

SB 309 - CERTIFICATE OF MERIT

Action to Date: The legislation was introduced by Senator Jack Brandenburg in April of 2013. The Senate a Judiciary committee held one hearing on the bill but has not taken a vote.

A/E/S POSITION: We support

ISSUE

Like many professionals, architects and professional engineers are called to defend themselves against third party damage claims and claims by owners. While some of these actions may have merit, many do not. We are a litigious society and the design professions have not been spared.

Because of the existence of malpractice insurance policies, plaintiffs routinely name the design professional in a lawsuit, even without any basis to believe the design professional may have actually been negligent.

When the medical profession faced this same issue, the Michigan Legislature responded by requiring malpractice plaintiffs to obtain a Certificate of Merit before suing a doctor. A Certificate of Merit must be signed by an individual who is qualified to testify as to whether the doctor breached the professional standard of care. Michigan's architects and professional engineers deserve the same protection.

KEY POINTS

- Legislation would require a plaintiff to obtain a positive opinion from an expert witness as to the merits of the claim prior to filing it with a court, which will reduce the number of lawsuits clogging court dockets and tends to separate the claims that had merit from those that were not meritorious.
- In order to obtain a judgment against an architect or a professional engineer for malpractice, a plaintiff must still ultimately prove the architect or professional engineer breached the professional standard of care. Therefore, a plaintiff is required to provide the exact same evidence, eventually. Often a plaintiff can wait until the eve of trial to do so. Meanwhile, the design professional must expend valuable resources to defend the suit, whether the claim is meritorious or completely frivolous. The Certificate of Merit simply requires the plaintiff to investigate the claim before filing suit against the design professional. The Certificate of Merit requirement is therefore fair to everyone.
- The number of these lawsuits not only increases the cost of doing business in this state, but also, increases the cost of government. Construction claims are notoriously complex and expensive and require the consumption of significant judicial system resources to accommodate.
- Certificate of Merit would provide an economic benefit to Michigan. The law imposes no cost on the State, but the cost of doing business for the construction industry in Michigan will decrease, and the economic environment will become more favorable.

ACTION REQUESTED

- Urge a vote in the Senate Judiciary Committee and support the passage of SB 309.

CERTIFICATE OF MERIT

KEY LEGISLATIVE COMMITTEES

HOUSE

Judiciary Committee

Kevin Cotter (R), Chair

Kurt Heise (R),

Klint Kesto (R)

Andrea LaFontaine (R)

Tom Leonard (R)

Brad Jacobsen (R)

Phil Cavanagh (D), MVC

Ellen Cogen Lipton (D)

Paul Clemente (D)

Jeff Irwin (D)

SENATE

Judiciary Committee

Rick Jones (R), Chair

Tonya Schuitmaker (R), VC

Steve Bieda (D), MVC

Tory Rocca (D)

SB – 472 REMONUMENTATION

Action to Date: This legislation was introduced by Senator Howard Walker in September of 2013. The bill was voted out of the Senate Local Government & Elections Committee in December.

A/E/S POSITION: We support

ISSUE

Remonumentation is a statewide program authorized by the Legislature in 1990 providing for the research, recovery, monumenting and preservation of original survey positions as established by the Original Government Surveyors with the positions having been subsequently used as a basis for issuing of a patent from the government to the private sector and thus defining all property boundaries. The remonumentation program is funded by fees imposed upon documents filed with the Register of Deeds.

Problems began occurring after the dissolution of the Remonumentation Commission in 1996. The Commission was comprised of several Professional Surveyors and private citizens from various geographic regions across the state which played a key role in policy decision made by the Office of Land Surveying & Remonumentation (OSLR. Once the Commission no longer existed, policy decisions were made internally with the OSLR without the involvement of the experts in the field. There were several Memorandums issued by the OSLR that drastically changed the way the program worked.

KEY POINTS

- Restoring the county option of including center quarter corners and closing quarter corners.
- Providing for the county option of omitting very low-value corners from the county plan.
- Restoring the county option of densifying, upgrading, and/or maintaining active geodetic control.
- Restoring the Remonumentation Commission as provided for in the original 1990 act.
- Clarifying the various roles of the County Representative, Grant Administrator and Peer Review Group.

ACTION REQUESTED:

- **Support the passage of SB 472 and address the concerns existing in the current Remonumentation program.**

REMONUMENTATION

KEY LEGISLATIVE COMMITTEES

HOUSE

Local Government Committee

Amanda Price (R), Chair

Kurt Heise (R),

Dave Pagel (R)

Kevin Daley (R)

Ray Franz (R)

Pete Pettalia (R)

Patrick Sommerville (R)

Bruce Rendon (R)

Joe Graves (R)

Woodrow Stanley (D), MVC

Brian Banks (D)

Alberta Tinsley-Tlabi (D)

Bob Koswoski (D)

SENATE

Local Government Elections Committee

Dave Robertson (R), Chair

Arlan Meekhof (R), VC

Jack Brandenburg (R)

Coleman Young (D), MVC

TRANSPORTATION FUNDING

Governor Rick Snyder called for increased funding for our transportation system in his January State-of-the-State address and in his Executive Budget. Legislation has been introduced that seeks to adequately fund our system while protecting taxpayer dollars, saving lives and creating jobs.

A/E/S POSITION: We support adequate, long-term funding solutions that will allow Michigan to maintain a safe, efficient multi-modal transportation system vital to our economy.

