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**Significant Legal/Legislative Policies/Activities**  
Prepared for the Engineers Joint Contract Documents Committee  
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*The following is a summary of recent legal/legislative activities of interest to the Engineers Joint Contract Documents Committee (EJCDC).  
For background material on each issue, please contact Art Schwartz, NSPE Deputy Executive Director & General Counsel ([aschwartz@nspe.org](mailto:aschwartz@nspe.org)).*

**FEDERAL LEGISLATIVE/REGULATORY MATTERS**

**EPA Proposal Would End PE Requirement** – NSPE has raised objections to the Environmental Protection Agency’s proposed elimination of a requirement that closed vent emissions system modifications be reviewed and sealed by a professional engineer. The objections were outlined in a public comment to the agency, which is reconsidering emission standards for the oil and natural gas sector. Under the current rule, anytime a closed vent system is altered or modified, the changes must be reviewed and sealed by a professional engineer. The EPA wants to relax that rule, however, and allow approval by non-licensed in-house engineers.

The EPA’s proposal runs counter to a recent recommendation by the National Transportation Safety Board in response to the Merrick Valley, Massachusetts, gas pipeline explosions. NTSB’s preliminary report included an urgent recommendation that public utility licensing exemptions be eliminated. In its comments to the EPA, NSPE referenced the NTSB report and also objected to the industry’s characterizations that there aren’t enough PEs available to meet this requirement.

**Public Safety Should Not Be an Afterthought** – NSPE has challenged two automakers and federal regulators over public safety issues in the companies’ development of autonomous vehicles. On May 14, NSPE questioned petitions from General Motors and Nuro Inc. that seek exemptions from vehicle safety requirements (such as having a steering wheel, gas and brake pedals, and a gearshift) for the AVs they are developing.

In reviewing the petitions filed with the National Highway Traffic Safety Administration, NSPE found a lack of detail regarding how the companies’ vehicles will actively and successfully protect the general public in a variety of scenarios. NSPE urged NHTSA to require more details from both companies before granting the requested exemptions. NSPE also strongly recommended that professional engineers be placed in responsible charge of all aspects of autonomous vehicle development and deployment that affect public health, safety, and welfare.

**STATE LEGISLATIVE/REGULATORY MATTERS**

**NSPE Voices Opposition to Tracking Software** – NSPE has joined with several other organizations to protest the proposed use of tracking software on the computers of government contract employees, including those at engineering firms.

A draft bill introduced in several state legislatures would require government contractors to install “verification software” on their computers. The software logs a user’s every keystroke, and takes a screen shot every three minutes. All of the information gathered must be stored for up to seven years, and government agencies must have unlimited access to the data.

Supporters are promoting the bill as a way of reducing fraudulent charges by allowing government agencies to verify contract hours worked, but it poses grave threats to personal privacy and security.

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A joint statement opposing the legislation was released in conjunction with an article that provides details about the software's privacy and security concerns. Other organizations joining in the statement include the American Council of Engineering Companies, the Associated General Contractors of America, the American Institute of Certified Public Accountants, and the Information Technology Industry Council.

NSPE has been in communication with its partner societies in states where the legislation is moving and has sent action alerts to members in those states. The Society will continue to monitor all the bills and will mount opposition when and where it is needed.

In legislatures around the country, a threat to engineering firms that contract with government agencies is emerging. The threat comes from a model bill requiring private businesses that contract with any government body to install tracking software on the computer of every employee who works on a public project. The company TransparentBusiness is aggressively promoting the model bill as a way of reducing fraudulent charges by government contractors. This company, coincidentally, sells the tracking software. In response to a bill introduced in Springfield, the Illinois Society of Professional Engineers has responded in opposition, along with the American Council of Engineering Companies–Illinois, the American Institute of Architects–Illinois, the Illinois CPA Society, the Illinois Professional Land Surveyors Association, the Illinois Road & Transportation Builders Association, and the Illinois Secretary of State.

The Montana legislature, through a fiscal note, has also detailed the negative financial impact the bill would have on a state economy.

TransparentBusiness has shopped this bill to more than 40 state legislatures already; as of the last count, some version of this legislation has been introduced in the following 23 states:

- **Arizona** - HB 2086
- **Arkansas** - SB 281
- **Hawaii** - HB 1293 (Labor and Public Employment Committee recommended that the bill be deferred) /SB 1326
- **Idaho** - H 135 (Professions licensed by the state are exempted.)
- **Illinois** - SB 1326/HB 2127
- **Indiana** - HB 1572
- **Iowa** - HSB 169
- **Kansas** - SB 56 (hearing scheduled for February 7 was cancelled)/HB 2115
- **Maryland** - SB 375 (hearing scheduled for March 5, 1 p.m.)/HB 483 (hearing scheduled for February 19)
- **Massachusetts** - HD 653 (draft)
- **Minnesota** - SF 913/HF 153
- **Mississippi** - HB 1133/SB 2879 (both died in committee)
- **Montana** - HB 197 (Tabled in committee. Committee noted “significant long-term impacts” and “technical concerns” with the bill.)
- **Nebraska** - LB 717
- **New Jersey** - S 2960
- **New Mexico** - SB 546
- **Rhode Island** - HB 5255/SB 125
- **South Dakota** - HB 1123 (defeated)
- **Tennessee** - HB 1329/SB 1420
- **Texas** - HB 1352
- **Virginia** - HB 2804 (failed in committee)
- **Washington** - HB 1744/SB 5809
- **West Virginia** - SB 584/HB 2756

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NSPE is tracking all of these bills. We will post additional information and updates as they become available.

