

PUBLIC SECTOR CLIENT ALERT

July 7, 2021

Analysis of LD 32, an Act Regarding Remote Participation in Public Proceedings

Background: In March of 2020, the Maine Legislature passed LD 2167, which authorized remote-access public proceedings during the COVID-19 state of emergency under a new public records law, 1 M.R.S.A § 403-A. The law laid out basic requirements for remote public meetings (including notice and accessibility requirements) and stipulated that it would be repealed 30 days after the termination of the state of emergency. Governor Mills lifted Maine’s State of Civil Emergency as of June 30, 2021, meaning § 403-A will be repealed on July 30th.

On June 17, 2021, the Legislature passed emergency legislation in order to provide for continued remote participation in certain public proceedings after the termination of the current state of emergency. The recently passed emergency legislation, LD 32 (enacted as 1 M.R.S.A. § 403-B) took effect immediately on June 21, 2021. This memo outlines the requirements for public bodies providing remote participation in public proceedings under § 403-B, which replaced the temporary authorizations of § 403-A.

Q & A

→ *What is “remote participation”*

The statute applies to remote participation in public proceedings by board members and the public via telephonic or video technology that allows for the “simultaneous reception of information.” It may include other means for the purposes of reasonably accommodating individuals with disabilities. The statute explicitly states that public proceedings may not be conducted by text-only means such as email, text messages or chat functions.

→ *Can a public body continue hybrid in person/remote meetings?*

Yes, as long as the proceedings meet the statutory requirements (see below).

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➔ *What are the requirements of conducting proceedings with remote participation by board members under the new law?*

Written Policy: After notice and hearing, the public body is required to adopt a written policy governing the conditions of remote participation. See § 403-B(2)(A). The written policy must state that board members are expected to be physically present for public proceedings except when being physically present is not practicable. Circumstances that are “not practicable” for participation of members of the body include:

- The existence of an “emergency or urgent issue” that would require the public body to meet remotely.
- Illness, another physical condition, or the temporary absence from the jurisdiction of the board that would cause significant difficulties for a board member in traveling to and attending in person.

Notice: Notice of the proceeding must be provided in accordance with Title 1, § 406. The notice must also include (1) the means by which members of the public may access the proceeding using remote methods and (2) the location for members of the public to attend in person. A public body **may not** limit public attendance to remote participation except when there is “an emergency or urgent issue that requires the public body to meet by remote methods.”

Effective Communication: When a public body provides an opportunity for public input during the proceeding, it must provide “an effective means of communication” between the members of the public body and the public. This provision does not expressly state that the public must be able to speak remotely or have the same remote participation rights as the public who are physically present at the meeting. A public body could provide for the written presentation of public comment (through chat for example) if this is an effective means of communication between the public body and the public.

Voting: A member of a public body who participates by remote methods is present for the purposes of a quorum and voting. In addition, all votes taken during a public proceeding using remote methods must be taken by a roll call vote that can be seen and heard (if using video technology) or heard (if using only audio technology) by the public body and public participants.

Availability of Materials: The public body must make all documents and other materials considered by the body available electronically or otherwise to the same extent customarily available to members of the public who attend in person, as long as additional costs are not incurred by the public body.

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➔ ***Must a public body allow members of the public to participate remotely?***

The new law requires the public body to provide members of the public with a “meaningful opportunity to attend by remote methods” *when members of the body participate by remote methods*. If a member of the public body is participating remotely, the public body should provide remote communication opportunities for the public, including having “an effective means of communication” between the public body and the public. The new law also requires public bodies to provide reasonable accommodations to individuals with disabilities when necessary.

➔ ***Is the public body required to livestream their meetings?***

No. M.R.S.A § 403-B does not require public entities to livestream meetings. As stated above, if members of the body are participating remotely, the public body must provide remote communication opportunities for the public (not just one-way livestreaming or uploading a video after the fact).

➔ ***Are there any meetings where remote participation is not permitted?***

Yes. The Act specifically states that it does not authorize regional school unit budget meetings pursuant to Title 20-A, Section 1482-A to be held remotely or for municipalities to hold town meetings remotely.