

# MAINE STATE LEGISLATURE

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# 128th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2018

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Legislative Document

No. 1831

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H.P. 1273

House of Representatives, February 8, 2018

### **An Act Concerning Remote Participation in Public Proceedings**

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Reported by Representative MOONEN of Portland 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.

A handwritten signature in cursive script that reads "R B. Hunt".

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. Remote participation in public proceedings**

5 **1. Remote participation.** This section governs participation in a public proceeding  
6 of a body subject to this subchapter by a member of that body when the member is not  
7 physically present. It is the intent of the Legislature that actions of those bodies be taken  
8 openly and their deliberations be conducted openly. Remote participation through  
9 telephonic, video, electronic or other similar means of communication may not be used to  
10 defeat the purposes of this subchapter as stated in section 401.

11 **2. Prohibition.** Except as provided in subsection 3, a body subject to this subchapter  
12 may not allow a member of the body to participate in any of its public proceedings  
13 through telephonic, video, electronic or other similar means of communication.

14 **3. Exceptions.** A member of the following bodies may participate in a public  
15 proceeding of the body when not physically present to the extent authorized in the  
16 respective statute:

17 A. The Finance Authority of Maine, as authorized in Title 10, section 971-A;

18 B. The Commission on Governmental Ethics and Election Practices, as authorized in  
19 Title 21-A, section 1002, subsection 2;

20 C. The Maine Health and Higher Educational Facilities Authority, as authorized in  
21 Title 22, section 2054, subsection 4-A;

22 D. The Maine State Housing Authority, as authorized in Title 30-A, section 4723,  
23 subsection 2, paragraph B-1;

24 E. The Maine Municipal Bond Bank, as authorized in Title 30-A, section 5951,  
25 subsection 4-A;

26 F. The Emergency Medical Services' Board, as authorized in Title 32, section 88,  
27 subsection 1, paragraph E; and

28 G. The Workers' Compensation Board, as authorized in Title 39-A, section 151,  
29 subsection 5-A.

30 **PART B**

31 **Sec. B-1. 10 MRSA §971,** as amended by PL 1995, c. 117, Pt. C, §1, is repealed.

32 **Sec. B-2. 10 MRSA §971-A** is enacted to read:

33 **§971-A. Actions of the members**

34 **1. Quorum required.** Seven members of the authority constitute a quorum of the  
35 members. The affirmative vote of the greater of 5 members, present and voting, or a

1 majority of those members present and voting is necessary for any action taken by the  
2 members. A vacancy in the membership of the authority does not impair the right of the  
3 quorum to exercise all powers and perform all duties of the members.

4 **2. Emergency meeting.** Notwithstanding any other provision of law, in a situation  
5 determined by the chief executive officer to be an emergency requiring action of the  
6 members on not more than 3 days' oral notice, an emergency meeting of the members  
7 may be conducted by telephone in accordance with the following.

8 A. A conference call to the members must be placed by ordinary commercial means  
9 at an appointed time.

10 B. The authority shall arrange for recordation of the conference call when  
11 appropriate and prepare minutes of the emergency meeting.

12 C. Public notice of the emergency meeting must be given in accordance with Title 1,  
13 section 406 and that public notice must include the time of the meeting and the  
14 location of a telephone with a speakerphone attachment that enables all persons  
15 participating in the telephone meeting to be heard and understood and that is  
16 available for members of the public to hear the business conducted at the telephone  
17 meeting.

