Significant Legal/Legislative Policies/Activities
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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).

FEDERAL LEGISLATIVE/REGULATORY MATTERS

NCEES Offers BIM Project Guidelines – The National Council of Examiners for Engineering and Surveying has issued guidelines for design professionals when using building information modeling on a project. The document, released in June, provides strategies to enhance the successful use of BIM and offers a project-specific execution plan, project role definitions, and direction on properly signing and sealing deliverables.

The following are some of the recommendations:

▪ **BIM Model Use**
  How the BIM model will be used from project inception to construction to post-commissioning must be defined up front and accounted for in the project cost estimate. Examples of usage topics include model ownership, turnover to the owner at project conclusion, involvement of the project team in model preparation and development through the life cycle, use for structural detailing, cost/schedule inclusion, and products that will be produced.

▪ **Responsibilities and Scope**
  Each design professional working with a BIM model will have responsible charge for a portion of the project. It’s imperative that each design professional clearly define his or her primary role and scope of responsibility, particularly where the professional’s scope boundaries align with those of another discipline.

▪ **Lead Design Professional’s Role**
  Each project team should appoint a lead design professional to oversee the BIM model development to ensure that communication channels are effective, that schedule milestones are achieved, and that the model manager is efficiently and effectively completing his or her responsibilities. This person should have a working knowledge of the scope of all design professionals, documents to be produced, and project design and goals in total.

▪ **Model Manager’s Role**
  The model manager reports to the lead design professional and serves a role in coordinating the development of the BIM model and data import, consistent with the execution plan’s stated needs. The lead design professional must ensure that all design professionals have participated in the BIM model to the extent of their responsible charge and scope.

▪ **Sign and Seal Deliverables**
  At a point in project development agreed to by the owner’s team and per the owner’s agreement with the project members, the licensee shall affix a seal and signature to only that part of the products from the BIM model for which he or she is responsible. A digital archive of the design professional’s final product at the completion of each project phase shall be retained in the BIM model archives.
NSPE, Engineers Canada Collaborate on Licensing Mobility – NSPE and Engineers Canada have announced a commitment to finding acceptable solutions to international licensure mobility challenges in a way that will maintain adequate protection of the public health, safety, and welfare.

The discussion between the two organizations was prompted by a letter that NSPE submitted last year to the United States Trade Representative about the challenges that US PEs face when attempting to obtain a license in Canada.

The letter was a formal response to the US Trade Representative’s request for comment for its annual National Trade Estimate Report on foreign trade barriers. According to the report, standards-related measures (standards, technical regulations, and conformity assessment procedures) help facilitate international trade to obtain greater access to foreign markets. The measures also enable governments to pursue objectives such as protecting human health and the environment and preventing deceptive practices. However, standards-related measures that are nontransparent, discriminatory, or otherwise unwarranted can act as significant barriers to US exports.

Both the US and Canada allow individual jurisdictions to develop their own requirements for obtaining an engineering license. Unlike most states, Canada’s 12 provinces require license applicants to work at least one year in Canada before applying. This requirement prohibits many US PEs from practicing there despite having adequate education and experience.

British Columbia and Saskatchewan provide exceptions to this requirement. British Columbia recognizes Engineers Canada’s mutual recognition agreements with Hong Kong, Ireland, and Australia, while Saskatchewan maintains an agreement with Texas. Canada maintains an MRA with only Texas and Nevada.

An agreement between Engineers Canada and ABET, which recognizes the substantial equivalence of accredited engineering education programs, will serve as a model for addressing mobility.

NSPE leaders have expressed appreciation for the opportunity to work toward mobility solutions on an international scale and look forward to more discussions on reciprocity and mobility for licensed North American engineers.

STATE LEGISLATIVE/REGULATORY MATTERS

Michigan Law Allows PEs to File Liens – Professional engineers in Michigan now have increased financial protection through an amendment to the state’s construction lien act that allows them to record liens for professional services related to property improvements. The change, supported by the Michigan Society of Professional Engineers, was signed into law by then governor Rick Snyder in December.

The law (P.A. 367 of 2018) outlines conditions and procedures for recording, claiming, enforcing, vacating, and discharging liens. It allows a design professional who enters into a written contract to provide professional services related to proposed or actual construction, alteration, repair, or removal of a structure or other improvement to real property to record a notice of the contract with the county register of deeds. The notice can be recorded regardless of whether the professional services or related project have been started or finished, but the notice must be recorded no more than 90 days after the professional services were last performed. The notice is valid for one year after the recorded date.
The Michigan Society of Professional Engineers supported the addition of design professionals to the construction lien act because the act ensures that design firms and consultants will be paid in full for services rendered in the planning stages of a project in addition to services provided for actual physical improvements.

