



NEW YORK STATE SOCIETY OF
PROFESSIONAL ENGINEERS

NYSSPE 2024 Legislative Mid-Year Review

(by Mark Kriss Esq., Legislative Counsel)

Preliminarily, the Society's leadership and I want to again thank all NYSSPE members who have helped advance our legislative and regulatory objectives. I am pleased to report that the Society was broadly successful in our efforts to defeat legislation adverse to the interest of the profession. Following are key issues which required an investment of our time and energy. While passage of NYSSPE's affirmative legislative agenda, including our effort to secure enactment of a Statute of Repose, remains elusive, some progress as detailed below has been made.

1. Indemnification - Support

S6059 / A7610 - (Senator Kennedy / Assemblyman Zebrowski)

This legislation, which was previously vetoed by former Governor Andrew Cuomo, addresses the issue of design professional contractual indemnification respecting public sector projects (state and local) and is strongly supported by NYSSPE. The legislation addresses public sector contracts wherein municipalities, state agencies and other governmental entities have inordinate leverage over the terms of indemnification. Presently, governmental entities can and do unfairly shift the burden to professional engineers and consulting firms for the cost of future contingent events such as personal injury, property damage and attendant attorneys' fees.

Broad form defense and indemnification provisions subject design professionals to liability arising out of the circumstances that are well beyond the design professional's scope of work and for matters over which the design professional has no control. Design professionals in many instances are unable to secure insurance to cover the scope of claims these provisions can generate. Many of the most highly qualified engineering firms simply refuse to participate in RFQs when confronted with adhesion contracts of this nature. As a result both public owners and taxpayers are deprived of the opportunity to benefit from their participation.

This bill addresses indemnification inequity by voiding contractual provisions requiring defense and indemnification involving a public work to the extent that a design professional is required to defend and indemnify a municipality, state agency, and other governmental entity or other parties for damages that are not the result of the negligence, recklessness, or willful misconduct of the design professional. Responsibility for losses related to the actions or failures of other parties that are unrelated to the design professional services rightfully rest with the at-fault party or parties. Design professions simply should not be compelled to provide indemnification for such conduct.

This legislation continues to face opposition from the general contractor community and efforts are underway to address these concerns. NYSSPE has been most vocal in proposing a compromise placing a cap on designer liability based on the proportional share design services represent in relation to a project as a whole.

2. QBS – Support

S 8122A / A9575A - (Senator Comrie / Assemblymember Hyndman)

This legislation requires the use of Qualifications Based Selection by Public Authorities and Public Benefit Corporations, in addition to state agencies. Expanded utilization of QBS has been a long sought-after goal of NYSSPE. In fact, due in substantial part to the Society's efforts, similar legislation has previously passed the Assembly. QBS assures that price is not the sole criteria in the selection of professional engineering services by affording due consideration to the respective qualifications of consulting firms participating in the procurement process. The cost for design services is a small fraction of overall project costs. Getting the design right can significantly influence the overall cost of construction as well as ongoing life cycle costs. Simply put it is penny

wise and pound foolish to employ a low bid methodology in the procurement of design services.

3. Statute of Repose - Support

S8213/ A4549 – (Senator Cooney / Assemblyman Pretlow)

This legislation creates a 10-year Statute of Repose requiring that actions for personal injury, wrongful death or property damage against a design professional be commenced not more than 10 years after a project is completed. All states in the US have true Statutes of Repose with the exception of NY and VT. I am pleased to report the bill was advanced in the Senate out of the Judiciary Committee to the Senate floor for the first time. Nevertheless, the Plaintiffs' trial bar has frustrated our efforts to advance the bill across the finish line.

In order to improve the prospect for passage of this measure the Society has urged that a Statute of Repose provision be incorporated into any bill to expand damages in wrongful death cases. Earlier this year Governor Hochul vetoed stand alone legislation to expand damages in wrongful death cases. (See S6636/A6698 2023 veto memo # 151.)

NYSSPE, along with the business community (as well as the medical community including the association of hospitals), have urged that the 2024 wrongful death bill (A9232B/ S8485B) be vetoed yet again due to the impact of the proposal upon the economic well-being of key segments of the State's economy. While the 2024 version of the legislation reduced the scope of the bill to some degree, by limiting recovery to traditional family members and shortening a look-back period, the bill is still projected to be extremely expensive. While New York is admittedly out of step with the balance of the country, insofar as more than 40 states permit family members to recover for emotional losses in wrongful death cases, at the same time 48 states have adopted true Statutes of Repose to protect design professionals from liabilities for claims long after a building, or other improvement, has withstood the test of time having performed as intended. Balance must be a cornerstone for sound civil justice reform to proceed.

4. Bachelor's Degree in Engineering Technology

S1049 / A5051 (Senator Cooney / Assemblyman Jean-Pierre)

Pursuant to Chapter 465 of the Laws of 2021 licensure as a professional engineer in NYS requires a bachelor's degree in engineering as a prerequisite. However, the Commissioner of Education has authority to permit candidates with alternative educational backgrounds to qualify for licensure. Moreover, it has long been the policy of the State Education Department to recognize the importance of providing a licensure pathway to parties holding a bachelor's degree in engineering technology. A party holding a four-year engineering technology degree, from an approved institution, is eligible for licensure upon completion of two additional years of design experience beyond the experience otherwise required for licensure candidates holding a bachelor's degree in engineering.