18 This subsection is repealed July 1, 2020.

19 **Sec. B-3. 21-A MRSA §1002, sub-§2,** as amended by PL 2011, c. 389, §2, is  
20 further amended to read:

21 **2. Telephone meetings.** The commission may hold meetings over the telephone if  
22 necessary, as long as the commission provides notice to all affected parties in accordance  
23 with the rules of the commission and the commission's office remains open for attendance  
24 by complainants, witnesses, the press and other members of the public. Notwithstanding  
25 Title 1, chapter 13, telephone meetings of the commission are permitted:

26 A. During the 28 days prior to an election when the commission is required to meet  
27 within 2 business days of the filing of any complaint with the commission; or

28 B. To address procedural or logistical issues before a monthly meeting, such as the  
29 scheduling of meetings, deadlines for parties' submission of written materials, setting  
30 of meeting agenda, requests to postpone or reschedule agenda items, issuing  
31 subpoenas for documents or witnesses and recusal of commission members.

32 This subsection is repealed July 1, 2020.

33 **Sec. B-4. 22 MRSA §2054, sub-§4,** as amended by PL 2015, c. 449, §2, is  
34 further amended to read:

35 **4. Powers of authority.** The powers of the authority are vested in its members, and  
36 5 members of the authority constitute a quorum at any meeting of the authority. A  
37 vacancy in the membership of the authority does not impair the right of a quorum to  
38 exercise all the rights and perform all the duties of the authority. An action taken by the  
39 authority under this chapter may be authorized by resolution approved by a majority of  
40 the members present at any regular or special meeting, which resolution takes effect

1 immediately, or an action taken by the authority may be authorized by a resolution  
2 circularized or sent to each member of the authority, which resolution takes effect at such  
3 time as a majority of the members have signed an assent to such resolution. Resolutions  
4 of the authority need not be published or posted. The authority may delegate by  
5 resolution to one or more of its members or its executive director such powers and duties  
6 as it considers proper.

7 ~~The authority may meet by telephonic, video, electronic or other similar means of~~  
8 ~~communication with less than a quorum assembled physically at the location of a public~~  
9 ~~proceeding identified in the notice required by Title 1, section 406 only if:~~

10 ~~A. Each member can hear all other members, speak to all other members and, to the~~  
11 ~~extent reasonably practicable, see all other members by videoconferencing or other~~  
12 ~~similar means of communication during the public proceeding, and members of the~~  
13 ~~public attending the public proceeding at the location identified in the notice required~~  
14 ~~by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see~~  
15 ~~all members participating from other locations by videoconferencing or other similar~~  
16 ~~means of communication;~~

17 ~~B. Each member who is not physically present at the location of the public~~  
18 ~~proceeding and who is participating through telephonic, video, electronic or other~~  
19 ~~similar means of communication identifies all persons present at the location from~~  
20 ~~which the member is participating;~~

21 ~~C. A member who participates while not physically present at the location of the~~  
22 ~~public proceeding identified in the notice required by Title 1, section 406 does so~~  
23 ~~only when the member's attendance is not reasonably practical. The reason that the~~  
24 ~~member's attendance is not reasonably practical must be stated in the minutes of the~~  
25 ~~meeting; and~~

26 ~~D. Each member who is not physically present at the location of the public~~  
27 ~~proceeding and who is participating through telephonic, video, electronic or other~~  
28 ~~similar means of communication has received prior to the public proceeding all~~  
29 ~~documents and materials discussed at the public proceeding, with substantially the~~  
30 ~~same content as those presented at the public proceeding. Documents or other~~  
31 ~~materials made available at the public proceeding may be transmitted to the member~~  
32 ~~not physically present during the public proceeding if the transmission technology is~~  
33 ~~available. Failure to comply with this paragraph does not invalidate an action taken~~  
34 ~~by the authority at the public proceeding.~~

35 **Sec. B-5. 22 MRSA §2054, sub-§4-A** is enacted to read:

36 **4-A. Remote participation in meetings.** The authority may meet by telephonic,  
37 video, electronic or other similar means of communication with less than a quorum  
38 assembled physically at the location of a public proceeding identified in the notice  
39 required by Title 1, section 406 only if:

40 A. Each member can hear all other members, speak to all other members and, to the  
41 extent reasonably practicable, see all other members by videoconferencing or other  
42 similar means of communication during the public proceeding, and members of the  
43 public attending the public proceeding at the location identified in the notice required

