

Significant Legal and Legislative Activities

Prepared for the Engineers Joint Contract Documents Committee (EJCDC)
June 7-8, 2013 – Portland, Oregon

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

Ontario Repeals Industrial Exemption – The government of Ontario, Canada, has repealed the province's industrial exemption. The change, which took effect on March 1, means that those responsible for professional engineering work related to production machinery or equipment must be licensed professional engineers. [Note: On March 1, Professional Engineers Ontario announced that the deadline would be extended to September 1, 2013.]

In the U.S. engineering profession, industrial exemptions from state licensing laws have long been a controversial issue, especially since the BP oil spill in the Gulf of Mexico. Since its founding, NSPE has questioned the wisdom of exemptions from licensing laws and believes state licensure laws should apply to all individuals who practice engineering as defined by the Model Law published by the National Council of Examiners for Engineering and Surveying.

Last year, NCEES amended the Model Law to require responsible charge by a PE over the engineering design of buildings, structures, products, machines, processes, and systems that can affect the public health, safety, and welfare.

In Ontario, while a licensed professional engineer was required to perform health and safety reviews prior to the start-up of newly installed or altered production machinery and equipment, an exception for the work performed was enacted in 1984. The recent change to Ontario's Professional Engineers Act repealed that exception, however.

"Repealing the industrial exception brings professional engineering in again at the beginning of the production process development cycle," says Michael Price, P.Eng., acting CEO and registrar of Professional Engineers Ontario. "Engineering is regulated to serve and protect the public interest, and professional engineers are accountable to PEO for doing just that by maintaining a high quality in their work and also by considering its overall implications. Bringing this mindset into the design of the production process should be cost-effective for industry by lessening workplace illness or injury and associated workplace insurance claims, and minimizing retrofitting, downtime, and equipment replacement."

Minnesota Governor Drops Proposed Tax on A/E Services – Minnesota Governor Mark Dayton has scrapped a proposed tax that would have applied to architectural and engineering services as well as other business services.

The [Minnesota Society of Professional Engineers](#) opposed the tax and encouraged members to address their concerns with legislators about the potentially negative effects the tax could present for businesses in the state. Many others in the business community opposed the tax, including the state chapters of the American Council of Engineering Companies and the American Institute of Architects.

Dayton's proposal, introduced on January 22, aimed to close the state's budget deficit and increase revenues for transportation projects, additional investments in K–12 and higher education, and workforce

training programs. His proposal would have reduced the sales tax rate from 6.87% to 5.5%, but broadened the tax base to include goods and services previously exempt from taxation.

It was estimated that the business and professional services sales tax would have raised \$3.2 billion for the general fund. The tax was aimed at business support services, computer services, consulting and development services, facilities support services, legal services, management consulting services, specialized design services, as well as A/E services.

Florida Society Backs Increased Liability Protections – On April 24, 2013, Florida Governor Rick Scott signed into law a bill introduced on January 15 that will protect design professionals from individual liability if specific requirements are outlined in a contract.

According to the [Florida Engineering Society](#), recent court decisions have stripped engineers of the right to enforce liability clauses in design professional contracts. The organization supported the bill (S.B. 286) because it will protect the integrity of contracts that specify remedies for economic damages. It also will allow contracting parties to decide how they would like to address economic damages—either by following common law precedent or through contract terms.

In 2010, the Florida legislature passed a bill to address this issue, but it was vetoed by former Governor Charlie Crist. The bill will allow a business to enter a contract stating that an individual employee of another business entity will not be held liable for negligence arising from performance of professional services under the following six conditions:

1. The business entity must execute the contract with a claimant or with another entity for the provision of professional services on behalf of the claimant;
2. The contract must contain a prominent statement that an individual employee or agent may not be held individually liable for negligence;
3. The contract does not list an individual employee or agent as a party to the contract;
4. The business entity is required to have professional liability insurance under the contract;
5. The conduct of the design professional giving rise to the damages occurs within the course and scope of the contract; and
6. The harm is exclusively economic in nature and does not extend to persons or property not subject to the contract.

In a contract not adhering to the conditions, a licensed engineer employed through a business organization is not exempt from the personal liability for negligence, misconduct, or wrongful acts he or she commits. In addition, partnerships will be jointly and severally liable for the negligence, misconduct, and wrongful acts committed by their employees or partners while serving in a professional capacity.

Maryland Bill Aims to Require Firm Permits – Engineering business owners in Maryland will be required to obtain a permit to provide services if new legislation under consideration in the legislature is enacted. The requirement seeks to prevent companies from providing engineering services without a licensed engineer in responsible charge.

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The legislation (H.B. 347), introduced in January, will require engineering firms to obtain a permit from the State Board for Professional Engineers (which operates under the Department of Labor, Licensing, and Regulation) to provide professional engineering services. The permit allows the business—either a corporation, partnership or limited liability corporation—to operate through a dedicated professional engineer and indicates to the public that the firm is authorized to provide engineering services. Currently, architects and surveyors are required to obtain a firm permit in the state.

South Carolina Bill Seeks Protections for Design Professionals – Design professionals in South Carolina may get some relief if a liability protections bill is enacted. The legislation, introduced in January, seeks to amend the state's Limited Liability Corporation Act to shield design professionals from personal liability when acting in good faith as a member of a limited liability corporation.

The bill (S. 124) was introduced after the South Carolina Supreme Court ruled that the state legislature didn't intend for the law to protect a member of a limited liability corporation from personal liability while performing for the business

The [South Carolina Society of Professional Engineers](#) supports the legislation because numerous A/E firms in the state are limited liability corporations. The bill changes the language in the act to state that the debts, obligations, and liabilities of a limited liability corporation (whether arising in contract, tort, or otherwise) are solely the debts, obligations, and liabilities of the company. A member or manager, as an agent of that company, cannot be held personally liable for these debts, obligations, and liabilities. The liability shield can only be waived if a waiver is set forth in the articles of organization and the design professional has consented to the waiver in writing.

Hawaii PEs Oppose Bill Allowing Vets to Skip PE Exam – Professional engineers in Hawaii are questioning the wisdom of a bill being considered by the state senate aimed at making licensure easier for veterans.

The bill (S.B. 506) applies to all forms of professional licensure in the state and, as it is currently written, is also opposed by dentists and accountants, according to Majella Stevenson, P.E., F.NSPE, the [Hawaii Society of Professional Engineers](#)' representative for veteran issues. "It's got a bunch of good language in it aimed at helping veterans to get a license easier," she says. "But there's also a stipulation that, based on military experience, the exam requirement can be waived."

If enacted, the bill would allow applicants to skip the PE exam if the Hawaii licensing board determines they are qualified for licensure based on education, training, or service.

Despite her own veteran status, Stevenson does not support such a provision. "We really do support veterans getting jobs and assisting them, and we think a lot of the other portions of the bill are fine," Stevenson says. "Our concern is that they do need to sit for an exam."

FEDERAL LEGISLATIVE/REGULATORY MATTERS