The lien law defines “actual physical improvement” as the actual physical change in real property as a result of labor provided under contract by a contractor, subcontractor, or worker. The change must be readily visible, so that an individual would see, upon reasonable inspection, that there has been an improvement. The previous law, adopted in 1982, specifically excluded architects, engineers, and surveyors from the definition.

The change was also supported by the American Council of Engineering Companies, the American Institute of Architects, and the Michigan Society of Professional Surveyors.

Arizona Eases Mobility for Out-of-State Licensees – Arizona Governor Doug Ducey signed legislation in April that allows all occupational licensing boards in the state to recognize the out-of-state licenses of applicants who have been licensed for at least one year. The law is touted as the first of its kind in the nation. The law’s proponents believe that it will help ease mobility, particularly for military personnel and their spouses, while critics believe that it’s too broad.

The recognition of the out-of-state licenses isn’t automatic, however. Applicants must be in good standing in all states where they are licensed; pay applicable fees; and meet all residency, testing, and background-check requirements.

The law is a part of Ducey’s focus on deregulation and eliminating what he calls “unnecessary barriers to entering the job market.” Based on reviews and reports, some occupational licenses have faced elimination.

In the first session of the legislature after he became governor, Ducey proposed deregulating geologists and landscape architects along with other groups like yoga instructors and citrus fruit pickers. PEs, architects, and land surveyors saw this as a threat to the design professions and contacted legislators and stakeholders to explain why it was important to maintain these two learned professions. During a hearing about the proposal to end licensing of landscape architects and geologists, licensees shared how a removal of registration would cause them to leave Arizona and take their businesses with them.

Ducey also signed an executive order requiring licensing boards and commissions to review requirements and issue feasibility reports explaining training requirements, continuing education, fees, and administrative processes.

NSPE believes that the licensing of professional engineers is critical to protecting the public health, safety, and welfare and works closely with state societies across the country to combat efforts to undermine the PE license’s value. The practice of engineering is not a right, but a privilege granted only to those with the proper qualifications, NSPE argues, and licensing boards and governing jurisdictions are necessary to regulate the profession.

PA Governor Signs Occupational Licensure Reciprocity Bill – Pennsylvania Governor Tom Wolf signed legislation in July that allows all occupational licensing boards to recognize out-of-state license applicants through an “endorsement” process.

The legislation (H.B. 1172) was introduced to provide licensed professionals greater ease in getting licensed in the commonwealth and minimize barriers to employment, particularly for military personnel and their spouses.

Pennsylvania licensing boards and commissions will be able to issue a reciprocal license if the applicant meets the following conditions:
• The applicant must hold a current license or registration in a jurisdiction in which the licensing requirements are substantially similar to Pennsylvania’s;

• The applicant must be in good standing, with no recent disciplinary actions on his or her record;

• The applicant must be able to demonstrate competency in the profession either via continuing education credits or professional experience in at least two of the last five years preceding the date of application; and

• The applicant must pay any fees set by the licensing board.

The legislation also allows, but doesn’t require, licensing boards to issue a provisional license while the applicant is working to meet the requirements.

The legislation is similar to a licensure reciprocity bill signed by Arizona Governor Doug Ducey in April: applicants must be in good standing in all states where they are licensed; pay applicable fees; and meet residency, testing, and background-check requirements. The law is a part of Ducey’s focus on deregulation and eliminating what he calls “unnecessary barriers to entering the job market.” Based on reviews and reports, some occupational licenses have faced elimination.

**Florida Approves Early Examination and Increases Licensure Mobility** – In June, Florida Governor Ron DeSantis signed legislation that will allow for early taking of the PE exam and improve licensure mobility.

The legislation (S.B. 616/H.B. 827) revises the prerequisites for an individual to take the PE exam and establishes other standards of practice and responsibility rules. Licensure candidates will be allowed to take the PE exam prior to gaining four years of engineering experience. The candidate will not, however, be eligible to earn a PE license before gaining the required experience.

In 2005, Nevada became the first state to allow the early taking of the PE exam. The following states have followed suit: Arizona, California, Idaho, Illinois, Kentucky, Louisiana, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, Texas, Utah, and Wyoming.

The legislation eases licensing mobility by allowing an individual with an out-of-state PE license who has not taken the FE exam to be able to practice in Florida if they have been licensed for 10 years (reduced from 15 years) and have 15 years of continuous engineering experience (down from 20). An individual who has not taken the PE exam but is licensed in another state can qualify for licensure in Florida if he or she has maintained the license for 20 years (reduced from 25) and have 25 years of experience (reduced from 30).