1 by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see  
2 all members participating from other locations by videoconferencing or other similar  
3 means of communication;

4 B. Each member who is not physically present at the location of the public  
5 proceeding identified in the notice required by Title 1, section 406 and who is  
6 participating through telephonic, video, electronic or other similar means of  
7 communication identifies all persons present at the location from which the member  
8 is participating;

9 C. A member who participates while not physically present at the location of the  
10 public proceeding identified in the notice required by Title 1, section 406 does so  
11 only when the member's attendance is not reasonably practicable. The reason that the  
12 member's attendance is not reasonably practicable must be stated in the minutes of  
13 the meeting; and

14 D. Each member who is not physically present at the location of the public  
15 proceeding identified in the notice required by Title 1, section 406 and who is  
16 participating through telephonic, video, electronic or other similar means of  
17 communication has received prior to the public proceeding all documents and  
18 materials discussed at the public proceeding, with substantially the same content as  
19 those presented at the public proceeding. Documents or other materials made  
20 available at the public proceeding may be transmitted to the member not physically  
21 present during the public proceeding if the transmission technology is available.  
22 Failure to comply with this paragraph does not invalidate an action taken by the  
23 authority at the public proceeding.

24 This subsection is repealed July 1, 2020.

25 **Sec. B-6. 30-A MRSA §4723, sub-§2, ¶B,** as amended by PL 2015, c. 449, §3,  
26 is further amended to read:

27 B. The Maine State Housing Authority, as authorized by Title 5, chapter 379, must  
28 have 10 commissioners, 8 of whom must be appointed by the Governor, subject to  
29 review by the joint standing committee of the Legislature having jurisdiction over  
30 economic development and to confirmation by the Legislature. The 9th  
31 commissioner is the Treasurer of State who serves as an ex officio voting member.  
32 The Treasurer of State may designate the Deputy Treasurer of State to serve in place  
33 of the Treasurer of State. The 10th commissioner is the director of the Maine State  
34 Housing Authority who serves as an ex officio nonvoting member. At least 3  
35 gubernatorial appointments must include a representative of bankers, a representative  
36 of elderly people and a resident of housing that is subsidized or assisted by programs  
37 of the United States Department of Housing and Urban Development or of the Maine  
38 State Housing Authority. In appointing the resident, the Governor shall give priority  
39 consideration to nominations that may be made by tenant associations established in  
40 the State. Of the 5 remaining gubernatorial appointments, the Governor shall give  
41 priority to a representative involved in the housing business and a representative of  
42 people with disabilities. The powers of the Maine State Housing Authority are vested  
43 in the commissioners. The commissioners may delegate such powers and duties to  
44 the director of the Maine State Housing Authority as they determine appropriate.

1 The Governor shall appoint the chair of the commissioners from among the 8  
2 gubernatorial appointments. The chair serves as a nonvoting member, except that the  
3 chair may vote only when the chair's vote will affect the result. The commissioners  
4 shall elect a vice-chair of the commissioners from among their number.

5 Following reasonable notice to each commissioner, 5 commissioners of the Maine  
6 State Housing Authority constitute a quorum for the purpose of conducting its  
7 business, exercising its powers and for all other purposes, notwithstanding the  
8 existence of any vacancies. Action may be taken by the commissioners upon a vote  
9 of a majority of the commissioners present, unless otherwise specified in law or  
10 required by its bylaws.

