

**OFFICE OF POLICY AND LEGAL ANALYSIS**

**Date:** March 3, 2021

**To:** Veterans and Legal Affairs Committee

**From:** Janet Stocco, Legislative Analyst

**LD 107 RESOLUTION, Proposing an Amendment to the Constitution of Maine To Specify the Qualifications of Electors (Rep. Faulkingham)**

---

**SUMMARY**

LD 107 proposes to amend Article II, § 1 of the [Constitution of Maine](#) to specify that only a “citizen of the United States may vote in a state, county, municipal or other local election.”

**ADDITIONAL INFORMATION:**

- **Constitutional Amendment Procedure.** Under [Article X, § 4](#) of the Constitution of Maine:
- The Legislature may, by a 2/3 vote in each chamber in favor of a Constitutional Resolution, propose an amendment to the Constitution of Maine;
  - The Constitutional Resolution is then submitted to the voters for ratification by majority vote in an election held the following November.

The Governor does not have the opportunity to sign or to veto the Constitutional Resolution; thus, the Constitutional Resolution may not include amendments to the Maine Revised Statutes.

- **Current law: prohibitions on non-citizen voting.**

Office	Statutory Prohibition	Constitutional Prohibition
<b>Federal office</b> President, Vice-President, presidential elector, U.S. Senator, U.S. Representative	<b><a href="#">18 U.S.C. § 611(a)</a></b> “It shall be unlawful for any alien to vote in any election . . . for the purpose of electing a candidate for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives....”	<b>None.</b> But, <a href="#">U.S. CONST. ART. I, § 2</a> provides that the electors for U.S. Representative “shall have the qualifications requisite for electors of the most numerous branch of the state legislature.” <i>See also</i> <a href="#">U.S. CONST. AMEND. XVII</a> (same for U.S. Senate elections). Under <a href="#">ART. II, § 1</a> of the Maine Constitution, U.S. citizenship is required to vote in these elections.  <i>Also see</i> <a href="#">U.S. CONST. AMEND. XXVI</a> (“The right of citizens of the United States, who are [18] years of age or older, to vote shall not be denied...”).

Office	Statutory Prohibition	Constitutional Prohibition
<b>State office</b> Governor, State Senator and State Representative	<b>21-A M.R.S. § 111(1) *</b> “A person who meets the following requirements may vote in any election in a municipality, including a biennial municipal caucus held pursuant to section 311. <b>1. Citizenship.</b> The person must be a citizen of the United States.”	<b>ME. CONST. ART. II, § 1</b> “Every citizen of the United States of the age of 18 years and upwards, excepting persons under guardianship for reasons of mental illness, having his or her residence established in this State, shall be an elector for Governor, Senators and Representatives, in the city, town or plantation where his or her residence has been established, if he or she continues to reside in this State; and the elections shall be by written ballot.”
<b>State ballot question</b> Referendum, direct initiative, or people’s veto referendum	<b>21-A M.R.S. § 111(1) (above) *</b>	<b>ME. CONST. ART. IV, § 20</b> Art. IV, § 20 defines “electors” and “people” to mean “the electors of the State qualified to vote for Governor.” (See citizenship requirement above.) Those defined terms then describe who may vote on: a referendum, <i>see</i> ART. IV, § 19; on a direct initiative, <i>see</i> ART. IV, § 18(2); or on a people’s veto referendum, <i>see</i> ART. IV, § 17(3).
<b>County office</b> Probate Judge, Sheriff, DA, etc.	<b>21-A M.R.S. § 111(1) (above) *</b>	<b>None.</b>
<b>Local/municipal elections</b> Selectperson, school board members, mayor, city councilor, etc.	<b>30-A M.R.S. § 2501(2)</b> <b>“2. Qualifications for voting.</b> The qualifications for voting in a municipal election conducted under this Title are governed solely by Title 21-A, section 111.”	<b>None.</b>
<b>Local ballot question</b>	<b>30-A M.R.S. § 2501(2) (above)</b> <b>21-A M.R.S. § 111(1) (above) *</b>	<b>None.</b>

\* **Other relevant provisions of Maine election law.** In addition to 21-A M.R.S. § 111(1), several other provisions of Maine’s election laws restrict the right of noncitizens to vote in Maine elections:

- **Challenge:** Under 21-A MR.S. § 673(1)(A)(3)(b), “A voter of a municipality or an election official” may “challenge” the right of a person to vote “at an election election held in a municipality on the grounds that the challenged person . . . Is not a citizen of the United States.” A challenged ballot is counted the same as a regular ballot, “unless it affects the results of an election.” § 696(1). If the ballot affects the results of the election, the Supreme Judicial Court determines the validity of the ballot. *Id.* Regardless of whether the ballot affects the outcome of the election, the registrar must

hold a hearing “within a reasonable time after the election” to determine the qualifications of a challenged voter. § 673(7). If the voter “fails to offer satisfactory proof of qualifications,” the voter’s registration may be cancelled in the central voter registration system. § 161(4).

- **Criminal penalty.** Under 21-A M.R.S. §674(3)(B), a person commits a Class C crime—punishable by a sentence of up to 5 years imprisonment and a fine of up to \$5,000—if that person “Votes knowing that the person is not eligible to do so.”

## ISSUES RAISED / AMENDMENTS PROPOSED AT PUBLIC HEARING

- **History of citizenship requirement to vote in Maine.** At the public hearing, committee members asked when the Maine law requiring citizenship to vote in state, county and local elections was first enacted. [Article II, § 1 of the original Constitution of Maine](#), adopted in 1820, required U.S. citizenship to vote in state elections:

Every male citizen of the United States of the age of twenty-one years and upwards, excepting paupers, persons under guardianship, and Indians not taxed, having his residence established in this State for the term of three months next preceding any election, shall be an elector for Governor, Senators and Representatives, in the town or plantation where his residence is so established; and the elections shall be by written ballot. But persons in the military, naval or marine service of the United States, or this State, shall not be considered as having obtained such established residence by being stationed in any garrison, barrack or military place, in any town or plantation; no shall the residence of a student at any seminary of learning entitle him to the right of suffrage in the town or plantation where such seminary is established.

A review of the Maine Revised Statutes suggests that the first statute requiring citizenship to vote was enacted in 1893 and this statute required citizenship to vote “in every . . . election in the city, town or plantation” where the voter resided. Prior to enactment of the 1893 statute, the index to the Maine Revised Statutes referred to Article I, §2 of the Constitution of Maine for an explanation of the qualification of electors.

- **Proposed amendment - League of Women Voters of Maine.** The League suggested amending the wording of the ballot question that appears on p. 1, lines 28-30 of the Constitutional Resolution:

“Do you favor amending the Constitution of Maine to permit only citizens of the United States to vote in ~~state~~, county or municipal or other local elections.”

The League observed that Art. II, § 1 of the Constitution of Maine already requires voters in state elections to be citizens of the United States; thus, the focus of LD 107 is really whether one must be a U.S. citizen to vote in county, municipal or other local elections.

## TECHNICAL ISSUES

None identified, other than the technical suggestion proposed by the League of Women Voters.

## FISCAL IMPACT

*Preliminary Fiscal Impact Statement (1/28/21)* potential ballot printing and delivery costs of \$172,000 will accrue if the number of referendum questions requires production and delivery of a second ballot.