

Significant Legal and Legislative Activities

Prepared for the Engineers Joint Contract Documents Committee (EJCDC)
June 8-9, 2012 – Washington, DC

The following is a summary of recent legal/legislative activities of interest to the Engineers Joint Contract Documents Committee collected from information provided by EJCDC member organizations and other source material. For background material on each issue, please contact Art Schwartz, NSPE Deputy Executive Director & General Counsel (aschwartz@nspe.org).

STATE LEGISLATIVE/REGULATORY MATTERS

Minnesota Bill Targets Certification Requirements for PEs – A bill working its way through the Minnesota legislature seeks to ensure that professional engineers are not required to obtain additional licenses or certifications to perform work covered under the scope of the professional engineer license in the state.

The legislation (S.F. 1524, H.F. 1787) specifies that no state or local agency or governmental unit will require a licensed professional engineer to pass any additional exam to obtain a license or certification or any other form of approval to perform any actions that a professional engineer is authorized to do. An entity can require an additional license or certification of a PE if it has determined that qualification as a PE is not adequate to safeguard life, health, and property pertaining to a particular activity. If passed, the changes would not apply to practice areas where licenses or certifications are required prior to the effective date of the legislation.

The Minnesota Society of Professional Engineers worked closely with the state licensing board to develop language in the bill. MSPE became concerned about this issue after an increase in requirements of additional licenses and certifications for engineers licensed in the state.

ANSI Recognizes NCEES Standard for Structural Engineers – The American National Standards Institute announced in early February that it approved the Model Law Structural Engineer standard from the National Council of Examiners for Engineering and Surveying.

NCEES's Model Law Engineer and Model Law Surveyor standards had already received ANSI approval. All three standards outline the guidelines for states to license the corresponding professions and are designed to promote uniformity of licensing laws.

Licensees who meet NCEES's education, examination, and experience requirements can be granted the Model Law designation, which will provide the licensee with an expedited comity licensure process in many states.

California PEs Support Change to 'Broken' Licensing System – For almost two decades, professional engineers in California have tried without success to change a confusing system of licensing engineers. Now, a coalition of professional engineers believes that a new rule requiring that only licensed civil engineers design "fixed works" goes too far and further limits the ability of PEs licensed in other disciplines to practice in the state.

The California Legislative Council of Professional Engineers, which includes the California Society of PEs, supports passage of a bill (S.B. 1061) that would allow all professional engineers to practice within their areas of competence and allow for the overlap among disciplines that is common and permitted in other jurisdictions. A previous version of the legislation was opposed by the union California Professional Engineers in Government and the American Council of Engineering Companies.

Engineering deans in the University of California system also spoke out in favor of the previous legislation on behalf of their students and the profession. They believe that the current licensing law shows a lack of equal respect for other engineering disciplines and creates a two-tier system that doesn't work in the current marketplace. The current law, they say, also threatens the ability of engineering graduates to provide services in a state that so greatly needs their expertise.

California's licensing system, regulated by the California Board for Professional Engineers, Land Surveyors, and Geologists, runs counter to NSPE's recommended concept of licensing. NSPE believes an engineer should be licensed only as a "professional engineer," not by designated branches or specialties. The system, however, is a complicated mix of "practice act" disciplines (civil, electrical, and mechanical engineering) and nine "title act" disciplines: agricultural, chemical, control systems, fire protection, industrial, metallurgical, nuclear, petroleum, and traffic engineering.

The law makes it illegal for a person to practice civil, electrical, or mechanical engineering without being licensed. Title act licensees can use the title "professional engineer," but they are not allowed to practice civil, electrical, or mechanical engineering as defined by state law.

The statute change would go even further to limit the practice of other PEs by requiring any fixed work to be designed by a licensed civil engineer. The current law says that civil engineering is in responsible charge of the design of fixed works for irrigation, drainage, waterpower, water supply, flood control, inland waterways, harbors, municipal improvements, railroads, highways, tunnels, airports, purification of water, sewage, refuse disposal, foundations, grading, framed and homogeneous structures, buildings, or bridges.

New York Authorizes Design-Build on Select Projects – New York Governor Andrew Cuomo signed legislation on December 9 permitting the use of design-build for the infrastructure projects of several state agencies and authorities. The authorization aims to spur economic growth through improving deteriorating infrastructure, but it fails to require qualifications-based selection to procure design services.

The legislation (S.50002/A.40002), effective immediately, applies to design and construction projects over \$1.2 million at the New York State Thruway Authority; the Department of Transportation; the Office of Parks, Recreation, and Historic Preservation; the Department of Environmental Conservation; and the New York State Bridge Authority.

The agencies can select a proposal using "best value," which is defined as awarding services to the firm based on quality, cost and efficiency, price, and performance criteria. The criteria that can be used by the agency to award the proposal include the following:

- The quality and timeliness of the contractor's performance on previous projects, in addition to the level of customer satisfaction;
- The contractor's record of performing past projects on budget and minimizing cost overruns;
- The contractor's ability to limit change orders and ability to prepare appropriate project plans;
- The contractor's technical capacities and the qualifications of the contractor's key personnel; and
- The contractor's ability to assess and manage risks and minimize risk impact.

The New York State Society of Professional Engineers and other organizations that advocate for qualifications-based selection of design services will work with the agencies to ensure they understand the benefits of QBS and to make sure that certificates of authorization are part of the selection process.