11 ~~The Maine State Housing Authority may meet by telephonic, video, electronic or~~  
12 ~~other similar means of communication with less than a quorum assembled physically~~  
13 ~~at the location of a public proceeding identified in the notice required by Title 1,~~  
14 ~~section 406 only if:~~

15 ~~(1) Each commissioner can hear all other commissioners, speak to all other~~  
16 ~~commissioners and, to the extent reasonably practicable, see all other~~  
17 ~~commissioners by videoconferencing or other similar means of communication~~  
18 ~~during the public proceeding, and members of the public attending the public~~  
19 ~~proceeding at the location identified in the notice required by Title 1, section 406~~  
20 ~~are able to hear and, to the extent reasonably practicable, see all commissioners~~  
21 ~~participating from other locations by videoconferencing or other similar means of~~  
22 ~~communication;~~

23 ~~(2) Each commissioner who is not physically present at the location of the public~~  
24 ~~proceeding and who is participating through telephonic, video, electronic or other~~  
25 ~~similar means of communication identifies all persons present at the location~~  
26 ~~from which the commissioner is participating;~~

27 ~~(3) A commissioner who participates while not physically present at the location~~  
28 ~~of the public proceeding identified in the notice required by Title 1, section 406~~  
29 ~~does so only when the commissioner's attendance is not reasonably practical.~~  
30 ~~The reason that the commissioner's attendance is not reasonably practical must be~~  
31 ~~stated in the minutes of the meeting; and~~

32 ~~(4) Each commissioner who is not physically present at the location of the public~~  
33 ~~proceeding and who is participating through telephonic, video, electronic or other~~  
34 ~~similar means of communication has received prior to the public proceeding all~~  
35 ~~documents and materials discussed at the public proceeding, with substantially~~  
36 ~~the same content as those presented at the public proceeding. Documents or~~  
37 ~~other materials made available at the public proceeding may be transmitted to the~~  
38 ~~commissioner not physically present during the public proceeding if the~~  
39 ~~transmission technology is available. Failure to comply with this subparagraph~~  
40 ~~does not invalidate an action taken by the Maine State Housing Authority at the~~  
41 ~~public proceeding.~~

42 **Sec. B-7. 30-A MRSA §4723, sub-§2, ¶B-1** is enacted to read:

1 B-1. The Maine State Housing Authority may meet by telephonic, video, electronic  
2 or other similar means of communication with less than a quorum assembled  
3 physically at the location of a public proceeding identified in the notice required by  
4 Title 1, section 406 only if:

5 (1) Each commissioner can hear all other commissioners, speak to all other  
6 commissioners and, to the extent reasonably practicable, see all other  
7 commissioners by videoconferencing or other similar means of communication  
8 during the public proceeding, and members of the public attending the public  
9 proceeding at the location identified in the notice required by Title 1, section 406  
10 are able to hear and, to the extent reasonably practicable, see all commissioners  
11 participating from other locations by videoconferencing or other similar means of  
12 communication;

13 (2) Each commissioner who is not physically present at the location of the public  
14 proceeding identified in the notice required by Title 1, section 406 and who is  
15 participating through telephonic, video, electronic or other similar means of  
16 communication identifies all persons present at the location from which the  
17 commissioner is participating;

18 (3) A commissioner who participates while not physically present at the location  
19 of the public proceeding identified in the notice required by Title 1, section 406  
20 does so only when the commissioner's attendance is not reasonably practicable.  
21 The reason that the commissioner's attendance is not reasonably practicable must  
22 be stated in the minutes of the meeting; and

23 (4) Each commissioner who is not physically present at the location of the public  
24 proceeding identified in the notice required by Title 1, section 406 and who is  
25 participating through telephonic, video, electronic or other similar means of  
26 communication has received prior to the public proceeding all documents and  
27 materials discussed at the public proceeding, with substantially the same content  
28 as those presented at the public proceeding. Documents or other materials made  
29 available at the public proceeding may be transmitted to the commissioner not  
30 physically present during the public proceeding if the transmission technology is  
31 available. Failure to comply with this subparagraph does not invalidate an action  
32 taken by the Maine State Housing Authority at the public proceeding.

