

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document

No. 668

H.P. 495

House of Representatives, March 3, 2021

**An Act To Ensure Public Accountability While Implementing a
Practical Approach to Remote Participation**

Received by the Clerk of the House on March 1, 2021. Referred to the Committee on
Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

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

ROBERT B. HUNT
Clerk

Presented by Representative BABBIDGE of Kennebunk.

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

2 **PART A**

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

4 **§403-B. Remote participation in public proceedings**

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

11 **1. Definition.** As used in section, "remote participation" means participation through
12 telephonic, video, electronic or other similar means of communication.

13 **2. Remote participation; requirements.** Except as provided in subsection 6, a public
14 body subject to this subchapter may not allow a member of the public body to participate
15 remotely in any of its public proceedings unless the remote participation is in accordance
16 with this subchapter and:

17 A. After notice and public hearing, the public body has adopted a written policy or
18 rule that authorizes a member of the public body who is not physically present to
19 participate in a public proceeding of that public body in a manner that allows all
20 members to simultaneously hear and speak to each other during the public proceeding
21 and allows members of the public attending the public proceeding at the location
22 identified in the notice required by section 406 to hear all members of the public body.
23 The policy may not allow remote participation in executive sessions. The policy must
24 prohibit a member who is participating in the public proceeding remotely from voting
25 on an issue that was discussed in an executive session if the executive session
26 immediately precedes the proceeding in which the vote is taken;

27 B. For a public body consisting of 3 or fewer members, at least one member is
28 physically present at the location identified in the notice required by section 406; and,
29 for a public body consisting of more than 3 members, a quorum is physically present
30 at the location identified in the notice required by section 406, unless immediate action
31 is imperative and physical presence of a quorum is not reasonably practicable within
32 the period of time in which action must be taken. The determination that a quorum is
33 not required under this paragraph must be made by the presiding officer of the public
34 body and the facts supporting that determination must be included in the minutes of the
35 meeting. A public body consisting of 3 or more members may not consider matters
36 other than those requiring immediate action in a public proceeding held pursuant to this
37 subsection when a quorum is not physically present. Each member must be physically
38 present for at least one proceeding each year;

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

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

1 members. A vacancy in the membership of the authority does not impair the right of the
2 quorum to exercise all powers and perform all duties of the members.

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

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

9 B. The authority shall arrange for the conference call to be recorded when the authority
10 determines it to be appropriate and shall prepare minutes of the emergency meeting;
11 and

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 location
14 of a telephone with a speakerphone attachment that enables all persons participating in
15 the telephone meeting to be heard and understood and that is available for members of
16 the public to hear the business conducted at the telephone meeting.

17 This subsection is repealed July 1, 2027.

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

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

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

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

31 This subsection is repealed July 1, 2027.

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

34 **4. Powers of authority.** The powers of the authority are vested in its members, and 5
35 members of the authority constitute a quorum at any meeting of the authority. A vacancy
36 in the membership of the authority does not impair the right of a quorum to exercise all the
37 rights and perform all the duties of the authority. An action taken by the authority under
38 this chapter may be authorized by resolution approved by a majority of the members present
39 at any regular or special meeting, which resolution takes effect immediately, or an action
40 taken by the authority may be authorized by a resolution circularized or sent to each
41 member of the authority, which resolution takes effect at such time as a majority of the
42 members have signed an assent to such resolution. Resolutions of the authority need not

1 be published or posted. The authority may delegate by resolution to one or more of its
2 members or its executive director such powers and duties as it considers proper.

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

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

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

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

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

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

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

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

42 B. Each member who is not physically present at the location of the public proceeding
43 identified in the notice required by Title 1, section 406 and who is participating through

1 telephonic, video, electronic or other similar means of communication identifies all
2 persons present at the location from which the member is participating;

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

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

17 This subsection is repealed July 1, 2027.

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

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

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

42 Following reasonable notice to each commissioner, 5 commissioners of the Maine
43 State Housing Authority constitute a quorum for the purpose of conducting its business,
44 exercising its powers and for all other purposes, notwithstanding the existence of any

1 vacancies. Action may be taken by the commissioners upon a vote of a majority of the
2 commissioners present, unless otherwise specified in law or required by its bylaws.

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

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

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

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

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

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

35 B-1. The Maine State Housing Authority may meet by telephonic, video, electronic or
36 other similar means of communication with less than a quorum assembled physically
37 at the location of a public proceeding identified in the notice required by Title 1, section
38 406 only if:

39 (1) Each commissioner can hear all other commissioners, speak to all other
40 commissioners and, to the extent reasonably practicable, see all other
41 commissioners by videoconferencing or other similar means of communication
42 during the public proceeding, and members of the public attending the public
43 proceeding at the location identified in the notice required by Title 1, section 406
44 are able to hear and, to the extent reasonably practicable, see all commissioners

1 participating from other locations by videoconferencing or other similar means of
2 communication;

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

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

13 (4) 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 has received prior to the public proceeding all documents and
17 materials discussed at the public proceeding, with substantially the same content
18 as those presented at the public proceeding. Documents or other materials made
19 available at the public proceeding may be transmitted to the commissioner not
20 physically present during the public proceeding if the transmission technology is
21 available. Failure to comply with this subparagraph does not invalidate an action
22 taken by the Maine State Housing Authority at the public proceeding.

