

Significant Legal and Legislative Activities

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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

Missouri Design Professionals Push for Peer-Review Bill – The Missouri General Assembly passed legislation in May establishing a peer-review process for design professionals with civil liabilities protections.

The bill (H.B. 1280), supported by the Missouri Society of Professional Engineers, allows for a peer-review process and "lessons learned" teaching sessions on engineering, architecture, land surveying, and landscape architecture projects. The bill defines "lessons learned" as internal meetings and presentations, or other means of teaching, after substantial completion of the project. This teaching must be conducted exclusively by employees, partners, and coworkers of the design professional who prepared the project's design for the purpose of learning best practices and reducing errors and omissions in documents and procedures.

The bill provides immunity from civil liability for licensed peer reviewers, as long as they are acting in good faith, without malice, and within the scope of inquiry of the review process. Third-party design professionals who conduct outside peer reviews will be granted immunity as long as the design professional has no other role in the project aside from performing the review. The reviewer must also not be an employee, coworker, or partner of the design professional who is being reviewed before substantial completion of the project.

"Missouri is the first state in the U.S. to encourage safer engineering designs by passing peer-review legislation," says William Quatman, general counsel and a senior vice president of Burns & McDonnell Engineering Co. Inc., in Kansas City, Missouri. "With this new law, design consultants should have no apprehension about conducting peer reviews for a relatively small fee, as compared to the risk."

Quatman believes that teaching young engineers through lessons-learned sessions is the best way to improve on quality. "From real-life examples of things we did well and those we did not, everyone learns how to deliver better projects the next time," says the board member of the Design-Build Institute of America. "By keeping these teaching sessions out of court, project participants can be more candid about their performance."

Ohio PEs Oppose Bill on Criminal Offenses – The Ohio Society of Professional Engineers is opposing legislation in the General Assembly that would restrict how licensing boards limit or prohibit individuals with felony convictions from obtaining licensure.

The bill (H.B. 169), sponsored by Rep. Sandra Williams (D-Cleveland), would require individual boards, commissions, and agencies to determine the criminal offenses (felony or misdemeanor) that are "substantially related" to a profession and determine if these offenses hinder the individual's fitness or ability to work in the occupation. The agencies will also have to address how licenses and certifications are denied, suspended, or not renewed in these cases.

The Model Law of the National Council of Examiners for Engineering and Surveying (section 150.10) recommends that licensing boards have the power to suspend, revoke, place on probation, fine, or to refuse to issue, restore, or renew a license or intern certification if the individual is found guilty of several offenses. These offenses can include, but aren't limited to, fraud, dishonorable, unethical, and unprofessional conduct, and conviction or guilty pleas relating to any felony.

Washington Continuing Education Bill Fails to Move – Legislation that would require PEs to earn 15 hours of continuing education annually in order to renew their licenses failed to move out of the Washington Legislature prior to the end of its session in April.

The Washington Society of Professional Engineers supports continuing education for PEs, but opposed the bill (H.B. 1900) because of its mandatory reporting requirement. The legislation, supported by the local chapter of the American Society of Civil Engineers, would have also required the state's Department of Licensing to write rules governing what professional development hours are acceptable to meet the requirements.

Under the state's current law, continuing education for PEs is considered a matter of professional conduct and practice that is left to the discretion of the individual. The law states that "registrants shall maintain their competency by continuing their professional development throughout their careers." The state does not conduct audits or require a minimum number of professional development hours. Licensed land surveyors are required to earn 15 hours of continuing professional development for license renewal.

Washington A/Es Get 'Duty to Defend' Relief – Washington Governor Christine Gregoire signed legislation in March that will reduce the liability risks for design professionals by eliminating unfair indemnity clauses in contracts with public agencies.

The legislation (H.B. 1559) places limits on the enforcement of indemnification agreements between state and local public agencies and licensed design professionals. A contract that requires a design professional to indemnify an agency for claims made against the agency, including the duty to defend, will only be enforceable in regards to the negligence, recklessness, or willful misconduct of the design professional. The design professional will not be responsible for paying for damages of a third party's actions that are not connected to the professional.

FEDERAL LEGISLATIVE/REGULATORY MATTERS

Digital Signatures and Seals Essential to Industry Innovation, Report Says – The AEC industry needs to keep pace with technological advances and move away from paper-heavy projects—particularly with use of standard digital seals and signatures—says a new project management guide.

Published by Fiotech, an international group dedicated to innovation in capital projects, the report explains how digital seals and signatures can help streamline processes and increase efficiency in the delivery of projects.

AEC firms are increasingly digitizing business processes with the expansion of mobile technology, as they strengthen their commitment to environmentally friendly practices. Yet, the guide says, there is a "wet signature" problem. When documents need signatures and professional seals—the ink comes out. The dependence on a "wet signature" can increase expenses for a firm in various ways, through printing and shipping costs, time associated with obtaining multiple signatures, and delays if an individual is not immediately available to sign or seal documents.