



# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

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Legislative Document

No. 32

S.P. 40

In Senate, January 13, 2021

### An Act Regarding Remote Participation in Public Proceedings

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Received by the Secretary of the Senate on January 11, 2021. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in dark ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator STEWART of Aroostook.  
Cosponsored by Representative MARTIN of Sinclair and  
Senator: CLAXTON of Androscoggin, Representative: HARNETT of Gardiner.

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

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

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

4 **1. Remote participation.** This section governs remote means of participation in  
5 public proceedings of certain public bodies. For the purposes of this section, "remote  
6 means" includes participation by telephonic, video, electronic or other similar means of  
7 communication.

8 **2. Requirements.** Notwithstanding section 403-A, subsection 1, a public body  
9 described in section 402, subsection 2, paragraph B, C or D may allow members of the  
10 body to participate in a public proceeding using remote means under the following  
11 conditions:

12 A. After notice and hearing the body has adopted a written policy governing how the  
13 members of the body who are not physically present may participate in a public  
14 proceeding of that body. The policy may allow the public to attend and observe using  
15 remote means;

16 B. Each member of the body who is participating in the public proceeding must be  
17 able to hear and speak to all other members and must be heard by the members of the  
18 public attending and observing the public proceeding during the public proceeding;

19 C. Notice of the proceeding must be provided in accordance with section 406;

20 D. If the body determines that the public may attend a public proceeding of the body  
21 using remote means, all members of the public must be able to hear, or see and hear,  
22 all members of the body and any other speaker. The notice provided in accordance  
23 with section 406 must inform members of the public of the method by which they may  
24 attend remotely. Unless attendance by the public is only by remote means, the notice  
25 must also identify a location for members of the public to attend in person; and

26 E. All votes taken during the public proceeding must be taken by roll call vote.

27 **SUMMARY**

28 This bill authorizes municipal, county and school boards to adopt a policy allowing  
29 members of the body to participate remotely in a public proceeding. It extends the same  
30 authority to the University of Maine System, Maine Maritime Academy, the Maine  
31 Community College System and other state and regional boards and commissions.

32 Under the policy, a public body may allow the public to attend and observe via remote  
33 means. If the public may attend remotely, the notice of the public proceeding must inform  
34 the public how to attend remotely. Unless the only way for the public to attend is by remote  
35 means, the notice must also identify the location where the public can attend in person.

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Date:

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**JUDICIARY**

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**STATE OF MAINE**

**SENATE**

**130TH LEGISLATURE**

**FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 40, L.D. 32, “An Act Regarding Remote Participation in Public Proceedings”

Amend the bill by striking out everything after the enacting clause and inserting the following:

**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;**

**COMMITTEE AMENDMENT**

1 (3) With respect to a public body with statewide membership, significant distance  
2 a member must travel to be physically present at the location in the notice under  
3 section 406; and

4 (4) The area of the public body's jurisdiction includes geographic characteristics  
5 that impede or slow travel, including but not limited to islands not connected by  
6 bridges;

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

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

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

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

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

26 H. The public body must make all documents and other materials considered by the  
27 public body available, electronically or otherwise, to the public who attend by remote  
28 methods to the same extent customarily available to members of the public who attend  
29 the proceedings of the public body in person, as long as additional costs are not incurred  
30 by the public body.

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

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

35 A. The Legislature; or

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

37 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section  
38 number to read consecutively.

39 **SUMMARY**

40 This amendment replaces the bill. It provides authorization for any public body subject  
41 to the Freedom of Access Act to conduct public proceedings by remote methods if the

1 public body adopts a policy that meets certain requirements. "Remote methods" means  
2 telephonic or video technology allowing simultaneous reception of information and may  
3 include other means when such means are necessary to provide reasonable accommodation  
4 to a person with a disability. The amendment specifically prohibits the conducting of  
5 public proceedings by text-only means, including but not limited to e-mail, text messages  
6 and chat functions.

7 The policy governing remote participation must be adopted by the public body only  
8 after notice and hearing. The policy establishes the conditions upon which members of the  
9 body and the public may participate in a public proceeding of that body by remote methods.

10 The policy must provide that members of the body are expected to be physically present  
11 for public proceedings except when being physically present is not practicable. The policy  
12 must provide members of the public a meaningful opportunity to attend by remote methods  
13 when members of the body participate by remote methods, and reasonable  
14 accommodations may be provided when necessary to provide access to individuals with  
15 disabilities. If the body allows or is required to provide an opportunity for public input  
16 during the proceeding, an effective means of communication between the members of the  
17 body and the public must be provided.

18 Notice of the proceeding must be provided as required in the Freedom of Access Act.  
19 When the public may attend by remote methods, the notice must include the means by  
20 which members of the public may access the proceeding using remote methods. The notice  
21 must also identify a location for members of the public to attend in person. The body may  
22 not determine that public attendance at a proceeding will be limited solely to remote  
23 methods except when an emergency or urgent issue exists that requires the public body to  
24 meet by remote methods.

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

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

30 The public body must make all documents and other materials considered by the public  
31 body available, electronically or otherwise, to the public who attend by remote methods to  
32 the same extent customarily available to members of the public who attend the proceedings  
33 of the public body in person, as long as additional costs are not incurred by the public body.

34 Town meetings and regional school unit budget meetings may not be conducted using  
35 remote methods.

36 These provisions do not apply to the Legislature or to any public bodies whose  
37 proceedings are specifically addressed by statute.

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STATE OF MAINE  
SENATE  
130TH LEGISLATURE  
FIRST SPECIAL SESSION

SENATE AMENDMENT “ ” to COMMITTEE AMENDMENT “A” to S.P. 40, L.D. 32, “An Act Regarding Remote Participation in Public Proceedings”

Amend the amendment by inserting after the title the following:

'Amend the bill by inserting after the title and before the enacting clause the following:

**'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,'

Amend the amendment by inserting after section 1 the following:

'Amend the bill by adding before the summary the following:

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

Amend the amendment by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

**SENATE AMENDMENT**

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**SUMMARY**

This amendment adds an emergency preamble and emergency clause.

**SPONSORED BY:** \_\_\_\_\_

(Senator CARNEY, A.)

**COUNTY:** Cumberland