

PUBLIC PROCEEDING RULES & PRACTICES

The Maine Freedom of Access Act (“FOAA”) ensures the accountability of the government to the citizens of the state by requiring public access to the meetings of public bodies. Beginning on page 2 is a series of Frequently Asked Questions (FAQs) relating to the statutory requirements for public proceedings of government.

EMT Practices for Board Meetings

The Trust’s Board meeting practices satisfy all the minimum criteria for public proceedings outlined in the FOAA. In some cases, its practices go beyond what is required. A few key practices are highlighted below.

Notice. One week before the Board Meeting, the Trust provides public notice by sending an email to its notification list for Board Meetings. The meeting date/time and agenda are also posted on the Trust’s website.

Materials. The Trust posts online the Board Meeting Agenda, Minutes, and the Executive Director’s Report.

Public Participation. Members of the public can attend Board Meetings either in person or remotely via online video conferencing. The FOAA does not require that an opportunity for public participation be provided at open meetings. Nevertheless, the Board has a tradition of allowing public comment during the appropriate section of the agenda.

Minutes. The FOAA sets minimum requirements for a public proceeding record, including the date, time and place of the meeting; the presence or absence of each member of the body holding the meeting; and all motions or votes taken, by individual member if there is a roll call. The Trust Staff typically provides considerably more detail in its Board Meeting minutes.

Public Proceeding FAQs (see <https://www.maine.gov/foaa/faq/index.shtml>)

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1. What is a public proceeding?

The term "public proceeding" means "the transactions of any functions affecting any or all citizens of the State" by the Maine Legislature and its committees and subcommittees; any board or commission of a state agency or authority including the University of Maine and the Maine Community College System; any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; the full membership meetings of any association, the membership of which is comprised exclusively of counties, municipalities, school districts, other political or administrative subdivisions, or their boards, commissions, agencies or authorities; and any advisory organization established, authorized or organized by law, resolve or executive order.[1 M.R.S. § 402 \(2\)](#)

2. What does the law require with regard to public proceedings?

The FOAA requires all public proceedings to be open to the public and any person must be permitted to attend. [1 M.R.S. § 403](#)

3. When does a meeting or gathering of members of a public body or agency require public notice?

Public notice is required of all public proceedings if the proceedings are a meeting of a body or agency consisting of 3 or more persons. [1 M.R.S. § 406](#)

4. What kind of notice of public proceedings does the Freedom of Access Act require?

Public notice must be given in ample time to allow public attendance and must be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency. [1 M.R.S. § 406](#)

5. Can a public body or agency hold an emergency meeting?

Yes. Public notice of an emergency meeting must be provided to local representatives of the media, whenever practicable. The notice must include the time and location of the meeting and be provided by the same or faster means used to notify the members of the public body or agency conducting the public proceeding. [1 M.R.S. § 406](#) The requirements that the meeting be open to the public, that any person be permitted to attend and that a record of the meeting be made and open for public inspection still apply. [1 M.R.S. § 403](#)

6. Can public bodies or agencies hold a closed-door discussion?

Yes. Public bodies or agencies are permitted, subject to certain procedural conditions, to hold closed "executive sessions" on specified subjects after a public recorded vote of 3/5 of the members present and voting. [1 M.R.S. § 405\(1\)-\(5\)](#)

7. Can the body or agency conduct all of its business during an executive session?

Generally, no. The content of deliberations during executive sessions is restricted to the matters listed in the FOAA, such as the following: discussions regarding the suspension or expulsion of a student; certain employment actions; the acquisition, use or disposition of public property; consultations between a body and its attorney concerning its legal rights and responsibilities or pending litigation; and discussion of documents that are confidential by statute. In addition, any governmental body or agency subject to the FOAA is prohibited from giving final approval to any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session. [1 M.R.S. § 405\(2\), \(6\)](#)

8. What if I believe a public body or agency conducted improper business during an executive session?

Upon learning of any such action, any person may appeal to any [Superior Court](#) in the State. If the court determines the body or agency acted illegally, the action that was taken by the body or agency will be declared to be null and void and the officials responsible will be subject to the penalties provided in the Act. [1 M.R.S. § 409\(2\)](#)

9. Can members of a body communicate with one another by e-mail outside of a public proceeding?

The law does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of the FOAA. [1 M.R.S. § 401](#)

E-mail or other communication among the members of a body that is used as a substitute for deliberations or decisions which should properly take place at a public meeting may likely be considered a "meeting" in violation of the statutory requirements for open meetings and public notice. "Public proceedings" are defined in part as "the transactions of any functions affecting any or all citizens of the State..." [1 M.R.S. § 402](#) The underlying purpose of the FOAA is that public proceedings be conducted openly and that deliberations and actions be taken openly; clandestine meetings should not be used to defeat the purpose of the law. [1 M.R.S. § 401](#) Public proceedings must be conducted in public and any person must be permitted to attend and observe the body's proceeding although executive sessions are permitted under certain circumstances. [1 M.R.S. § 403](#) In addition, public notice must be given for a public proceeding if the proceeding is a meeting of a body or agency consisting of 3 or more persons. [1 M.R.S. § 406](#)

Members of a body should refrain from the use of e-mail as a substitute for deliberating or deciding substantive matters properly confined to public proceedings. E-mail is permissible to communicate with other members about non-substantive matters such as scheduling meetings, developing agendas and disseminating information and reports.

