



Testimony Neither For Nor Against LD 2171

Adoption of Provisionally Adopted Changes to Rule Chapter 305 and 335

Senator Tepler, Representative Doudera, and Members of the Joint Standing Committee on Environment and Natural Resources:

My name is Elizabeth Frazier, and I am here on behalf of the American Council of Engineering Companies of Maine (ACEC Maine). ACEC represents consulting engineering firms across the State who work every day with municipalities, private landowners, state agencies, and environmental professionals to design, permit, and construct projects that comply with Maine's environmental laws while meeting critical infrastructure and housing needs.

ACEC Maine is testifying neither for nor against LD 2171. However, we appreciate the opportunity to offer technical perspective regarding the provisionally adopted changes to the Department of Environmental Protection's Chapters 305 and 335, which govern coastal sand dune systems, shoreline stabilization activities, and endangered and threatened species protections, including interactions with vernal pools.

Our members participated extensively in both (1) the public hearing on the precipitating legislation that directed these rule updates and (2) the subsequent public hearing before the Board of Environmental Protection on the provisionally adopted rules. At both forums, ACEC members raised consistent themes that we believe remain relevant to the Committee's consideration today.

First, our comments have focused less on policy outcomes and more on implementation clarity. Engineering firms are tasked with translating statutory and regulatory language into buildable, permissible plans. When rules are highly prescriptive—specifying in detail the exact design methods, dimensional standards, sequencing requirements, or documentation thresholds—they can provide predictability. Predictability is valuable. It reduces permitting timelines and litigation risk and allows engineers to design with confidence that a compliant project will be approved.

However, prescriptive rules can also become inflexible in dynamic coastal systems. Shoreline stabilization, dune migration, and storm impacts do not always conform to standardized design templates. In those cases, overly rigid criteria may unintentionally preclude innovative, site-specific, or resilience-based solutions that would better serve both environmental and public safety objectives.

Second, the proscriptive elements of the proposed rules—those that prohibit certain activities or constrain design options outright—carry similar tradeoffs. Clear prohibitions are sometimes necessary to protect sensitive resources, including endangered species and vernal pool habitat. But where prohibitions are drafted broadly, without clear standards for variance, waiver, or case-specific review, they can result in uncertainty that shifts risk onto property owners and municipalities. That uncertainty

is often borne out in extended permitting timelines, increased costs, and, in some cases, project abandonment.

ACEC members noted in prior testimony before the Board of Environmental Protection that engineers are uniquely positioned at the intersection of environmental compliance and practical feasibility. Our firms routinely evaluate shoreline stabilization alternatives, assess species impacts, and design mitigation measures that achieve statutory goals. To the extent the rules establish performance standards rather than purely method-based mandates, they allow engineers to meet environmental objectives while adapting to site conditions.

Third, while ACEC appreciates the use of the permit-by-rule as a mechanism to speed up or streamline development review, it can be problematic when the rulemaking does not provide sufficient pathways to implementation, or flexibility of application on a case-by-case basis.

Finally, we reiterate a point raised at both prior hearings: the regulated community benefits when rule language clearly delineates what is required, what is prohibited, and where professional judgment may be exercised. Engineers are licensed professionals bound by ethical and statutory duties. The rules should recognize and appropriately rely upon that professional judgment, particularly in rapidly evolving coastal and climate contexts.

ACEC Maine does not take a position today on whether the Committee should advance LD 2171. Instead, we respectfully urge the Committee, if it chooses to move the bill forward, to ensure that the final rules strike an appropriate balance:

- Clear and predictable standards where uniformity is necessary;
- Flexibility where site-specific engineering solutions better achieve environmental protection;
- Narrowly tailored prohibitions grounded in articulated resource impacts; and
- Regulatory language that supports efficient, transparent, and consistent permitting.

Our members stand ready to continue working with the Department, the Board of Environmental Protection, and this Committee to ensure that Maine's coastal regulatory framework protects sensitive resources while allowing responsible infrastructure, resilience, and community development to proceed.

Thank you for the opportunity to provide this perspective, and we would be happy to provide any additional materials or answers to questions that may arise from the committee.

Sincerely,

Elizabeth M. Frazier

On behalf of ACEC Maine