**After Pipeline Explosion, NSPE Wins Case for Ending License Exemption** – NSPE’s major effort to improve public safety in the aftermath of a deadly pipeline explosion in Massachusetts has resulted in a new state law. On December 31, Governor Charlie Baker signed emergency legislation that requires a licensed professional engineer to approve plans for engineering work associated with natural gas infrastructure in the commonwealth.

Following the Merrimack Valley gas line explosions in September, the National Transportation Safety Board investigated the incident and consulted with NSPE. The Society and NTSB staff spent several weeks discussing the engineering licensing process, its standards, and NSPE’s opposition to licensing law exemptions. NSPE shared several documents, including its industrial exemptions position statement and fact sheet, and public testimony from professional engineers.

Among the NTSB's recommendations: Massachusetts should eliminate the professional engineer licensing exemption for public utilities and require a PE to seal public utility engineering drawings. In addition, NTSB made an urgent recommendation that NiSource, the parent company of Columbia Gas, revise the engineering plan and constructability review process across all of its subsidiaries to ensure that a PE signs and seals all applicable construction documents. NiSource owns and operates the gas distribution system in which the explosions occurred.

NSPE believes that Governor Baker took an important step by heeding the call for professional engineer oversight and signing the legislation, which took effect immediately. The Society encourages more states to follow Massachusetts’ lead in ending engineering license exemptions and elevating the PE’s role in protecting the public. Currently, 53 states and territories allow licensing exemptions in some form while 16 states allow exemptions for public utilities.

## **COURT DECISIONS**

**Express Oil Change, d/b/a “Tire Engineers” v. Mississippi Board of Licensure for Professional Engineers and Land Surveyors** – The United States Court of Appeals for the Fifth Circuit issued its opinion on February 19, 2019 ruling that the district court erred in its ruling in favor of the Mississippi Board of Licensure for Professional Engineers and Land Surveyors which had earlier ruled that Express Oil Change, d/b/a “Tire Engineers” had violated the Mississippi professional engineering statute because it improperly and illegally used the title “engineer” in its name. The appeals court reversed the district court’s decision and rendered a judgment in favor of Express Oil Change (Tire Engineers)

The NSPE, ASCE, and ACEC had signed onto a friend-of-the-court brief in this case in support of the state engineering licensing board. The case involved a company that believed its rights were violated by a Mississippi law prohibiting the use of the title “engineer” by individuals and businesses that aren’t licensed to practice engineering.

When Express Oil Change LLC changed the name of its tire sale and service center to Tire Engineers in 2015, the Mississippi Board of Licensure for Professional Engineers and Surveyors notified the company of the violation of state law. A person or business is prohibited from using the term “engineer” in a commercial identification, title, or name, unless the individual or company is licensed to perform engineering services by the state licensing board.

Express Oil Change filed a lawsuit claiming that the licensing board misinterpreted its governing statutes and infringed upon the company’s First Amendment rights by prohibiting its use of “Tire Engineers.” The Alabama-based company maintains nine service centers in Mississippi.

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In February 2018, a federal district court upheld the state actions against EOC, rejecting the free speech and trademark rights claims in the case. Although the company's website states, "Tire Engineers have tire engineers who are qualified to service customers' tires," the district court concluded that the business name Tire Engineers is likely to deceive and mislead consumers to believe that services are provided by a recognized group of qualified engineers working to design tires in the transportation industry.

Upon EOC filing an appeal in May to the US Court of Appeals for the Fifth Circuit, the Mississippi attorney general requested that NSPE submit an amicus brief along with the American Council of Engineering Companies and the American Society of Civil Engineers.

The brief argues that the use of the term "tire engineer" to describe auto service mechanics is inherently misleading to the public and that "tire engineer" has a well-established meaning: a professional engineer with specialized knowledge and experience working with tires. For example, the brief says, "Tire Engineers states the reason is 'to distinguish its automotive services from those offered by competitors.' But the only distinguishing characteristic that Tire Engineers' name suggests is that, unlike its competitors, Tire Engineers employs actual professional tire engineers. This suggestion is false."

NSPE believes that state licensing laws for design professionals are predicated upon and justified to protect the public health, safety, and welfare. The public is best served by the licensure of all qualified individuals within the engineering profession.

**Järllström v. Oregon Board of Examiners for Engineering and Land Surveying** – A federal judge has ruled that an Oregon man was within his First Amendment rights when he referred to himself as an "engineer," even though he was not licensed as a professional engineer. This ruling does not, in any way, weaken or change the fact that only PEs may engage in the professional practice of engineering in the state, nor that only licensed individuals may call themselves professional engineers or PEs.

The ruling on December 28 by US Magistrate Judge Stacie Beckerman stems from a case that began in 2016, when the Oregon Board of Examiners for Engineering and Land Surveying fined Mats Järllström \$500 for referring to himself as an "engineer" in documents sent to the board and in media interviews. Järllström's case began when he submitted a letter and calculations to the board, calling into question the timing of red-light cameras, after his wife received a ticket for a red-light violation. In the letter, Järllström, who earned an electrical engineering degree in his native Sweden, referred to himself as an "electronics engineer," which the board said violated state law regarding use of the title "engineer."

Although recognizing his right to use the generic term "engineer" publicly and privately, the judge's ruling was limited. The judge determined that Järllström may study, communicate publicly about, and communicate privately about, his theories relating to traffic lights as long as his communications occur outside the context of an employment or contractual relationship relating to the timing of traffic lights with a governmental or other entity that changes or implements or has final approval to change or implement traffic-light timing without the review and acceptance of responsibility by an Oregon-licensed professional engineer.

Oregon is one of the few states with a statute that aims to regulate the general use of the term "engineer." This ruling is a setback for those provisions, but the main issue remains unchanged: Only PEs may engage in the professional practice of engineering as defined by the state, and only licensed individuals may call themselves professional engineers or PEs.