



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

Commission Meeting 07/30/2021  
Agenda Item #9

To: Commission  
From: Jonathan Wayne, Executive Director  
Date: July 21, 2021  
Re: Proposed Policy on Remote Participation

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Last month, the Legislature and Governor approved a new provision in the Freedom of Access Act that would permit members of public boards and commissions to participate remotely in meetings, provided that the board or commission has adopted a written policy concerning remote participation. The Commission staff and Counsel collaborated on the attached draft policy for your consideration at the July 30, 2021 meeting. We distributed this version to you by email on July 16, and then invited comment from the public earlier today through our email notification list. We will forward to you any written comments that we receive before your July 30, 2021 meeting.

If you would like to provide improvements or edits, I suggest emailing Assistant Director Martha Currier ([Martha.Currier@maine.gov](mailto:Martha.Currier@maine.gov)), Commission Counsel Jon Bolton ([Jonathan.Bolton@maine.gov](mailto:Jonathan.Bolton@maine.gov)) and me. I will be out of the office on July 26-28 for vacation, but can circulate a new version on July 29 if necessary. Thank you.



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
Mail: 135 State House Station, Augusta, Maine 04333  
Office: 45 Memorial Circle, Augusta, Maine

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## **POLICY ON REMOTE PARTICIPATION IN ETHICS COMMISSION MEETINGS**

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In accordance with 1 M.R.S. § 403-B, it is the policy of the Commission on Governmental Ethics and Election Practices (“Commission”) to allow Commission members to participate remotely using synchronous telephonic or video technology allowing simultaneous reception and exchange of information pursuant to this policy.

### **1. Notice to the Public of Commission Meetings**

The Commission will notify the public of the date, time, and location of each Commission meeting on the home page of the Commission’s website, [www.maine.gov/ethics](http://www.maine.gov/ethics). If applicable, the notice will specify the means by which members of the public may access the proceeding remotely. Members of the public may also sign up to receive notices of upcoming meetings through an email notification service established by the Commission. A link to subscribe to the email notices is available at [www.maine.gov/ethics](http://www.maine.gov/ethics). In addition, the Commission staff posts a link to the agenda and written materials for each meeting to [www.maine.gov/ethics](http://www.maine.gov/ethics) roughly one week before each meeting, unless the Commission is meeting due to an emergency or urgent issue.

### **2. Remote Participation by Commission Members**

Commission members are expected to be physically present for meetings except when it is not practicable for a member to attend the meeting in person, for example:

- when the time for a member to travel to a meeting exceeds 90 minutes,
- when a member would face significant difficulties attending a meeting in person due to illness, other physical condition, family emergency, or the member’s temporarily absence from Maine,
- when there are geographic characteristics or meteorological conditions that impede safety or slow travel, including but not limited to islands not connected by bridges or significant weather events such as snowstorms, ice storms or nor’easters, or
- when an emergency or urgent issue, as determined by the Commission Chair, requires the Commission to meet remotely.

If a Commission member determines it is not practicable for them to participate in person, the member will notify the Commission staff as soon as possible. If the

Commission Chair determines that an emergency or urgent issue requires the Commission to meet remotely, the Chair will notify Commission staff as soon as possible. In both cases, the staff will arrange for remote participation by telephonic or video technology. When one or more members is participating remotely, the Commission will provide an opportunity for members of the public to attend the meeting remotely.

### **3. Telephone Meetings Permitted**

The Commission's meetings statute, 21-A M.R.S. § 1002(2), permits the Commission to meet by telephone:

- to address procedural or logistical issues before a regular meeting, such as scheduling, deadlines for parties' submission of written materials, setting of the meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses, or recusal by a Commission member; and
- during the 28 days before an election, when the Commission is required to meet within two business days of the filing of any complaint with the Commission.

In the event of a meeting by telephone, the Commission will provide notice to all affected parties and its office will remain open for attendance by complainants, witnesses, the press and other members of the public.

### **4. Participation by Interested Persons**

When a person requests an opportunity to participate in a Commission meeting (*e.g.*, requesting a waiver of a late-filing penalty) or when the Commission requests that someone participate in the meeting (*e.g.*, to respond to a complaint), the Commission expects the person to attend in person. For good cause shown, the Commission may allow the person to participate remotely by telephone or video technology. The Commission's executive director is authorized to make decisions on requests for remote participation and will confer with the Chair as necessary.

### **5. Accessibility to the Public**

It is the policy of the Commission to make its meetings accessible to all members of the public. In addition to remote attendance as permitted under paragraph 2, members of the public may appear at the Commission's office (or such other location designated in the public notice) to attend any Commission meeting, unless an emergency or urgent issue requires the Commission to meet remotely and the Commission Chair determines that allowing in-person attendance is not practicable.

At the time of the adoption of this policy, the Commission is exploring the feasibility

of using video technology to stream its meetings to a YouTube channel for the public to access. In addition to live access, the Commission will make audio recordings of each meeting available to the public upon request within a reasonable timeframe after the conclusion of the meeting.

The Commission will provide reasonable accommodations as necessary to allow members of the public with disabilities to access its meetings. A member of the public seeking a particular accommodation for a disability should request this by contacting Commission staff at (207) 287-4179 or [ethics@maine.gov](mailto:ethics@maine.gov).

