



AGC MAINE

THE CONSTRUCTION ASSOCIATION

Testimony of Matthew Marks in Opposition to LD 1190

“An Act to Ensure a Fair Workweek by Requiring Notice of Work Schedules”

Joint Committee on Labor and Housing

April 6, 2023

Senator Tipping, Representative Roeder, and distinguished members of the Joint Standing Committee on Labor and Housing my name is Matthew Marks, I am a Principal at Cornerstone Government Affairs, and here today to speak on behalf of my client The Associated General Contractors of Maine. AGC Maine is a statewide commercial construction trade association and a Chapter of AGC America.

Project scheduling in the construction industry has several factors we would like the Committee to consider associated with this bill including weather, environment, permitting, contractual, and safety.

Construction work activity is directly impacted by Maine’s weather. Snow, rain, wind, cold, and heat impact operation schedules. For safety and by contract snowfall requires the industry to service contracts for snow removal including active construction sites. Rain can delay or extend activity during a day(s) and prevent the installation or placement of products. State and private contracts or specifications typically include language on the placement of asphalt in those conditions. Every year the industry rushes to meet cold weather specifications for paving. That means crews will work extended hours in advance of plant shutdown dates or owner requirements. If they have to adhere to the restrictions placed in this bill it will add significant costs and risks for both public and private projects.

In addition to regulations for working in certain heat conditions, work in some areas, for instance, in-stream activity is dictated by permit dates and conditions known as a work window. Because the industry is reliant on the supply chain, and the compressed work window, it is difficult to determine what hours would be required during the peak season to meet the requirements. The purpose of the in-stream work window is to avoid fish and aquatic spawning seasons.

Paving operations have faced increasing regulations that are determined by the project owner and regulations. Both can accelerate or decelerate operations that require flexibility by the company and workers. Right now, companies, workers, and agencies are feeling the impacts of work that must be conducted at night. Generally, bidding that is happening now will dictate the conditions that vary between projects that will start shortly after. That pressure must be addressed in the field to meet deadlines for the opening of roads, bridges, schools, and other public facilities.

Safety is a concern with this model, and I want to share a few examples. If construction activity on a site discovers an issue within an open trench it’s imperative that the hazard is prepared for safe passage before leaving for the day. That activity and other end-of-day site safety practices take time, and that is all a condition of the individual site. Additionally, construction firms are essential across the state in response to emergency-related situations and to complete those tasks it’s imperative the workforce be prepared and expected to respond.

Contracts in the industry have specific dates for completion and it's our belief that this bill would create a logistics challenge, add tremendous cost, and fails to recognize the many conditions that are related to working in our natural environment. While they generally know the time for various activities, any given site expects conditions that present various challenges to completing tasks. It's important for both safety and quality the process isn't rushed to meet the scheduling conditions in this bill.

While the workforce has made significant strides building the workforce in recent years the volume of construction activity and the continued pace of retiring skilled workers means the industry doesn't have the flexibility to add the staffing required to schedule as prescribed in this bill. It will reduce bidders on complicated projects and certainly those with night work conditions. For example, Maine DOT has reported more than 50 projects rejected in recent years because of the increases in material prices. Adding a complicated layer of new employee scheduling conditions as outlined will result in fewer bidders willing to take risks associated with the existing complicated schedules, timelines, and regulations.

Supply chain logistics and costs regularly impact the schedule. Crews often shift their work plan as products are delayed and as costs rise, they must adapt. Those decisions are not predictable, like the weather conditions. In a recent project, the materials specified in the plans were not readily available and had a much higher cost than projected. The contractor quickly adjusted and used a fabrication process, with more work by their team, to solve the issue. Those types of innovative solutions would have to consider the work schedule and could prevent the timely delivery of the product.

We welcome direct conversation by any member of this Committee with companies that will be impacted directly by this law. I urge the Committee to vote against this bill.