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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).*

FEDERAL LEGISLATIVE/REGULATORY MATTERS

Federal Safety Agency Challenges License Exemptions – The National Transportation Safety Board has identified 31 states that do not require a licensed professional engineer on natural gas pipeline projects. In the fall, the governor of each of the states received a letter from the NTSB, urging them to end these exemptions for gas pipeline operators and asking for an update within 90 days.

License exemptions began getting more attention after the NTSB issued an investigation report on the September 2018 gas pipeline explosions in Massachusetts' Merrimack Valley. The agency made two critical recommendations: first, that all the states with license exemptions for public utilities eliminate the exemption, and second, that a professional engineer be required to review and approve gas pipeline construction and maintenance documents.

When the NTSB began its investigation, the agency's staff contacted NSPE for information about licensing exemptions. Through a series of conversations and emails, NSPE shared report data, information on the licensing process and requirements, and the Society's position statement on licensing exemptions. Consequently, NTSB adopted a policy of addressing and eliminating engineering license exemptions within the gas pipeline industry.

NSPE staff is continuing the dialog with the National Transportation Safety Board and is working to secure a PE role in federal legislation on pipeline safety. NSPE is also assisting state societies on this issue.

NSPE-Led Coalition Delivers Message on Responsible Licensure – In August, NSPE announced the creation of the Alliance for Responsible Professional Licensing (ARPL), a coalition of advanced professions that is focused on informing lawmakers and the public about the importance of rigorous professional licensing standards.

In combination with its longtime efforts defending the PE license, the Society has been leading the charge to educate policymakers about the importance of standards for complex technical professions, such as engineering, that affect the public health, safety, and welfare.

Five Consequences of Weakening Professional Licensing Standards

- 1. Puts the public at risk.** Our professions oversee the physical integrity of public and private spaces, and the fiscal integrity of financial systems. Eliminating licensing would eliminate the critical training and qualifications necessary for work that directly impacts public safety, trust, and welfare. Errors in designing a bridge or building or certifying a corporate audit are not small matters that can be remedied by a bad Yelp® review. Our work must be done correctly the first time.

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- 2. Leaves the public on its own and ill-equipped to determine qualifications.** Professional licensing is an important indicator of a baseline level of expertise and qualification. Without professional licensing, the burden of ensuring qualifications will shift from experts to the public. Consumers will be left on their own to evaluate qualifications and performance for highly-complex, technical professions without the specialized knowledge needed to do so.
- 3. Ignores the critical role licensing plays in continued education, enforcement, compliance, and remedies. Licensing is about more than entry into a profession.** Licensing boards provide the systems for ongoing education for professionals—critical in professions that must stay current with complicated and changing codes—and the means for enforcing standards and sanctioning bad actors. Weakening licensing would diminish the ability of the licensing boards to establish, verify, and enforce necessary expertise.
- 4. Replaces assurance of qualifications on the front end with costly litigation after the fact.** Professional licensing is an efficient and cost-effective way to protect the public by establishing and ensuring qualifications on the front end. Eliminating licensing would replace established and verified qualifications that serve the public at large, with case-by-case, costly litigation to penalize lack of qualifications if something goes wrong. This approach is inefficient, costly, and only serves the person filing suit while doing little or nothing to protect others from similar bad outcomes by unqualified practitioners.
- 5. Threatens career mobility and destroys good licensing models that are working.** Our professions have licensing models that are working and already provide interstate mobility and reciprocity. This is possible because well-structured licensing systems have established consistency in qualifications and standards within a profession. This uniformity of standards establishes a baseline of trust in the qualifications of practitioners from other states that makes it possible for professionals to move from one state to another and have their license acknowledged.

Weakening licensing standards on a state-by-state basis will destroy the confidence in qualifications and completely disrupt existing mobility models. States will be less inclined to accept out-of-state licenses if some states have rigorous requirements and some states have weak requirements. The result: it will become more difficult for professionals to move and maintain their careers across states.

[NCEES, EWB Partner to Promote Licensure](#) – Engineers Without Borders USA and the National Council of Examiners for Engineering and Surveying launched an outreach campaign in September to promote licensure in engineering and surveying to college students and the next generation of young professionals in the two fields.

Following an announced \$3 million contribution over three years by NCEES at its 2018 annual meeting, the two organizations conducted stakeholder interviews with EWB-USA members to learn more about their current perceptions of licensure and implement an outreach and marketing campaign to promote licensure on college campuses, according to NCEES’s Director of Public Affairs Nina Norris.

“This partnership will provide powerful stories that illustrate the difference licensure can make in someone’s career and the impact engineers and surveyors have on our daily lives,” Norris says. “These stories and profiles will be an important part of how we convey our message throughout the campaign.”

The two organizations are already seeing more engineering students get behind the ideals promoted by professional licensure, according to EWB-USA Executive Director Cathy Leslie, P.E.

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“Our EWB-USA member base and volunteers have already been hard at work promoting the benefits of surveying and engineering licensure at student-led organization meetings and career fairs,” Leslie says. “We have set up booths on campus to distribute informative materials and speak with students directly at multiple events, and we are only just getting started.”

The two organizations say that because of the personal stories from other licensed engineers and volunteers within their organizations, they are better able to connect with students who may share similar experiences.

“Research shows that today’s students and young professionals react positively to stories about people within their profession who are making a difference,” Norris says. “We hope to capture their attention through the stories of the campaign and build on their existing engagement with EWB-USA to include NCEES and the value of licensure.”

The next stage of the campaign will begin in 2020, when the partnered organizations plan to expand their current efforts to include communicating with post-graduate and professional members about the benefits of staying on the licensure path.