## **6. Opportunity for Public to Comment**

If the Commission invites members of the public to comment on an item of business before the Commission (*e.g.*, when conducting a rulemaking or adopting a policy or guidance document), the Commission will provide an effective means for members of the public to communicate with the Commission. In meetings in which the public is invited to attend remotely, participation will be permitted by telephonic or video technology.

*Adopted on \_\_\_\_\_, 2021*

STATE OF MAINE

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IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-ONE

—  
S.P. 40 - L.D. 32

**An Act Regarding Remote Participation in Public Proceedings**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the state of emergency declared by the Governor pursuant to the Maine Revised Statutes, Title 37-B, section 742 in response to the public health emergency caused by the spread of the novel coronavirus disease referred to as COVID-19 may terminate sooner than 90 days after the adjournment of the First Special Session of the 130th Legislature; and

**Whereas,** the Maine Revised Statutes, Title 1, section 403-A governs remote participation in public proceedings of certain public bodies but is automatically repealed 30 days after the termination of the state of emergency declared by the Governor; and

**Whereas,** there is a need to have in place a law that governs remote participation in public proceedings of certain public bodies after the termination of the state of emergency declared by the Governor; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

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

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

**1. Remote participation.** This section governs remote methods of participation in public proceedings of certain public bodies. For the purposes of this section, "remote methods" means telephonic or video technology allowing simultaneous reception of information and may include other means when such means are necessary to provide reasonable accommodation to a person with a disability. Public proceedings may not be conducted by text-only means such as e-mail, text messages or chat functions.

**2. Requirements.** A public body subject to this subchapter may allow members of the body to participate in a public proceeding using remote methods only under the following conditions:

A. After notice and hearing the body has adopted a written policy governing the conditions upon which members of the body and the public may participate in a public proceeding of that body by remote methods;

B. The policy adopted pursuant to paragraph A must provide that members of the body are expected to be physically present for public proceedings except when being physically present is not practicable. Circumstances in which physical presence for one or more members is not practicable may include:

(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;

C. The policy adopted pursuant to paragraph A must provide members of the public a meaningful opportunity to attend by remote methods when members of the body participate by remote methods, and reasonable accommodations may be provided when necessary to provide access to individuals with disabilities;

D. If the body allows or is required to provide an opportunity for public input during the proceeding, an effective means of communication between the members of the body and the public must be provided;

E. Notice of the proceeding must be provided in accordance with section 406. When the public may attend by remote methods pursuant to paragraphs C and D, the notice must include the means by which members of the public may access the proceeding using remote methods. The notice must also identify a location for members of the public to attend in person. The body may not determine that public attendance at a proceeding will be limited solely to remote methods except under the conditions in paragraph B, subparagraph (1);

F. A member of the body who participates in a public proceeding by remote methods is present for purposes of a quorum and voting;

G. All votes taken during a public proceeding using remote methods must be taken by roll call vote that can be seen and heard if using video technology, and heard if using only audio technology, by the other members of the public body and the public; and

H. The public body must make all documents and other materials considered by the public body available, electronically or otherwise, to the public who attend by remote methods to the same extent customarily available to members of the public who attend

the proceedings of the public body in person, as long as additional costs are not incurred by the public body.

**3. Remote participation not permitted.** This section does not authorize town meetings held pursuant to Title 30-A, section 2524 or regional school unit budget meetings held pursuant to Title 20-A, section 1482-A to be conducted using remote methods.

**4. Application.** This section does not apply to:

A. The Legislature; or

B. A public body to which specific statutory provisions for remote participation apply.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.



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135 STATE HOUSE STATION  
AUGUSTA, MAINE

## MEMORANDUM

To: Interested Parties  
From: Martha Carrier, Assistant Director  
Date: July 21, 2021  
Subject: Invitation to Comment on Proposed Policy Changes

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The Ethics Commission invites public comments on a proposed Commission Policy in response to 1 M.R.S. § 403-B, which became law on June 21, 2021. This new law requires agencies to adopt a policy regarding remote meetings for public proceedings.

### Current Policy or Rule

The Commission does not have a policy or rule addressing this issue.

### Proposed Policy Background

When the COVID-19 pandemic began, state agencies were forced to adapt quickly to the challenges of conducting the business of government remotely. The pandemic quickly necessitated an acceptance of Zoom and similar platforms as a regular way to work. Initially, the Legislature passed a law allowing remote meetings for state agencies, which had a repeal provision 30 days after the termination of the state of emergency by the Governor.

The new law allows state agencies to best serve the citizens of Maine while encouraging public access and participation through remote meetings. This enables work to be completed efficiently and without unnecessary delays due to pandemics, weather, distance, etc.



Commission staff with the help of the Attorney General's Office have drafted a proposed policy on remote participation in Ethics Commission meetings and seeks public comment on this proposal. Comments can be submitted online [here](#), by email to [martha.currier@maine.gov](mailto:martha.currier@maine.gov), by appearing at the Commission meeting on Friday, July 30, 2021 at 10:00 a.m. at 45 Memorial Circle, 2<sup>nd</sup> Floor in Augusta, or by participating remotely by Zoom. The deadline for written comments is 5:00 p.m. on Wednesday, July 28, 2021.

Please contact me at the email above or call 287-3024 if you have any questions or wish to be provided with information to participate remotely in this meeting.

**\*\*\*PROPOSED\*\*\***

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