



TO: The Honorable Louis Luchini
The Honorable John Schneck, Co-Chairs
Members of the Joint Standing Committee on Veterans and Legal Affairs

DATE: May 1, 2019

RE: LD 1631 – RESOLUTION, Proposing an Amendment to the Constitution of Maine
Concerning Early Voting, Voting by Absentee Ballot and Voting by Mail

My name is Ann Luther. I am a resident of Trenton. I am here today as a volunteer member of the League of Women Voters Advocacy Committee. We testify in support of LD 1631.

Before I address the bill, it might be helpful to review the current constitutional language on absentee voting:

The Legislature under proper enactment shall authorize and provide for voting by citizens of the State absent therefrom in the Armed Forces of the United States or of this State and for voting by other citizens absent or physically incapacitated for reasons deemed sufficient.

This provision dates back to 1864, when the Tenth Amendment was passed to allow soldiers serving in the Civil War a chance to vote “wherever they may be.” In 1921, passage of the Forty-Seventh Amendment allowed those who are absent on Election Day to vote. Thirty years later, the Seventy-Fourth Amendment was enacted to allow those who are incapacitated to vote without actually going to the polling place.¹ Each step expanded voting access.

LD 1631 would further expand voting access and encourage voter participation. It would authorize the legislature to enact legislation allowing early voting and voting by mail. LWVME testified earlier this session (LD 619) in favor of early voting, including an early voting constitutional amendment. We testified neither for nor against vote by mail (LD 272) and recommended a study commission to examine the pro’s and con’s of that option.

We emphasize that both of these provisions in LD 1631 are permissive. That is, although they authorize early voting and vote by mail, they do not require the legislature to add early voting or vote by mail options for Maine voters.

LD 1631 would also revise the constitutional provision that creates the foundation for our current absentee voting laws. As the constitution is currently written (Art. II, §4), voters in the

¹ <http://legislature.maine.gov/lawlibrary/constitutional-amendments-enacted-1934/9203/>

Armed Forces and citizens who are absent or incapacitated must be permitted to vote early. Voters in the Armed Forces need no justification, but voters who are absent or incapacitated must have a “reason deemed sufficient.” There is little constitutional guidance regarding what “sufficient” means in this context. In 1999, the legislature opted against trying to define “sufficient” and instead enacted 21-A MRSA §751 which eliminated the need for a voter to provide any reason whatsoever. We support this provision, and it has worked very well. In effect, the legislature has deemed “no reason” to be a “sufficient” reason, since §751 allows absentee voting even if the voter cannot offer a reason for doing so, even if they are neither absent nor physically incapacitated.²

We offer three additional comments on the text of LD 1631.

- Although LD 1631 would remove the phrase “absent or physically incapacitated” from §4, it would not remove the requirement to show “reasons deemed sufficient.” We are curious about the intent of this change.
- If a future legislature allows early voting under LD 1631, it would be limited to “the same manner [of voting] as on election day.” This could be interpreted to mean that all aspects of traditional Election Day voting must be replicated during any early voting period authorized by the Legislature. However, municipalities may need to adjust some aspects of the Election Day process to accommodate early voting during what could be a several-day period. We question the necessity of imposing the “same manner of voting” without including at least some flexibility to vary the time, place, and manner of voting.
- Voting by mail is described in LD 1631 as “an alternative to voting by absentee ballot.” By linking voting by mail with absentee voting, this provision raises the question of whether or not a new voting by mail program would be subject to absentee voting’s “reasons deemed sufficient” requirement described above. We suggest clarification.

We have taken the liberty of suggesting a re-draft to streamline this provision, add some clarity, and address these concerns. Please see the following page.

We are happy to answer any questions and we intend to be present for the work session.

² “**Proper at any election.** Absentee ballots may be cast at any election by any voter who requests an absentee ballot as provided under this subchapter. The voter need not specify a reason to receive an absentee ballot.”

Section 4. Time of state election; ~~absentee-voting methods.~~ The election of Senators and Representatives shall be on the Tuesday following the first Monday of November biennially forever and the election of Governor shall be on the Tuesday following the first Monday of November every 4 years. The Legislature under proper enactment shall ~~authorize and provide for voting by citizens of the State absent therefrom in the Armed Forces of the United States or of this State and for voting by other citizens absent or physically incapacitated for reasons deemed sufficient.~~ allow a member of the Armed Forces of the United States or this State or a person who is physically incapacitated to vote by absentee ballot. The Legislature under proper enactment may authorize and provide for absentee voting, voting by mail, and/or early voting during a period immediately preceding an election day. No voter may be required to provide a reason for choosing one of these voting methods.