NYSSPE successfully opposed this bill, since it would divest the Commissioner of Education of authority to determine whether or not there exists equivalency in the curricula pertaining to engineering and engineering technology baccalaureate programs. However, the Society has authorized the appointment of a committee to further examine the issue, and determine whether to support a change in the current disparate treatment of these degrees. The committee has met a number of times and we await completion of its work.

5. Facilitates Access to Adjacent Property for Repairs or Improvements

A 1305/ A1321 (Senator Comrie / Assemblymember Rajkumar)

NYSSPE has joined the Real Estate Board of New York, and other interested parties, to advance this legislation which is designed to improve the resolution of cases when access to adjacent parcels is needed to facilitate repairs or improvements to a parcel of property and the adjacent property owner is unwilling to cooperate. This bill passed the Senate but was not approved by the Assembly. However, we continue to press key legislators to advance the bill and remain optimistic that the measure will be approved when the legislature returns following this year's elections.

6. The Offering of Geology by Grandfathered Engineering Firms

S1818-A / A 4870 (Senator Stavisky / Assemblyman McDonald)

The profession of geology was first licensed in New York in 2014. Prior to passage of the 2014 statute grandfathered engineering firms were permitted to provide geological services. This bill will enable grandfathered engineering firms to offer “professional geology services”, per se, provided at least one officer or director is a licensed professional geologist. In sum and substance, the bill will treat grandfathered corporations in a manner similar to professional engineering firms operating as professional service corporations, design professional service corporations, professional limited liability companies and registered limited liability partnerships. The bill passed the Senate but did not advance in the Assembly.

7. Emergency Responder - Support

S3312 / A 8066 (Senator Skoufis / Assemblywomen Jean-Pierre) Combines Emergency Responder / Good Samaritan

As previously reported, NYSSPE has joined a broad-based coalition including other design professional organizations and the construction community, in support of this measure which combines enhanced Good Samaritan protection with a proposal offering liability protection for emergency responders hired in the wake of a natural or man-made disaster. (The coalition includes: Associated General Contractors of New York, ACEC New York, AIA New York and a number of other organizations representing the construction and design communities.)

In essence, this bill is designed to ensure that the liability for services rendered under emergency conditions (whether voluntary or based on contract) rests with the governmental bodies which are principally charged with restoring normalcy following a disaster. Under the proposal, service providers are held harmless in the absence of gross negligence or intentional wrongdoing for services rendered in the wake of a disaster. The governmental entity securing services will stand in the shoes of the design professional or contractor in instances of ordinary negligence thereby affording the injured party a source of recovery.

The measure does not apply to businesses whose primary business is responding to disasters including a company routinely advertising its emergency response services.

8. Issuance of Building Permits by Professional Engineers and Registered Architects

S5614A / A 4202A (Senator Martinez / Assemblyman Stern)

This legislation would permit building permits to be issued by PEs and RAs without the employment of building code officials. The bill applies to Nassau, Suffolk and Westchester County as well as the City of Yonkers. NYSSPE has urged that local governments adequately staff building departments with qualified building code officials, or retain properly credentialed professionals as needed, to address undue delays in the permitting process in lieu of the approach reflected in this legislation. At the same time internal discussions are focused upon allowing permits to be issued in narrow circumstances such as permits pertaining to signage. This bill has not moved in either house.

9. Expanding the Use of Design Build to Westchester County

S 8174 / A7136 (Senator Bailey / Assemblyman Pretlow)

In 2019 the NYS legislature authorized specific NYC agencies to use design build. The implementing legislation did not include safeguards recommended by NYSSPE, as well as the NYS Board for Engineering and the NYS Board for Architecture. This proposal, expanding the use of design build, similarly does not include these recommended statutory safeguards and amendments are needed to prevent the proliferation of design, build projects, lacking, proper oversight. While this bill has not moved in either house, NYSSPE continues to press for quality assurance safeguards for all design build projects.

10. Fire Suppression System Contractors / Inspectors
S3295 / A3389 (Senator Breslin / Assemblymember Fahy)

This legislation provides for licensure of fire suppression system contractors and among other provisions permits layouts by licensees “in accordance with the provisions of water-based fire protection design standards and design criteria as provided by the engineer of record”. The bill has not moved in either house and NYSSPE will continue to monitor to assure that engineering licensure safeguards stand and that public safety is protected.

11. Land Surveying – (Modernization - Definition of Practice) – Monitor
Pending Introduction

The New York State Association of Professional Land Surveyors has for many years advocated for legislation which will modernize the definition of practice for land surveying (including, e.g., express reference to GPS technology and photogrammetry). NYSSPE has no objection to legislation to codify these changes provided that professional engineers continue to be authorized to undertake all aspects of the practice of land surveying with the sole exception being the determination of legal land boundaries.

The legislation listed above includes key bills currently before the legislature or anticipated to be introduced in 2024. [Details regarding any bill (Senate or Assembly) can be viewed by entering “NYS Assembly Bill Search” in any search engine.] The above list is not exhaustive. Please let us know if you have any particular concerns regarding any of these proposals or other bills impacting the profession. All comments will be shared with NYSSPE’s Legislative Committee and given careful consideration. (Address all comments and recommendations to: mkris@krislaw.com.) (Updates, including bill numbers, will be provided throughout the session.)