23 This paragraph is repealed July 1, 2027.

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

26 **4. Officers of board; exercise of powers.** The board of commissioners shall elect
27 one of its members as chair and one as vice-chair and shall appoint an executive director
28 who also serves as both secretary and treasurer. The powers of the bank are vested in the
29 commissioners of the bank in office from time to time. Three commissioners of the bank
30 constitute a quorum at any meeting of the commissioners. Action may be taken and
31 motions and resolutions adopted by the bank at any meeting by the affirmative vote of at
32 least 3 commissioners of the bank. A vacancy in the office of commissioner of the bank
33 does not impair the right of a quorum of the commissioners to exercise all the powers and
34 perform all the duties of the bank.

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

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

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

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

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

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

20 **4-A. Remote participation.** The board of commissioners may meet by telephonic,
21 video, electronic or other similar means of communication with less than a quorum
22 assembled physically at the location of a public proceeding identified in the notice required
23 by Title 1, section 406 only if:

24 A. Each commissioner can hear all other commissioners, speak to all other
25 commissioners and, to the extent reasonably practicable, see all other commissioners
26 by videoconferencing or other similar means of communication during the public
27 proceeding, and members of the public attending the public proceeding at the location
28 identified in the notice required by Title 1, section 406 are able to hear and, to the extent
29 reasonably practicable, see all commissioners participating from other locations by
30 videoconferencing or other similar means of communication;

31 B. Each commissioner who is not physically present at the location of the public
32 proceeding identified in the notice required by Title 1, section 406 and who is
33 participating through telephonic, video, electronic or other similar means of
34 communication identifies all persons present at the location from which the
35 commissioner is participating;

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

41 D. 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
44 communication has received prior to the public proceeding all documents and materials
45 discussed at the public proceeding, with substantially the same content as those

1 presented at the public proceeding. Documents or other materials made available at
2 the public proceeding may be transmitted to the commissioner not physically present
3 during the public proceeding if the transmission technology is available. Failure to
4 comply with this paragraph does not invalidate an action taken by the bank at the public
5 proceeding.

6 This subsection is repealed July 1, 2027.

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

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

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

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

31 This paragraph is repealed July 1, 2027.

32 **Sec. B-12. 39-A MRSA §151, sub-§5**, as amended by PL 2003, c. 608, §9, is
33 further amended to read:

34 **5. Voting requirements; meetings.** The board may take action only by majority vote
35 of its membership. The board may hold sessions at its central office or at any other place
36 within the State ~~and shall establish procedures through which members who are not~~
37 ~~physically present may participate by telephone or other remote access technology.~~
38 Regular meetings may be called by the executive director or by any 4 members of the board,
39 and all members must be given at least 7 days' notice of the time, place and agenda of the
40 meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a
41 quorum is present. Emergency meetings may be called by the executive director when it
42 is necessary to take action before a regular meeting can be scheduled. The executive
43 director shall make all reasonable efforts to notify all members as promptly as possible of
44 the time and place of any emergency meeting and the specific purpose or purposes for

1 which the meeting is called. For an emergency meeting, the 4 members constituting a
2 quorum must include at least one board member representing management and at least one
3 board member representing labor.

4 **Sec. B-13. 39-A MRSA §151, sub-§5-A** is enacted to read:

5 **5-A. Remote participation.** The board shall establish procedures through which
6 members who are not physically present at a meeting pursuant to subsection 5 may
7 participate by telephone or other remote-access technology.

8 This subsection is repealed July 1, 2027.

9 **PART C**

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

11 **4. Remote participation.** "Remote participation" means participation in a public
12 proceeding by a member of a body that is holding or conducting the public proceeding
13 while the member is not physically present at the location of the public proceeding
14 identified in the notice required by section 406.

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

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

17 **1. Procedures before legislative committees.** Whenever a legislative measure
18 containing a new remote participation authorization or a change that affects the
19 accessibility of a public proceeding is proposed, the joint standing committee of the
20 Legislature having jurisdiction over the proposal shall hold a public hearing and determine
21 the level of support for the proposal among the members of the committee. If there is
22 support for the proposal among a majority of the members of the committee, the committee
23 shall request the review committee to review and evaluate the proposal pursuant to
24 subsection 2 and to report back to the committee of jurisdiction. A proposed remote
25 participation authorization or proposed change that affects the accessibility of a public
26 proceeding may not be enacted into law unless review and evaluation pursuant to
27 subsection 2 have been completed.

28 **2. Review and evaluation.** Upon referral of a proposed remote participation
29 authorization or proposed limitation on accessibility from the joint standing committee of
30 the Legislature having jurisdiction over the proposal, the review committee shall conduct
31 a review and evaluation of the proposal and shall report in a timely manner to the committee
32 to which the proposal was referred. The review committee shall use the following criteria
33 to determine whether the proposed remote participation authorization should be enacted:

34 **A. Geographic distribution of members;**

35 **B. Demonstrated need based on emergency nature of action;**

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

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

