

Right to Know Advisory Committee
Legislative Subcommittee
Revised DRAFT: Meetings in public

Based on proposal prepared by Attorney Sigmund Schutz in 2009.

Sec. 1. 1 MRSA §401 is amended to read:

§401. Declaration of public policy; rules of construction

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter.

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.

Nothing in this subchapter prohibits communications of any kind between the members of a public body unless the communications are intended to defeat the purposes of this subchapter.*

**Not included in Mr. Schutz's proposed language.*

Sec. 2. 1 MRSA §402, sub-§2 is amended to read:

2. Public proceedings. The term "public proceedings" as used in this subchapter means ~~the a meeting to transactions of transact~~ any functions affecting any or all citizens of the State by any of the following:

- A. The Legislature of Maine and its committees and subcommittees;
- B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Community College System and any of its committees and subcommittees;

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;

D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;

E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees;

F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and

G. The committee meetings, subcommittee meetings and full membership meetings of any association that:

(1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and

(2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.

This paragraph applies to only those meetings pertaining to interscholastic sports and does not apply to any meeting or any portion of any meeting the subject of which is limited to personnel issues, allegations of interscholastic athletic rule violations by member schools, administrators, coaches or student athletes or the eligibility of an individual student athlete or coach.

Mr. Schutz's Note: The term meeting is added to the definition of public proceedings.

OPTION 1

Sec. 3. 1 MRSA §402, sub-§4 is enacted to read:

4. Meeting. “Meeting” means the convening of a quorum of the membership of any public body listed in subsection 2, or the majority of the members of such public body if the rules of that body define “quorum” as more than a majority of its members, whether in person, by means of telephone or electronic communication or in any manner such that all participating members are able to communicate with each other contemporaneously or by the use of serialized telephone or electronic communications.

OPTION 2 (Suggested in concept by Sig Schutz):

Sec. 3. 1 MRSA §402, sub-§4 is enacted to read:

4. Meeting. “Meeting” means:

A. The convening of a quorum of the membership of any public body listed in subsection 2, or the majority of the members of such public body if the rules of that body define “quorum” as more than a majority of its members, whether in person, by means of telephone or electronic communication or in any manner such that all participating members are able to communicate with each other contemporaneously or by the use of serialized telephone or electronic communications; or

B. The assembly of 3 or members of any public body listed in subsection 2.

Mr. Schutz’s Note: This is a new definition for the term “meeting.” The aim is to prevent the use of e-mail, instant messaging, electronic bulletin boards, telephone calls, virtual internet meetings, or electronic or telephonic meetings of any kind to circumvent the requirements that the public be given notice of and an opportunity to attend all public proceedings. On 7/8/10 Mr. Schutz asked that the definition be clarified to provide that an assembly of 3 members would constitute a meeting, which ¶B now provides.

Sec. 4. 1 MRSA §406 is amended to read:

§406. Public notice

Public notice shall be given for all public proceedings as defined in section 402, ~~if these proceedings are a meeting of a body or agency consisting of 3 or more persons.~~ This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.

Mr. Schutz's Note: The current text of Section 406 refers to a "meeting" of a body or agency consisting of 3 or more persons. The term "meeting" is not defined in current law. In place of the "3 or more persons" test, the proposed definition of meeting substitutes a "quorum of the membership of any public body listed in subsection 2, or the majority of the members of such public body if the rules of that body define 'quorum' as more than a majority of its members."

Staff Note - a different interpretation of some of the language Mr. Schutz's draft deletes is that some of the deleted words actually describe the body or agency that is subject to the notice requirement, not the attendance at the meeting: the body or agency must consist of 3 or more persons; i.e., §406 does not apply to a two-person board (if such a board exists). This interpretation does not require the OPTION definition of meeting above.

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