonic, video, electronic or other similar means of communication without a
5 quorum under subsection 1, paragraph C if:

6 A. An emergency has been declared in accordance with Title 22, section 802,
7 subsection 2-A or Title 37-B, section 742;

8 B. The public proceeding is necessary to take action to address the emergency; and

9 C. The body otherwise complies with the provisions of this section to the extent
10 practicable based on the circumstances of the emergency.

11 **4. Annual meeting.** If a body conducts one or more public proceedings pursuant to
12 this section, it shall also hold at least one public proceeding annually during which
13 members of the body in attendance are physically assembled at one location and where no
14 members of the body participate by telephonic, video, electronic or other similar means
15 of communication from a different location.

16 PART B

17 **Sec. B-1. 10 MRSA §384, sub-§5** is enacted to read:

18 **5. Meetings.** The board shall have a physical location for each meeting.
19 Notwithstanding Title 1, section 403-A, board members may participate in meetings by
20 teleconference. Board members participating in the meeting by teleconference are not
21 entitled to vote and are not considered present for the purposes of determining a quorum,
22 except in cases in which the chair of the board determines that the counting of members
23 participating by teleconference and the allowance of votes by those members is necessary
24 to avoid undue hardship to an applicant for an investment.

25 **Sec. B-2. 32 MRSA §88, sub-§1, ¶D**, as amended by PL 2007, c. 274, §19, is
26 further amended to read:

27 D. A majority of the members appointed and currently serving constitutes a quorum
28 for all purposes and no decision of the board may be made without a quorum present.
29 A majority vote of those present and voting is required for board action, except that
30 for purposes of either granting a waiver of any of its rules or deciding to pursue the
31 suspension or revocation of a license, the board may take action only if the proposed
32 waiver, suspension or revocation receives a favorable vote from at least 2/3 of the
33 members present and voting and from no less than a majority of the appointed and
34 currently serving members. ~~The Notwithstanding Title 1, section 403-A, the board~~
35 ~~may use video conferencing and other technologies to conduct its business but is not~~
36 ~~exempt from Title 1, chapter 13, subchapter 4.~~ Members of the board, its
37 subcommittees or its staff may participate in a meeting of the board, subcommittees
38 or staff via video conferencing, conference telephone or similar communications
39 equipment by means of which all persons participating in the meeting can hear each
40 other, and participation in a meeting pursuant to this subsection constitutes presence
41 in person at such meeting.

1 7. Each member who is not physically present and who is participating through
2 telephonic, video, electronic or other similar means of communication must have
3 received, prior to the proceeding, any documents or other materials that will be discussed
4 at the public proceeding, with substantially the same content as those documents actually
5 presented.

6 8. A member of a body who is not physically present may not vote on any issue
7 concerning testimony or other evidence provided during the public proceeding if it is a
8 judicial or quasi-judicial proceeding.

9 9. If a body conducts one or more public proceedings using remote-access
10 technology, the body must also hold at least one public proceeding annually during which
11 all members of the body in attendance are physically assembled at one location.

12 Under current law, the following state agencies are authorized to use remote-access
13 technology to conduct meetings: the Finance Authority of Maine, the Commission on
14 Governmental Ethics and Election Practices, the Emergency Medical Services' Board and
15 the Workers' Compensation Board. Part B provides a specific exemption from the new
16 requirements for the Small Enterprise Growth Board, the Emergency Medical Services'
17 Board and the Workers' Compensation Board.