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MEMORANDUM OF OPPOSITION

BILL: S.1509 (Budget) / A.2009 (Budget) – Part VV

SUBJECT: Recreational Marijuana – Workplace Safety

DATE: February 1, 2019

The Associated General Contractors of New York State, (AGC NYS) the leading statewide trade association representing union and non-union construction companies opposes S.1509 (Budget – Part VV) / A.2009 (Budget – Part VV) which, creates and amends existing laws to legalize adult-use cannabis, consolidate governance of all forms of cannabis and create a regulatory structure to oversee the licensure, cultivation, production, distribution, sale, and taxation of cannabis within New York State.

Due to the inherent dangers of the construction industry and the absolute liability standard of New York's Scaffold Law, the Executive Budget proposal for recreational marijuana would have a significant negative impact on construction job site and highway work zone safety because it prohibits employers from implementing a zero tolerance drug policy for employees. American Occupational Medicine experts have concluded that, "It is reasonable and responsible for employers to ban the use of marijuana at any time by employees, contractors, and other workers."

Rather than permitting a zero tolerance drug policy, the Executive Budget proposal specifically only prohibits the use of recreational marijuana during work hours. Even if marijuana use at work is prohibited, there is still residual danger from recreational use. Marijuana impairment lasts beyond the time of the subjective high and beyond the time it would be possible to prove a person is impaired by simple observation. Numerous studies have shown that the impairing cognitive and psychomotor effects of cannabis can persist days after the subjective high is gone. AGC NYS' goal is to prevent workplace injuries which, is best achieved by removing impaired or intoxicated workers before they enter a workplace.

Construction is an inherently hazardous business, and federal, state, and local safety laws were enacted to protect employers, workers, and the public. Construction is performed by trained and skilled workers at hazardous sites including: highway work zones, bridges, congested roadways, subway tunnels, elevated heights, confined spaces, schools, airports, nuclear facilities, prisons, and other locations. In addition to the laws and regulations that help improve construction site safety, many employers take the additional step of mandating a zero tolerance drug policy for their employees.

The Executive Budget proposal does not take into account that unlike alcohol, accurate and on-demand testing for marijuana impairment or intoxication does not exist, which greatly jeopardizes worker safety at construction jobsites. Currently, testing for marijuana impairment or intoxication is limited to blood and urine tests which, significantly restrict an employer's ability to determine if an employee is under the influence and therefore should not be working on a construction jobsite.

Marijuana is considered by many substance abuse professionals to be a gateway drug and according to the Substance Abuse and Mental Health Services Administration; workers in the construction industries had some of the highest rates of illicit drug and alcohol abuse at 13.9 and 16.5 percent respectively. Employee illicit drug and heavy alcohol use, and substance use disorder are associated with negative work behaviors and frequent job changes.

Allowing the unfettered use of recreational marijuana will make it impossible to maintain the highest safety standards at construction job sites and AGC NYS strongly urges the Governor and Legislature to allow employers to implement a zero tolerance drug policy.