Even when sent or received using a member's personal computer or e-mail account, e-mail may be considered a public record. [1 M.R.S. § 402\(3\)](#) As a result, members of a body should be aware that all e-mails and e-mail attachments relating to the member's participation are likely public records subject to public inspection under the FOAA.

10. Can I record a public proceeding?

Yes. The FOAA allows individuals to make written, taped or filmed records of a public proceeding, or to broadcast the proceedings live, provided the action does not interfere with the orderly conduct of the proceedings. The body or agency holding the proceeding can make reasonable rules or regulations to govern these activities so long as the rules or regulations do not defeat the purpose of the FOAA. [1 M.R.S. § 404](#)

11. Do members of the public have a right to speak at public meetings under the Freedom of Access Act?

The FOAA does not require that an opportunity for public participation be provided at open meetings. However, public participation may be permitted or required in certain circumstances for constitutional reasons or under various statutes, local ordinances or policies. An individual should determine the type of public meeting and consult sources of authority outside the FOAA for information about participation rights.

12. Is a public body or agency required to make a record of a public proceeding?

Unless otherwise provided by law, a record of each public proceeding for which notice is required must be made within a reasonable period of time. At a minimum, the record must include the date, time and place of the meeting; the presence or absence of each member of the body holding the meeting; and all motions or votes taken, by individual member if there is a roll call.

The FOAA also requires that public bodies and agencies make a written record of every decision that involves the conditional approval or denial of an application, license, certificate or permit, and every decision that involves the dismissal or refusal to renew the contract of any public official, employee or appointee. [1 M.R.S. § 407\(1\), \(2\)](#)

If the public proceeding is an "adjudicatory proceeding" as defined in the Maine Administrative Procedure Act, the agency is required to compile a record that complies with statutory specifications, including a recording in a form susceptible of transcription. [5 M.R.S. § 8002\(1\)](#); [5 M.R.S. § 9059](#)

13. Is the agency or body required to make the record or minutes of a public proceeding available to the public?

Yes. Any legally required record or minutes of a public proceeding must be made promptly and shall be open to public inspection. In addition, every agency is required to make a written record of any decision that involves conditional approval or denial of any application, license, certificate or other type of permit and to make those decisions publicly available, [1 M.R.S. § 403](#) , [407](#); [5 M.R.S. § 9059 \(3\)](#)

14. Can a public body or agency meet remotely?

Yes, but only under the conditions set forth in [1 M.R.S. § 403-B](#). The body must adopt a written policy on remote participation after notice and public hearing. The body may then allow members to participate by remote means if the body complies with the other requirements of the law, including allowing for remote attendance by members of the public. The body may limit public attendance at a proceeding

solely to remote methods if there is an emergency or urgent issue that requires the body to meet only by remote methods.

15. Can a public body hold a remote hearing on a proposed written policy?

Yes. If the chair of a body determines that an emergency or urgent issue exists that prevents an in-person public meeting, the chair may call for a remote meeting to adopt a proposed remote meeting policy. If 2/3 of the members of the body vote in support of the chair's determination that an emergency or urgent issue exists, after an opportunity for hearing, the members may then vote on whether to adopt a remote meeting policy.

16. Does the remote meeting policy apply to boards or committees within the jurisdiction of the public body?

Yes, unless the board or committee adopts its own policy.

17. What is the procedure for adopting the written remote meeting policy?

The law requires public notice and a hearing prior to adopting the written policy. The body should give notice to the public in the same way it would give notice of any other public proceeding under [1 M.R.S. § 406](#). The notice should include information about how the public can participate in the meeting and the proposed policy or instructions on how to obtain a copy of the proposed policy in advance of the meeting.

18. 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 given in a manner reasonably calculated to notify the public of the time, date, location and method to be used to conduct the meeting. If any members of the body participate remotely, the notice must include the means by which members of the public may access the meeting. The notice must also provide the physical location where members of the public may participate in person, if applicable.

19. What methods of remote participation may be used?

Remote participation in a public proceeding is through either telephonic or video technology. Members of the public shall be provided with a meaningful opportunity to attend by remote means when any members of the body are participating remotely. Other means may be used when necessary to provide reasonable accommodation to a person with a disability. Public proceedings may not be conducted by text-only means of communication, such as email, text message or chat functions.

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

The body must provide an effective means of communication between members of the body and members of the public when public comment is allowed.

21. Do members of a body who are participating remotely count toward a quorum?

Yes, a member who participates remotely pursuant to the adopted policy is considered present for purposes of determining a quorum.

22. Is a roll call vote required for action taken during remote meetings?

Yes, all votes must be taken by roll call in a manner that can be seen and heard if using video technology, and heard if using only audio technology, by all members of the body and the public.

23. Do members of the public who attend remotely have access to meeting documents and materials?

All documents and other materials must be made available to members of the public participating remotely to the same extent customarily available to the public attending in person, as long as additional costs are not incurred by the public body. A proposed policy regarding remote participation must be made available in advance of the meeting if meeting remotely.