

Office of Policy and Legal Analysis

Date: March 17, 2021
To: Joint Standing Committee on Environment and Natural Resources
From: Dan Tartakoff, Legislative Analyst
Re: LD 489, RESOLUTION, Proposing an Amendment to the Constitution of Maine To Establish a Right to a Healthy Environment (Sen. Maxmin)

Summary of bill and additional background

This resolution proposes to amend the Constitution of Maine to grant the people of the State a right to a clean and healthy environment and to the preservation of the natural, cultural, recreational, scenic and healthful qualities of the environment.

This bill is a constitutional resolution. Under Article X, section 4 of the Maine Constitution, the Legislature may, by a 2/3 vote in each chamber in favor of the resolution, propose an amendment to the Constitution. The 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 resolution, therefore the resolution may not include amendments to the Maine Revised Statutes.

List of legislators/entities that submitted written testimony and/or spoke at the hearing

Proponents – Sen. Maxmin, Sen. Bennett, Rep. Pluecker, Rep. Newell, Rep. O’Neil, Sen. Daughtry, Rep. Talbot Ross, Maulian Dana/Penobscot Nation, 350 Maine, ACLU Maine, Defend Our Health, Episcopal Church in Maine, Green Amendments for the Generations, Maine Conservation Voters, Maine Organic Farmers and Gardeners Association, Maine Rivers, Maine Youth for Climate Justice, Midcoast Conservancy, Surfrider Foundation, additional members of the public.

Opponents – Associated General Contractors of Maine, Department of Environmental Protection, Maine Dairy Industry Association, Maine Forest Products Council, Maine Municipal Association, Maine Rural Water Association, Maine State Chamber of Commerce, Maine Water Utilities Association, Wild Blueberry Commission of Maine.

Neither for nor against – none.

Notes, issues and proposed amendments

1. *Sponsor’s proposed amendment* – sponsor has proposed an amendment to the bill (distributed separately), which amends the text of the proposed constitutional amendment.
2. *Concerns regarding scope or applicability of proposal* – numerous individuals testifying in opposition to the proposal raised questions regarding the scope and applicability of the various aspects of the proposed constitutional amendment. Many expressed concerns that those questions would need to be resolved by a court, creating uncertainty for many natural resource-based industries and others.
3. *Note on ballot question* – most of the text in the bill below the proposed constitutional provision is form language, required for any constitutional referendum. The actual question

to be submitted to the voters (i.e., what a voter would see on their ballot; page 1, lines 21-24)), however, can be amended by the Legislature as it deems necessary to ensure clarity about what is being voted on.

In the case of a ballot question that is not a constitutional referendum, state law charges the Secretary of State with ensuring that a ballot question is written "...in a clear, concise and direct manner that describes the subject matter of [question] as simply as is possible." (see 21-A MRSA §906).

Fiscal information

Not yet available.

Other state provisions

It was noted during the hearing by multiple speakers that 6 other states had already enacted similar constitutional provisions and that 1 state has enacted such a provision that will need to be ratified by the voters (and a number of others are considering similar provisions). The text of those other state provisions are set forth below.

Hawaii (Article XI, sections 1 and 9) – first adopted in 1978

Section 1. For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people

Section 9. Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.

Illinois (Article XI) – first adopted in 1970

Section 1. Public Policy – Legislative Responsibility. The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

Section 2. Rights of Individuals. Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.

Massachusetts (Article XCVII) – first adopted in 1972

The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose. The general court shall have the power to enact legislation necessary or expedient to protect such rights.

Montana (Article II, section 3; Article IX, section 1) – first adopted in 1972

Article II, section 3. Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Article IX, Section 1. Protection and improvement

- (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.
- (2) The legislature shall provide for the administration and enforcement of this duty.
- (3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Pennsylvania (Article I, section 27) – first adopted in 1971

§ 27. Natural resources and the public estate. The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

Rhode Island (Article I, section 17) – first adopted in 1987

Section 17. Fishery rights -- Shore privileges -- Preservation of natural resources. -- The people shall... be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values; and it shall be the duty of the general assembly to provide for the conservation of the air, land, water, plant, animal, mineral and other natural resources of the state, and to adopt all means necessary and proper by law to protect the natural environment of the people of the state by providing adequate resource planning for the control and regulation of the use of the natural resources of the state and for the preservation, regeneration and restoration of the natural environment of the state.

New York – proposed amendment to add the following Article 1, section 19 to the NYS Constitution (bill enacted in February 2021 and will be subject to ratification by the voters at an election this November)

§ 19. Environmental rights. Each person shall have a right to clean air and water, and a healthful environment.