33 This paragraph is repealed July 1, 2020.

34 **Sec. B-8. 30-A MRSA §5951, sub-§4**, as amended by PL 2015, c. 449, §4, is  
35 further amended to read:

36 **4. Officers of board; exercise of powers.** The board of commissioners shall elect  
37 one of its members as chair and one as vice-chair and shall appoint an executive director  
38 who also serves as both secretary and treasurer. The powers of the bank are vested in the  
39 commissioners of the bank in office from time to time. Three commissioners of the bank  
40 constitute a quorum at any meeting of the commissioners. Action may be taken and  
41 motions and resolutions adopted by the bank at any meeting by the affirmative vote of at  
42 least 3 commissioners of the bank. A vacancy in the office of commissioner of the bank  
43 does not impair the right of a quorum of the commissioners to exercise all the powers and  
44 perform all the duties of the bank.



1 The board of commissioners may meet by telephonic, video, electronic or other similar  
2 means of communication with less than a quorum assembled physically at the location of  
3 a public proceeding identified in the notice required by Title 1, section 406 only if:

4 A. ~~Each commissioner can hear all other commissioners, speak to all other~~  
5 ~~commissioners and, to the extent reasonably practicable, see all other commissioners~~  
6 ~~by videoconferencing or other similar means of communication during the public~~  
7 ~~proceeding, and members of the public attending the public proceeding at the location~~  
8 ~~identified in the notice required by Title 1, section 406 are able to hear and, to the~~  
9 ~~extent reasonably practicable, see all commissioners participating from other~~  
10 ~~locations by videoconferencing or other similar means of communication;~~

11 B. ~~Each commissioner who is not physically present at the location of the public~~  
12 ~~proceeding and who is participating through telephonic, video, electronic or other~~  
13 ~~similar means of communication identifies all persons present at the location from~~  
14 ~~which the commissioner is participating;~~

15 C. ~~A commissioner who participates while not physically present at the location of~~  
16 ~~the public proceeding identified in the notice required by Title 1, section 406 does so~~  
17 ~~only when the commissioner's attendance is not reasonably practical. The reason that~~  
18 ~~the commissioner's attendance is not reasonably practical must be stated in the~~  
19 ~~minutes of the meeting; and~~

20 D. ~~Each commissioner who is not physically present at the location of the public~~  
21 ~~proceeding and who is participating through telephonic, video, electronic or other~~  
22 ~~similar means of communication has received prior to the public proceeding all~~  
23 ~~documents and materials discussed at the public proceeding, with substantially the~~  
24 ~~same content as those presented at the public proceeding. Documents or other~~  
25 ~~materials made available at the public proceeding may be transmitted to the~~  
26 ~~commissioner not physically present during the public proceeding if the transmission~~  
27 ~~technology is available. Failure to comply with this paragraph does not invalidate an~~  
28 ~~action taken by the bank at the public proceeding.~~

29 **Sec. B-9. 30-A MRS §5951, sub-§4-A** is enacted to read:

30 **4-A. Remote participation.** The board of commissioners may meet by telephonic,  
31 video, electronic or other similar means of communication with less than a quorum  
32 assembled physically at the location of a public proceeding identified in the notice  
33 required by Title 1, section 406 only if:

34 A. Each commissioner can hear all other commissioners, speak to all other  
35 commissioners and, to the extent reasonably practicable, see all other commissioners  
36 by videoconferencing or other similar means of communication during the public  
37 proceeding, and members of the public attending the public proceeding at the location  
38 identified in the notice required by Title 1, section 406 are able to hear and, to the  
39 extent reasonably practicable, see all commissioners participating from other  
40 locations by videoconferencing or other similar means of communication;

41 B. Each commissioner who is not physically present at the location of the public  
42 proceeding identified in the notice required by Title 1, section 406 and who is  
43 participating through telephonic, video, electronic or other similar means of

1 communication identifies all persons present at the location from which the  
2 commissioner is participating;

3 C. A commissioner who participates while not physically present at the location of  
4 the public proceeding identified in the notice required by Title 1, section 406 does so  
5 only when the commissioner's attendance is not reasonably practicable. The reason  
6 that the commissioner's attendance is not reasonably practicable must be stated in the  
7 minutes of the meeting; and

