

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

SECOND REGULAR SESSION-2016

Legislative Document

No. 1586

H.P. 1077

House of Representatives, February 9, 2016

**An Act To Implement Recommendations of the Right To Know
Advisory Committee Concerning Remote Participation in Public
Proceedings**

Reported by Representative HOBBS of Saco 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.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT
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 **1. Requirements.** A body, except a publicly elected body, subject to this subchapter
6 may conduct a public proceeding through telephonic, video, electronic or other similar
7 means of communication only if the following requirements are met:

8 A. The body has adopted a written policy that authorizes a member of the body who
9 is not physically present to participate in a public proceeding. The policy must
10 establish criteria that must be met before a member may participate when not
11 physically present. The policy may not allow a member who is not physically present
12 to participate in an executive session;

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

14 C. A quorum of the body is assembled physically at the location identified in the
15 notice required by section 406, except that a body may convene a public proceeding
16 by telephonic, video, electronic or other similar means of communication without a
17 quorum if:

18 (1) An emergency has been declared in accordance with Title 22, section 802,
19 subsection 2-A or Title 37-B, section 742;

20 (2) The public proceeding is necessary to take action to address the emergency;
21 and

22 (3) The body otherwise complies with the provisions of this section to the extent
23 practicable based on the circumstances of the emergency;

24 D. Each member of the body who is participating in the public proceeding is able to
25 hear all the other members and speak to all the other members during the public
26 proceeding, and members of the public attending the public proceeding in the
27 location identified in the notice required by section 406 are able to hear all members
28 participating from other locations;

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

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

33 G. Each member of the body who is not physically present and who is participating
34 through telephonic, video, electronic or other similar means of communication has
35 received prior to the public proceeding any documents or other materials that will be
36 discussed or presented at the public proceeding, with substantially the same content
37 as those documents actually discussed or presented. Documents or other materials
38 made available at the public proceeding may be transmitted to the member not
39 physically present during the public proceeding if the transmission technology is

1 available. Failure to comply with this paragraph does not invalidate the action of a
2 body in a public proceeding.

3 **2. Voting; quasi-judicial proceeding.** A member of a body who is not physically
4 present and who is participating in a quasi-judicial public proceeding through telephonic,
5 video, electronic or other similar means of communication may not vote on any issue
6 concerning testimony or other evidence provided during the quasi-judicial public
7 proceeding. For the purposes of this subsection, "quasi-judicial proceeding" means a
8 proceeding in which the governing body is obligated to objectively determine facts and
9 draw conclusions from the facts so as to provide the basis of an official action when that
10 action may affect the legal rights, duties or privileges of specific persons.

11 **3. 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. 32 MRSA §88, sub-§1, ¶D,** as amended by PL 2007, c. 274, §19, is
18 further amended to read:

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

34 **Sec. B-2. 39-A MRSA §151, sub-§5,** as amended by PL 2003, c. 608, §9, is
35 further amended to read:

36 **5. Voting requirements; meetings.** The board may take action only by majority
37 vote of its membership. The board may hold sessions at its central office or at any other
38 place within the State and shall establish procedures through which members who are not
39 physically present may participate by telephone or other remote-access technology but is
40 not subject to the requirements of Title 1, section 403-A. Regular meetings may be called
41 by the executive director or by any 4 members of the board, and all members must be
42 given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of

1 the board is 4 members, but a smaller number may adjourn until a quorum is present.
2 Emergency meetings may be called by the executive director when it is necessary to take
3 action before a regular meeting can be scheduled. The executive director shall make all
4 reasonable efforts to notify all members as promptly as possible of the time and place of
5 any emergency meeting and the specific purpose or purposes for which the meeting is
6 called. For an emergency meeting, the 4 members constituting a quorum must include at
7 least one board member representing management and at least one board member
8 representing labor.

9 **SUMMARY**

10 Part A of this bill allows members of a body subject to the Freedom of Access Act to
11 participate in meetings of the body through telephonic, video, electronic or other similar
12 means of communication under certain conditions; however, the bill does not allow
13 members of publicly elected bodies to participate in public proceedings unless physically
14 present. The body must have adopted a written policy authorizing remote participation
15 with criteria that must be met before a member may participate remotely, but the policy
16 may not allow a member to participate remotely in an executive session of the body. The
17 bill also requires that notice of the proceeding must be given as if no members were
18 participating remotely, each member of the body must be able to hear and speak to all
19 other members, members of the public must be able to hear all members of the body, each
20 member participating remotely must identify anyone else present at the location from
21 which the member is participating, documents or materials discussed or presented at the
22 proceeding must have been received by or transmitted to members participating remotely
23 and all votes must be taken by roll call vote. A member who is not physically present may
24 not vote in a quasi-judicial proceeding of the body. A quorum of the body must be
25 physically present unless an emergency has been declared and the proceeding is
26 necessary to address the emergency. If the body conducts proceedings with members
27 participating remotely, the body must also hold at least one proceeding annually where no
28 members participate remotely.

29 Under current law, the following state agencies are authorized to use remote-access
30 technology to conduct meetings: the Finance Authority of Maine, the Commission on
31 Governmental Ethics and Election Practices, the Emergency Medical Services' Board and
32 the Workers' Compensation Board. Part B provides a specific exemption from the new
33 requirements for the Emergency Medical Services' Board and the Workers' Compensation
34 Board and does not affect the existing authority of those agencies or the Finance
35 Authority of Maine or the Commission on Governmental Ethics and Election Practices to
36 use remote-access technology to conduct meetings.