

REMOTE PARTICIPATION IN PUBLIC PROCEEDINGS - Maine Secretary of State's Office

To Boards and Commissions:

On July 30, 2021, the emergency law permitting remote public proceedings during the COVID-19 pandemic expired. In its place, the Legislature enacted a new law, [P.L. 2021, Ch. 290, "An Act Regarding Remote Participation in Public Proceedings."](#) This memorandum answers frequently asked questions about the new law.

Can my board or commission continue to meet remotely under the new law?

Yes, but only under certain conditions. The body must first adopt a written policy on remote participation. The body may then allow members of the body to participate by remote means if their in-person attendance is not "practicable" and the body complies with the other requirements of the new law, including arranging for remote attendance for members of the public.

Which boards or commissions are covered by the new law?

Bodies are covered by the new law unless they meet one of two exceptions:

First, a body is not subject to the new law if it is not subject to the Freedom of Access Act generally. Very few state-created bodies fall within this exception. If you are unsure if your entity is covered by the Freedom of Access Act, consult 1 M.R.S. § 403(2)(A)–(G), which describes which entities are required to hold public meetings under the Act, or discuss with your legal counsel.

Second, a body is not subject to the new law if it is already subject to another law that allows for remote participation. If it is, that more specific law supersedes the new law.

When is it permissible for a member of my board or commission to attend a proceeding remotely?

Once the body has adopted a written policy on remote attendance, members can attend remotely if it is not "practicable" for them to attend the proceeding in person. The law does not give hard and fast rules for when attendance by a member is not "practicable." Instead, the law gives four non-exclusive examples of situations in which in-person attendance may be impracticable:

1. The existence of an emergency or urgent issue that requires the public body to meet by remote methods;
2. Illness, other physical condition or temporary absence from the jurisdiction of the body that causes a member of the body to face significant difficulties traveling to and attending in person at the location in the notice under section 406;
3. With respect to a public body with statewide membership, significant distance a member must travel to be physically present at the location in the notice under section 406; and
4. The area of the public body's jurisdiction includes geographic characteristics that impede or slow travel, including but not limited to islands not connected by bridges;

The law gives each body discretion to identify other circumstances that may render in-person attendance impracticable. Some bodies, for example, have identified weather events, such as hurricanes or snowstorms, as additional circumstances that may make in-person attendance impracticable.

Whether it simply accepts the four circumstances set forth in the law, or adopts additional circumstances, the body should strongly consider including in its written policy the specific circumstances that it will regard as making in-person attendance of its meetings impracticable.

If one or more members of my board or commission plans to participate remotely in a proceeding, does it change how the proceeding must be noticed and conducted?

Yes. If any members of the body participate remotely in a proceeding, the new law requires the following:

1. The body must provide members of the public with a meaningful opportunity to attend by remote methods.
2. The body must provide an effective means of communication between members of the body and the public if the body allows or is required to provide an opportunity for public input during the proceeding.
3. The notice of proceeding under 1 M.R.S. § 406 must contain certain additional information, including the means by which members of the public may access the proceeding using remote methods.
4. The body must offer a location for in-person attendance by the public. (The body is exempt from this requirement in the event of an “emergency or urgent issue that requires the public body to meet by remote methods”).
5. All votes must be conducted by roll call.
6. Documents and other materials must be made available to members of the public participating remotely to the same extent customarily available to members of the public attending in person.

Do members of a body who are participating remotely count toward a quorum?

Yes.

What types of technologies may be used for remote participation?

Either telephonic or video technologies may be used. Other means may also be used when necessary to reasonably accommodate a disability. Participation may not be by text-only means of communication, such as e-mail, text messages, or chat functions.

What should the written policy on remote attendance include?

The new law requires that each body’s written policy contain three elements:

1. It must state that "members of the body are expected to be physically present for public proceedings except when being physically present is not practicable."

2. It must provide members of the public with a meaningful opportunity to attend by remote methods whenever any member of the body participates by remote methods.
3. It must provide that reasonable accommodations may be provided when necessary to provide remote access to individuals with disabilities.

Beyond those three requirements, the contents of the policy are at the discretion of the body. Typical topics include a list of circumstances that may make in-person attendance impracticable, the specific processes or technologies that the body intends to use to allow for remote participation of its members and the public, and which members of the body (or its staff) are authorized to determine the existence of an emergency or urgent issue. Some statewide bodies have specified distances or travel times that make the attendance of a member impracticable.

Although not required, some agencies choose to repeat all the requirements of the new law within the policy, so that all the remote-meeting requirements will be compiled in one place.

What is the procedure for adopting the written policy required by the new law?

The new law requires public notice and a hearing prior to adopting the written policy. The body should give notice to the public in the same way it would give notice of any other public proceeding under 1 M.R.S. § 406. The notice should specify the time and location of the public hearing and also attach the text of the proposed policy. The hearing may be held as a separate meeting or as part of a regular meeting of the body.

After hearing any public comment on the proposed policy, the body may deliberate and vote on the policy in accordance with its usual procedures for taking final action on a matter before it.

Can the body hold a remote hearing on the proposed written policy?

No. If the body does not yet have a remote participation policy in place, it should hold an in-person hearing on the proposed remote participation policy.

If you have any additional questions related to remote meetings for boards or commissions, please consult with the body's assigned Assistant Attorney General or other authorized counsel.

cec.boards@informe.org