8 D. Each commissioner who is not physically present at the location of the public  
9 proceeding identified in the notice required by Title 1, section 406 and who is  
10 participating through telephonic, video, electronic or other similar means of  
11 communication has received prior to the public proceeding all documents and  
12 materials discussed at the public proceeding, with substantially the same content as  
13 those presented at the public proceeding. Documents or other materials made  
14 available at the public proceeding may be transmitted to the commissioner not  
15 physically present during the public proceeding if the transmission technology is  
16 available. Failure to comply with this paragraph does not invalidate an action taken  
17 by the bank at the public proceeding.

18 This subsection is repealed July 1, 2020.

19 **Sec. B-10. 32 MRSA §88, sub-§1, ¶D**, as amended by PL 2007, c. 274, §19, is  
20 further amended to read:

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

35 **Sec. B-11. 32 MRSA §88, sub-§1, ¶E** is enacted to read:

36 E. The board may use videoconferencing and other technologies to conduct its  
37 business but is not exempt from Title 1, chapter 13, subchapter 1. Members of the  
38 board, its subcommittees or its staff may participate in a meeting of the board,  
39 subcommittees or staff via videoconferencing, conference telephone or similar  
40 communications equipment by means of which all persons participating in the  
41 meeting can hear each other, and participation in a meeting pursuant to this paragraph  
42 constitutes presence in person at such meeting.

43 This paragraph is repealed July 1, 2020.



1 public proceeding may not be enacted into law unless review and evaluation pursuant to  
2 subsection 2 have been completed.

3 **2. Review and evaluation.** Upon referral of a proposed remote participation  
4 authorization or proposed limitation on accessibility from the joint standing committee of  
5 the Legislature having jurisdiction over the proposal, the review committee shall conduct  
6 a review and evaluation of the proposal and shall report in a timely manner to the  
7 committee to which the proposal was referred. The review committee shall use the  
8 following criteria to determine whether the proposed remote participation authorization  
9 should be enacted:

10 A. Geographic distribution of members;

11 B. Demonstrated need based on emergency nature of action;

12 C. Demonstrated need based on exigent circumstances, such as a natural disaster or  
13 an emergency declaration by the Governor directly related to the activities of the  
14 body; and

15 D. Any other criteria that assist the review committee in determining the value of the  
16 proposed remote participation authorization as compared to the public's interest in all  
17 members participating.

18 **3. Report.** The review committee shall report its findings and recommendations on  
19 whether the proposed remote participation authorization or proposed limitation on  
20 accessibility to public proceedings should be enacted to the joint standing committee of  
21 the Legislature having jurisdiction over the proposal.

## 22 SUMMARY

23 This bill is in response to recommendations contained in the Right To Know  
24 Advisory Committee's 12th annual report concerning remote participation in public  
25 proceedings by members of public bodies that are subject to the Freedom of Access Act.  
26 The bill expressly prohibits a member of a body subject to the Freedom of Access Act  
27 from participating in the body's public proceedings if the member is not physically  
28 present.

29 Part A prohibits a member of a public body from participating in a public proceeding  
30 when that member is not physically present at the location of the public proceeding as  
31 indicated in the required public notice. The members of 7 specific public bodies are  
32 currently statutorily authorized to participate remotely in the public proceedings of those  
33 bodies, and they may continue to do so as long as the statutes still authorize such  
34 participation. The 7 bodies are the Finance Authority of Maine, the Commission on  
35 Governmental Ethics and Election Practices, the Maine Health and Higher Educational  
36 Facilities Authority, the Maine State Housing Authority, the Maine Municipal Bond Bank  
37 the Emergency Medical Services' Board and the Workers' Compensation Board.

38 Part B amends the statutes enabling remote participation for the 7 bodies to repeal the  
39 authorization for remote participation July 1, 2020.

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