

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

SECOND REGULAR SESSION-2018

Legislative Document

No. 1832

H.P. 1274

House of Representatives, February 8, 2018

An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation

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 "Robert B. Hunt".

ROBERT B. HUNT
Clerk

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

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

3 **§403-A. Remote participation in public proceedings**

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

12 **1. Remote participation; requirements.** Except as provided in subsection 2, a
13 body subject to this subchapter may not allow a member of the body to participate
14 remotely in any of its public proceedings unless the participation is in accordance with
15 this subchapter and:

16 A. After notice and public hearing, the body has adopted a written policy or rule that
17 authorizes a member of the body who is not physically present to participate in a
18 public proceeding of that body in a manner that allows all members to simultaneously
19 hear and speak to each other during the public proceeding and allows members of the
20 public attending the public proceeding at the location identified in the notice required
21 by section 406 to hear all members of the body. If the policy allows remote
22 participation in executive sessions, the policy must establish procedures and
23 requirements that ensure the privacy of the executive session;

24 B. A quorum is physically present at the location identified in the notice required by
25 section 406, unless immediate action is imperative and physical presence of a quorum
26 is not reasonably practicable within the period of time in which action must be taken.
27 The determination that a quorum is not required under this paragraph must be made
28 by the presiding officer of the body and the facts supporting that determination must
29 be included in the record of the meeting. A body may not consider matters other than
30 those requiring immediate action in a public proceeding held pursuant to this
31 subsection when a quorum is not physically present;

32 C. Each member of the body who is participating in the public proceeding remotely
33 identifies for the record all persons present at the location from which the member is
34 participating. The member shall note for the record when any person enters or leaves
35 the location throughout the course of the public proceeding;

36 D. All votes taken during the public proceeding are taken by roll call;

37 E. A member of the body who is not physically present at the location identified in
38 the notice required by section 406 does not participate and does not vote in an
39 adjudicatory proceeding; and

40 F. Each member of the body who is participating in the public proceeding remotely
41 receives any documents or other materials presented or discussed at the public

1 proceeding in advance or when made available at the public proceeding if the
2 transmission technology is available. Failure to comply with this subsection does not
3 invalidate an action of the body.

4 **2. Exceptions.** The following bodies are exempt from the provisions of this section
5 and a member of the following bodies may participate in a public proceeding of the body
6 when the member is not physically present:

7 A. The Finance Authority of Maine, as provided in Title 10, section 971;

8 B. The Commission on Governmental Ethics and Election Practices, as provided in
9 Title 21-A, section 1002, subsection 2;

10 C. The Maine Health and Higher Educational Facilities Authority, as provided in
11 Title 22, section 2054, subsection 4;

12 D. The Maine State Housing Authority, as provided in Title 30-A, section 4723,
13 subsection 2, paragraph B;

14 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 subsection 1, paragraph D; and

18 G. The Workers' Compensation Board, as provided in Title 39-A, section 151,
19 subsection 5.

20 SUMMARY

21 This bill implements the recommendation of the Right To Know Advisory
22 Committee to clarify when members of public bodies may participate remotely in public
23 proceedings of those bodies. The bill prohibits a body subject to the Freedom of Access
24 Act from allowing its members to participate in its public proceedings through
25 telephonic, video, electronic or other similar means of communication unless the body
26 has adopted a written policy that authorizes remote participation in a manner that allows
27 all members to simultaneously hear and speak to each other during the public proceeding
28 and allows members of the public attending the public proceeding at the location
29 identified in the meeting notice to hear all members of the body. If the policy allows
30 remote participation in executive sessions, the policy must establish procedures and
31 requirements that ensure the privacy of the executive session. The bill requires a quorum
32 of the body to be physically present at the location identified in the meeting notice unless
33 immediate action is imperative and physical presence of a quorum is not reasonably
34 practicable within the period of time requiring action. The bill requires that each member
35 participating remotely identify all persons present at the remote location, that all votes be
36 taken by roll call and that members participating remotely receive documents or other
37 materials presented or discussed at the public proceeding in advance or when made
38 available at the meeting, if the technology is available. The bill prohibits members who
39 are not physically present at the meeting location from participating and voting in
40 adjudicatory proceedings.

1 The bill prohibits the Legislature from allowing its members to participate in its
2 public proceedings through telephonic, video, electronic or other similar means of
3 communication, but allows the Finance Authority of Maine, the Commission on
4 Governmental Ethics and Election Practices, the Maine Health and Higher Educational
5 Facilities Authority, the Maine State Housing Authority, the Maine Municipal Bond
6 Bank, the Emergency Medical Services' Board and the Workers' Compensation Board to
7 continue allowing remote participation at their public proceedings as currently authorized
8 in law.