



LEGISLATIVE AGENDA 2011-2012

Restoration of the 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 malpractice actions against architects, professional engineers, and professional surveyors from two to six years.

This threefold increase in liability exposure places design professional at greater risk and makes Michigan's statute longer than any other in the country. The Opinion is counter to 100+ years of case history and defies the legislative intent current statute.

ACEC/M Recommendations:

- Pass remedial legislation which will balance the redress of plaintiffs and restore the 2 year statute of limitations that was in place for a century. 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:

- Protect all current QBS statues and 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, regardless of the funding source.

Preserving Michigan's Infrastructure

The Transportation Funding Task Force (TF2), a non-partisan group appointed by Governor Granholm and the Michigan Legislature, recommended in November 2008 that *"Michigan must at least double current investment in transportation in order to continue to serve the state adequately"*. Since the report, the investment has not increased.

The drop in gas tax revenues and vehicle registration fees, paired with the skyrocketing costs of road-building materials like asphalt, cement, steel and diesel fuel, is causing severe shortfalls in needed revenue to repair and preserve Michigan's transportation system.

Other key elements of Michigan's infrastructure that protect the quality of life for Michigan residents are aging and failing. These include safe drinking water, adequate wastewater collection and treatment systems, energy generation and transmission, airports and dams. Michigan's economic recovery is completely dependent on a safe, efficient, quality infrastructure necessary to move people and goods, protect the safety of its residents, and provide an acceptable quality of life.

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 sought to improve the security of our water and wastewater facilities. Help to educate the legislature and the public on our aging infrastructure.

Fair and Insurable Professional Service Contracts

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

Language included in professional services contracts can be unfair and uninsurable. This places engineering firms at greater risk and does not provide owners with the protections they seek. Contract provisions must include an apportionment of the indemnification, defense and hold harmless obligation on a comparative fault basis.

ACEC/M Recommendations:

- Enact legislation that requires all public agencies to include fair, insurable, negligence-based contract provisions for all professional services contracts.