

NSPE Position Statement No. 10-0178 – Peer Review Legislation

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NSPE Contact: Board of Directors

Professional Policy Supported: 10-Professional Practice

Position Statement: It is the position of the National Society of Professional Engineers (NSPE) that peer review statutes should be enacted in all jurisdictions.

Background:

NSPE believes that professional engineers participating in peer review and post-project review processes should be protected by appropriate legal immunity and legal privilege. Peer reviews include the review of designs by a third-party prior to project completion, as well as in-house post-project reviews of completed projects to identify engineering best practices that can be incorporated into future engineering designs. Well-crafted peer review legislation which includes appropriate safeguards can help to limit the liability and risk exposure for both engineers and engineering firms that employ peer reviewers as well as those engineers who perform the peer reviews and post-project reviews.

To ensure a measure of uniformity among jurisdictions, NSPE believes the Peer Review Legislation should:

1. Define “peer review” as “a process through which professional engineers evaluate, maintain, or monitor the quality and utilization of engineering services, prepare internal lessons learned, or exercise any combination of such responsibilities.”
2. Provide that third-party peer reviewers who are licensed professional engineers are immune from civil liability if the third-party reviewer acts in good faith and has no other role in the project besides performing the peer review.
3. State clearly that peer review must be done before substantial completion of the project and the peer reviewer must not be an employee, coworker, partner or sub-consultant of the professional engineer whose design is being peer-reviewed.
4. Define post-project reviews as “reviews being done after the substantial completion of a project for the purpose of learning best practices that can be applied in future engineering designs, documents, and procedures.” Post-project review sessions performed by employees, partners, coworkers or sub-consultants of the professional engineer should be privileged and should not be subject to

discovery during litigation. Post-project review participants should not be compelled to disclose lessons learned information in the event of subsequent litigation.