“Collaborative partnerships with other organizations are an important aspect of supporting the NCEES mission to advance licensure,” says NCEES CEO David Cox. “Our growing partnership increases the opportunities to engage with current students, working engineers and surveyors, and engineering faculty to demonstrate how licensure can benefit their careers and protect the health, safety, and welfare of the public.”

STATE LEGISLATIVE/REGULATORY MATTERS

After Excavation Incidents, Philadelphia Puts PEs in Charge – Following recent building collapses, the City of Philadelphia approved a new PE inspection requirement for excavation projects to improve public safety.

The Department of Licenses and Inspections added the regulations in response to building collapses and property damage tied to increased redevelopment in the city over the last few years, according to the Philadelphia Inquirer. In one case, a family lost their home in February because of excavation activity at a building next door by a construction crew without proper permits. Contractors have also been injured or killed due to building collapses.

In a November 7 Inquirer article, the department commissioner David Perri stated, “We have so much more construction activity that there are now so many more opportunities for people to step on each others’ toes and for accidents to occur. The incentive now for a builder to go in and do a teardown and build new in the middle of a block...it’s causing issues that hadn’t previously existed.”

The department updated its building permitting process for excavations and protection of adjacent property (both public and private) to require monitoring and inspection by a PE. An inspection is needed when the construction project meets the following conditions: (1) When underpinning or structural support is specified or required; (2) Where excavations in excess of 12 feet in depth require engineer-designed sheeting and shoring; and (3) Where an excavation is three feet or less from an existing building. The PE requirement went into effect in August.

Florida Firms Say Goodbye to Certificates of Authorization – As Florida aims to reduce regulatory burdens for occupations, Florida AEC firms are no longer required to apply for a certificate of authorization.

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As of October 1, firms will be required to register their businesses with the Florida Board of Professional Engineers and be qualified by having a professional engineer licensed in the state on their staff. The board, however, is prohibited from charging a fee for qualifying a business organization.

Prior to this change in law, engineering firms had to renew their certificate of authorization every two years and pay a \$93.75 fee. Engineering firms applying for a certificate of authorization for the first time had to pay a \$125 initial application fee and a \$100 initial fee. There was also a \$5 unlicensed activity fee.

Firms that are current and active holders of a certificate will be transferred to a new registry.

If a firm's qualified licensee leaves the firm, the board must be notified within 24 hours. If the licensee was the only qualifying licensee with the firm, the business must stop offering engineering services in the state. If the firm wants to continue offering services, another qualified engineer must be brought into the firm within 60 days.

The registry will also apply to out-of-state firms that want to provide engineering services on a temporary basis.

Idaho Society Questions 'Universal' Licensure Proposal – Idaho Governor Brad Little is advocating for the creation of universal occupational licensure as part of his deregulation initiative. Idaho Society President Joseph Canning testified during a legislative committee hearing about concerns that this proposal could lower the bar for licensing engineers.

Little issued two executive orders last year—the Licensing Freedom Act of 2019 and the Red Tape Reduction Act—to target regulations that he believes are barriers to independence and prosperity for Idahoans. These orders built on a process started in 2017 with removal or simplification of some administrative rules and a review of Idaho's 442 occupational licenses, including the professional engineering license.

At a November hearing of the Idaho State Legislative Committee on Licensing and Certification Laws, legislators discussed the proposal to allow a licensing authority to set procedures for licensing an individual who holds an unrestricted license in another state, district, or territory in the US. This individual must demonstrate competency in the profession or occupation through methods determined by the licensing board or commission.

Canning emphasized during the hearing that licensure mobility is important, but ensuring that Idahoans are protected from potentially dangerous practice of unqualified individuals or businesses should be the top priority. "There was a lot of discussion on competency, scope of services, and health and safety. Is it a good idea for Idaho to 'lower its licensure bar' in all cases to the lowest common denominator of every state, territory, and perhaps country? Is it possible to treat all occupations the same for equalizing licensure and, above all, still protect the health, welfare and safety of Idaho's public?"

Canning's apprehension about the proposal is the board's power to issue a "limited" or provisional license if it determines that the applicant holds a license in a state where the occupation's scope of practice differs from practice in Idaho.

Canning pointed out to the committee that provisional licensing may not work for the engineering profession because an individual can't provide a provisional stamp or provisional engineering plans and documents. The committee listened and will be considering revisions to the proposal.

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Representatives of the Idaho Board of Professional Engineers and Land Surveyors, the state chapter of the American Council of Engineering Companies, the Idaho Bureau of Medicine, and the Idaho Medical Association also participated in the committee hearing discussions

New Law Protects Texas PEs From Frivolous Claims – Design professionals working on projects in the Lone Star state gained new legal protections, following the Texas Legislature’s amendment of the state’s certificate of merit statute.

The amendment effectively expands the certificate of merit requirement. Previously, a certificate of merit was required only from the original plaintiff in lawsuits arising out of damages related to professional services provided by PEs, licensed architects, professional land surveyors, and landscape architects.

Now, certificates of merit are required from any claimant—a plaintiff or third-party plaintiff—in any lawsuit or legal arbitration associated with damages arising out of professional services provided by a PE. The certificate of merit or affidavit must be provided by a third-party licensed professional. The third-party professional must work in the same area of practice as the licensee who is being sued and offer testimony based only on their knowledge, skill, experience, education, and training.

Supporters of the change believe that the revision will reduce frivolous claims and ensure that all claims are vetted by qualified professionals who understand the issues.

According to the law firm Gordon Rees Scully Mansukhani, the change in the law “could have a chilling effect on third-party litigation in Texas because of the new requirements. Gone are the days when contribution and indemnity claims could be brought against the design professional with minimal allegations of wrongdoing.”

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