A pathway to licensure for individuals who graduated from approved engineering technology programs prior to July 1979 is also provided by the legislation. The individual must take the standard examinations and have at least six years of engineering experience that indicates competence to be in responsible charge of engineering.

For business licensing, engineers will no longer have to obtain a certificate of authorization for their engineering firm, and out-of-state firms will be allowed to obtain temporary registration.

The legislation also addresses the responsibilities of a PE who serves as a “successor engineer” on a project. It defines “successor engineer” as a licensed engineer who is using or relying upon the work, findings, or recommendations of the engineer who previously sealed pertinent documents. If this individual wants to reuse documents previously
sealed by another licensed engineer, he or she will assume full professional and legal responsibility for the work by signing and sealing the documents. The documents will be treated as if they were the successor’s original work, and the predecessor will be released from any professional responsibility or civil liability.

**Pennsylvania Society Opposes Home Inspection Licensing Bill** – A bill in the Pennsylvania General Assembly would place the regulation and licensing of home inspectors under the state board that regulates the practice of engineers, land surveyors, and geologists. The [Pennsylvania Society of Professional Engineers](https://www.nspe.org) opposes the move.

Under current state law, an individual who provides home inspection services must be a member of an association such as the American Society of Home Inspectors or the International Association of Certified Home Inspectors. Professional engineers and architects, however, are exempt from this membership requirement.

If enacted, the bill (H.B. 21) would amend the Engineering, Land Surveyor, and Geologist Registration Law to require that the same state licensing board license and regulate home inspectors and home inspectors-in-training. The bill defines “home inspection” as a noninvasive visual examination of the systems and the essential components of a residential dwelling designed to identify material defects in those systems and components and performed for a fee in connection with or preparation for a proposed or possible residential real estate transfer.

In addition to establishing the examination, education, experience, and license renewal requirements, the legislation also amends the registration law to expand the number of licensing board members from nine to eleven to allow the governor to appoint two licensed home inspectors.

PSPE says the bill is flawed and believes that licensing of home inspectors shouldn’t be a job for the current design professional licensing board. The society encouraged its members to contact legislators to express their opposition to the bill and to emphasize that home inspection is not a design profession like the other groups licensed by the board. For example, the current education, experience, and examination requirements for a PE license exceed those for current home inspection certification as well as those proposed in the bill for home inspection licensure requirements.

PSPE also believes that adding another profession to the board will only increase the challenges it faces from a shortage of resources.

**PE Action Ensures License Requirement for Hawaii Public Works Position** – An effort to remove the PE requirement for the director of public works for Hawaii County was recently thwarted by the [Hawaii Society of Professional Engineers’](https://www.nspe.org) Big Island Chapter.

In June, the Hawaii County Charter Commission held hearings about 28 proposed charter amendments for the 2020 ballot, including a proposal to remove the PE requirement. The proposal (CA-26) placed only one significant requirement on the position: five years of administrative experience. The current department director David Yamamoto and deputy director Allen Simeon are both PEs.

Commission Chairman Doug Adams, sponsor of the proposal, believes that a lack of a professional license in a technical field doesn’t necessarily mean the director can’t manage those who have one, according to a Hawaii Tribune Herald article. “I think that it helps with identifying, increasing, expanding the potential for directors, good people, solid people that will have had experience in [a] public works department whether it is here or in other locations, and not necessarily create this small niche of those with a PE degree,” he was quoted as saying in a June 9 article.
Under the leadership of Big Island Chapter Director Curtis Beck, P.E., F. NSPE, chapter members spoke against the commission’s proposed amendment. Chapter members, which included former directors of public works, provided testimony to the commission. The commission was also presented with a letter addressing the critical need to have a licensed engineer in responsible charge of decisions that directly affect the health, safety, and welfare of county citizens. Nearly 60 PEs and architects who opposed the amendment signed onto the letter.

The commission responded to this outreach and testimonies by voting down the amendment, 7-2. “It felt good to make a difference,” Beck stated on an NSPE Communities post.

NSPE is aware that the practice of appointing non-engineer administrators to positions to perform functions that involve the practice of engineering has accelerated at an alarming pace throughout all levels of government. This practice, says the Society, is inconsistent with the goal of state engineering licensing laws to protect the public.

NSPE recommends that government officials recognize the importance of the engineering function within the government departments and agencies through the selection of qualified licensed professional engineers to positions having responsibility for making engineering decisions and exercising engineering judgment.

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