



## LEGISLATIVE AGENDA – 2007/2008

### **Statute of Limitations**

On February 1, 2006 the Michigan Supreme Court issued an opinion in the case of Ostroth v Warren Regency GP, LLC, docket number 126859, which greatly expanded the statute of limitations period for professional malpractice actions against architects, professional engineers, professional land surveyors and contractors from two to six years.

In its opinion the Court overturned a Michigan Court of Appeals decision that was over ten years old that construed this statute of limitations. This threefold and sudden increase in liability exposure places architects and professional engineers at much greater risk than any other professionals such as doctors or lawyers.

### ***ACEC/M Recommendations:***

- Create remedial legislation which will balance the redress of plaintiffs with the need to keep and grow jobs in Michigan. The legislation should remove ambiguities in the statutes and create fairness among professionals.

### **Procurement: Qualifications-Based Selection of Design Professionals**

The American Public Works Association (APWA) Policy Statement: “APWA believes that the public is best served when government agencies select architects, engineers, and related professional technical consultants for projects and studies through Qualification-Based Selection (QBS) procedures. Basing selections on qualifications and competence (rather than price) fosters greater creativity and flexibility, improves the delivery of professional services, increases the value to the owner in construction and life cycle expenses, and minimizes the potential for disputes and litigation.”

The Federal Government mandates the use of Qualifications-Based Selection (QBS) to select and contract for engineering and architectural services (Public Law 92-582, the Brooks Act). Currently, forty-five (45) states have passed QBS legislation.

High quality engineering and design services represent a very small percentage of total project costs, yet they directly affect the entire project budget and long-term costs. Under a QBS system, the owner will experience greater participation of firms during advertisement, alternative approaches to projects and cost saving designs will be maximized, and the owner will have an opportunity to understand a firm’s skills, experience and specialization.

### ***ACEC/M Recommendations:***

- Develop a long-term strategy to pass legislation requiring the use of a Qualifications-Based Selection (QBS) process for procurement of consulting engineering services on all projects partially or totally funded by the state.

### **Infrastructure Funding**

Michigan has an annual estimated funding shortfall of \$700 million for its state transportation system (MDOT managed) and at least \$2 billion more for its local roads (counties, cities and villages). With an estimated 40 percent drop in available road dollars by 2008, our transportation system is reaching crisis stage. The current funding system is broken and is in desperate need of repair.

In addition to the well-known needs of our existing transportation system, the unexpected drop in gas tax revenues, vehicle registration fees, and skyrocketing costs of road-building materials like asphalt, cement, steel and diesel fuel, the state will soon be announcing a \$130 million shortfall on our 5-year plan.

How Michigan fuel taxes compare to other states:

- 30 states have a higher regular fuel tax rate than Michigan;
- 43 states have a higher diesel fuel tax rate, including 4 that are more than double;
- 11 states have local option gas taxes;

Combined with other key elements of Michigan's infrastructure, quality of life and economy depend on the availability of good drinking water and acceptable wastewater treatment systems. Supporting economic growth requires a continuous investment in water and wastewater infrastructure.

Many communities face a critical backlog of unfunded needs due to aging water and wastewater systems.

#### ***ACEC/M Recommendations:***

- Support a comprehensive solution for fully funding state and local transportation projects and ensuring a fair allocation of those resources throughout the state. Support funding initiatives (i.e. State Revolving Fund) sought to improve the security of our water and wastewater facilities.

### **Proper Enforcement of Licensing Laws; Increased Penalties**

The design professions are licensed to protect the health and safety of the public. Unlicensed activity not only threatens the livelihood of the legitimate design professional, but it also threatens public safety.

ACEC/M urges the Department of Labor and Economic Growth, Bureau of Commercial Services to enforce the laws against both unlicensed and incompetent practice.

#### ***ACEC/M Recommendations:***

- Re-introduce legislation that makes it a crime and increases the penalties for those who practice the professions without a license or do so incompetently.

### **Tort Reform**

Excessive litigation continues to drive up the cost of doing business for Design Professionals. They are called to defend themselves against third party damage claims, many of which have no merit.

Legislation which requires a plaintiff to either swear to the authenticity of his/her complaint, requires him/her to obtain a positive opinion from an expert witness as to the merits of the claim

prior to filing it with a court, or requires a panel of experts to arbitrate the matter prior to filing the claim with a court, would reduce the number of lawsuits clogging court dockets and would tend to separate the claims that had merit from those that were not meritorious.

***ACEC/M Recommendations:***

- Enact legislation, referred to as “Certificate of Merit”, that requires confirmation that a claim against a Design Professional is meritorious before it clogs the court system.

**Preserving Public Safety: Do not license individuals to practice “indoor” architecture and engineering**

For years, people who call themselves “interior designers” have sought to have building officials accept their plans and documents for interiors of buildings without an architect’s or professional engineer’s seal. Many building officials will not accept the plans of interior designers without such a seal.

In order to have their plans approved by building officials, interior designers believe they need to be licensed or registered by the state. Interior designers are not however, qualified by either education or experience to prepare documents which could have an impact upon a building’s mechanical, electrical, structural, or life safety systems. Furthermore, architects and professional engineers are the only professionals who have the training and skill to wholly integrate a project. Interior designers, when used on a project, are only one part of that integrated whole. That integrated whole is overseen and coordinated by a licensed professional, an architect or professional engineer.

If interior designers were licensed or registered then there would be every justification for licensing others who contribute to the whole project, i.e. upholsterers, people trained in acoustics, etc.

Licensing Interior Designers would add another layer of government by creating yet another regulatory board which would license and discipline interior designers. There is not enough money in the budget to enforce the licensing laws we have now, let alone add another. That is why even the Department of Labor and Economic Growth, the Department that would be charged with licensing and regulating interior designers, is opposed to this type of legislation and believes as do the architects and professional engineers, that the best solution to the concerns of interior designers lies in an amendment to the Construction Code so their plans could be accepted by building officials.

Recently, Landscape Architects, Geologist and other disciplines have introduced legislation to create a licensing act for their profession that often encroach on the practice of engineering.

***ACEC/M Recommendations:***

- When appropriate, oppose efforts by specialty groups to become licensed when their practice does not affect the public health and safety or if their proposed scope of practice encroaches on the practice of engineering.