

Your Right to Know: The Maine Freedom of Access Act

The public's right to information about government activities lies at the heart of a democratic government. The Maine Freedom of Access Act ("FOAA") grants the people of this state a broad right of access to public records while protecting legitimate governmental interests and the privacy rights of individual citizens. The act also ensures the accountability of the government to the citizens of the state by requiring public access to the meetings of public bodies. Transparency and open decision-making are fundamental principles of the Maine Freedom of Access Act, and they are essential to ensuring continued trust and confidence in our government.



This website was created as part of the state's ongoing effort to educate and inform state employees and the public about the Maine Freedom of Access Act. On the site, you will find general information about the Freedom of Access Act, including information on how to make a FOAA request, answers to frequently asked questions, and regular updates on other important freedom of access issues. Providing universal access to resources that will inform and educate state employees and the public on the Freedom of Access Act is not just an aim but a priority for the state.

Open government is good government and the state is committed to ensuring and protecting your "right to know."

COVID-19 Update

In response to the recent outbreak of Coronavirus Disease 2019 (COVID-19) the Governor signed [LD 2167, An Act To Implement Provisions Necessary to the Health, Welfare and Safety of the Citizens of Maine in Response to the COVID-19 Public Health Emergency](#), which is now PL 2019, c. 617.

Part G enacts Title 1, section 403-A, Public proceedings through remote access during declaration of state of emergency due to COVID-19. It authorizes conducting public proceedings through telephonic, video, electronic or other similar means of remote participation with specific conditions. The section is repealed 30 days after the termination of the state of emergency.

While we want to find the right way to conduct public business and protect public health, even this emergency does not alter the fundamental requirements of transparency. The need for accountability is even more acute under these conditions. The following additional measures, although not required by law, will support government efforts to remain open and accessible:

- 1. IT resources needed to accomplish remote participation deployed to ensure that the objectives of the legislation can be met;
- 2. Audio recording of remote public meetings streamed or posted online; and

- 3. Notice, even for emergency meetings, include instructions for the public to join remotely;
- 4. Proactive release of public records related to topics of heightened public interest, especially COVID-19 health and safety information.

Sec. G-1. 1 MRSA §403-A is enacted to read:

§403-A. Public proceedings through remote access during declaration of state of emergency due to COVID-19

- **1. Remote access.** Notwithstanding any provision of law or municipal charter provision or ordinance to the contrary, during a state of emergency declared by the Governor in accordance with Title 37-B, section 742 due to the outbreak of COVID-19, a body subject to this subchapter may conduct a public proceeding through telephonic, video, electronic or other similar means of remote participation under the following conditions:
 - A. Notice of the public proceeding has been given in accordance with section 406, and the notice includes the method by which the public may attend in accordance with paragraph C;
 - B. Each member of the body who is participating in the public proceeding is able to hear and speak to all the other members during the public proceeding and members of the public attending the public proceeding in the location identified in the notice given pursuant to paragraph A are able to hear all members participating at other locations;
 - C. The body determines that participation by the public is through telephonic, video, electronic or other similar means of remote participation; and
 - D. All votes taken during the public proceeding are taken by roll call vote.
- **2. Application to legislative proceedings.** This section does not apply to public proceedings of the Legislature, a legislative committee or the Legislative Council, except that while the state of emergency as set out in subsection 1 is in effect, the Legislature, a legislative committee or the Legislative Council may restrict attendance by the public to remote access by telephonic, video, electronic or other similar means. This section also does not apply to town meetings held pursuant to Title 30-A, section 2524 or regional school unit budget meetings pursuant to Title 20-A, section 1483.
- **3. Repeal.** This section is repealed 30 days after the termination of the state of emergency as set out in subsection 1.

COVID-19 FAQs

Does the COVID-19 emergency mean that government bodies can now have secret meetings?

No, under the recently enacted emergency legislation, members of a public body may conduct a meeting through remote participation. Notice must still be given as required under the Freedom of Access Act and the public must be allowed to attend remotely.

What is remote participation?

Due to the need to limit the gathering of groups and in-person contact, the emergency legislation allows members of a public body and the public to use technology such as telephone, video, audio and other electronic means to attend and participate in a meeting.

What notice is required for a meeting being conducted remotely?

Notice must be given in ample time to allow the public to attend remotely and in a manner reasonably calculated to reach the public. Regularly scheduled meetings may have been cancelled or postponed due to the state of emergency and an agency should make extra efforts to let the public know the schedule of meetings as this becomes available. The Freedom of Access Act allows for notice for “emergency” meetings to go to members of the local media, whenever practical, by the same means or faster means used to notify the members of the body. Given the high public interest in the deliberations and actions of government relative to the current state of emergency, an agency should again employ all available means to put out the widest possible notice.

Does the notice need to include how the public can attend remotely?

Yes, the notice should give clear instructions about what technology is being used to conduct the meeting and how the public can connect remotely to the meeting. The agency should consider a contact person for addressing technical difficulties and questions from the public.

Should the members of the body who are participating remotely be able to hear and speak to each other?

Yes, the technology used to connect remotely must allow each member to speak and be audible to all others.

Should the public be able to hear all the members participating remotely?

Yes, the deliberations and actions taken by members of the body must be audible to the public. It is best if each member of the body is identified prior to speaking. All votes taken in a remote public meeting must be by roll call vote.

What if a member of the public wants to provide public comment?

For meetings that allow public comment, an agency should inform the public about what methods are available to submit such comment. If public comment is not feasible through remote means during the meeting, an agency should implement a method for collecting submissions electronically.

Credits

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