ISSUE

Michigan's transportation infrastructure is crumbling due to the lack of proper funding. Michigan roads are consistently ranked as the worst in the nation. The state gas tax has not been increased since 1997 (16 years).

Poor roads and bridges are reducing safety, damaging vehicles, and lowering on time deliveries due to congestion and delays. The cost to repair the roads increases substantially as they go from fair to poor.

If we do not increase the investment in our transportation infrastructure, it is estimated that the number of Michigan roads in poor condition will increase to 65% by 2018 (currently 32%).

KEY POINTS

- Michigan roads are deteriorating at a rate of \$3 million/day – more than \$1 billion annually.
- Fixing our roads is estimated to save 100 lives per year, by preventing fatalities related to poor road conditions.
- Poor roads cost motorists an average of \$370 per year for auto repairs, higher than all surrounding states (IN \$225, MN \$250, WI \$281, IL \$292, WI \$281, IL \$292).
- Every neighboring Midwest state invests more dollars per person than Michigan on their transportation system (**MI \$174**, IN \$187, WI \$231, IL \$235, OH \$235, MN \$315).
- Poor roads inhibit economic growth for our state.
- Fixing our roads will save money, save lives and create jobs.

ACTION REQUESTED

- Support legislation that will increase Michigan's investment in our transportation infrastructure by the necessary \$1.6B. Action needs to be taken now. Waiting will cost dollars, lives and jobs, further damaging the Michigan economy.
- Support the Executive Budget recommendation to include \$254 million in one-time general fund spending in FY 15.

TRANSPORTATION FUNDING

KEY LEGISLATIVE COMMITTEE

Senate Transportation Committee

Sen. Tom Casperson (R-Escanaba), Chair
Sen. Mike Kowall (R-White Lake Twp.)
Sen. Jack Brandenburg (R-Harrison Twp)
Sen. Geoff Hansen (R-Hart)
Sen. Phil Pavlov (R-St. Clair)
Sen. Morris Hood (D-Detroit), MVC

Senate Infrastructure Modernization Committee

Sen. Roger Kahn (R-Saginaw), Chair
Sen. John Pappageorge (R-Troy), Vice Chair
Sen. Darwin Booher (R-Evart)
Sen. Jack Brandenburg (R-Harrison Twp.)
Sen. Mark Jansen (R-Gaines Twp.)
Sen. Morris Hood (D-Detroit)
Sen. Rebekah Warren (D-Ann Arbor)

House Transportation & Infrastructure Committee

Rep. Wayne Schmidt (R-Traverse City), Chair
Rep. Ben Glardon (R-Owosso), Vice Chair
Rep. Kevin Daley (R-Lum)
Rep. Kurt Heise (R-Plymouth Twp.)
Rep. Brad Jacobsen (R-Oxford)
Rep. Dan Lauwers (R-Brockway)
Rep. Mike McCready (R-Birmingham)
Rep. Margaret O'Brien (R-Portage)
Rep. Peter Pettalia (R-Presque Isle)
Rep. Marilyn Lane (D-Fraser)
Rep. Tom Cochran (D-Mason)
Rep. Scott Dianda (D-Calumet)
Rep. David Rutledge (D-Ypsilanti)
Rep. Charles Smiley (D-Burton)

QUALIFICATIONS-BASED SELECTION

When procuring design professional services, owners should award contracts based on qualifications, expertise and experience. This will safeguard the public's health and well-being while being accountable to taxpayers.

A/E/S POSITION: We support passage of a state QBS law that requires all public agencies to procure design professional services on the basis of qualifications.

What is QBS?

QBS was codified in the Federal Brooks Act in 1972 to protect the interests of taxpayers. Over the life of a project, engineering/architectural/surveying services account for less than 5% of the total costs. Yet these services play a major role in determining the other 95% of the projects life-cycle costs, as well as the quality of the completed project.

The Brooks Act requires a competitive process in which engineers submit their qualifications to the procuring agency (the owner). The relative expertise of the competing firms is evaluated and the owner selects the most qualified firm for a given project. After selection and during negotiations, the scope of the work is further defined to obtain a more accurate cost. The cost of the services is a major factor in the procurement, just not the only factor.

QBS has been so successful at the federal level that it is now mandated in 44 states for state-funded projects.

Why Does QBS Make Sense?

Design professionals are highly skilled individuals and the services they provide directly affect the public health, safety and welfare. Similar to other professionals (like a doctor or a lawyer) who protect the public, they should not be selected based on the lowest bid.

QBS is supported by the American Public Works Associations (APWA), which represents owners who procure engineering services, and is recommended by the American Bar Association in its model procurement code for state and local governments.

Why are the benefits of QBS?

- **Results in Lower Overall Cost** – quality designs reduce change orders during construction and minimize long-term maintenance and repair costs. Negotiations allow for a more refined scope of work and a “meeting of the minds” on expectations.
- **Safeguards Public Interest** – QBS allows government agencies to interview the design team and review qualifications to ensure they are contracting with a qualified design professional versus blindly selecting on the lowest bid.
- **Greater innovation/Improved Project Solutions** – Using QBS, design professionals are able to provide input into the design solution and provide owners with options for completing the project before a final price is budgeted.

Action Requested:

Support legislation that will require public agencies to use a qualifications-based selection process to hire their design professionals to lower overall project costs and protect the public.