



NYSSPE 2025 Legislative Mid-Year Review

By: Mark Kriss Esq., Legislative Counsel

Preliminarily, the Society's leadership and I extend a sincere thank you to all NYSSPE members who have helped to 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, prevent the use of draconian Indemnification provisions in governmental contracts, and expand the use of QBS remains largely elusive, some progress has been made as detailed below. Moreover, I am pleased to report that a bill strongly supported by the Society, pertaining to adjacent property disputes, has been approved by both houses. (See item 1 below.)

Legislation passed both houses and awaiting delivery to the Governor:

1. Adjacent Property – Improvements to the process to facilitate timely and fair resolution of adjacent property disputes when a property owner needs a license to enter upon a neighboring property to facilitate repair or construction - Strongly Support

A357 / S3799 (Senator Comrie / Assemblymember Rajkumar)

NYSSPE had 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. We will now be lobbying Governor Hochul to sign this bill when it reaches her desk.

Legislation pending before the NYS Legislature 2025- 2026:

2. Indemnification - Strongly Support

S4591 / A7379 - (Senator Cooney / Assemblyman Vanel)

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 professionals 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.

3. QBS – Support

S 4577 / A5520 - (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.

4. Statute of Repose - Support

S2146 / A4907 – (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. 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. See S4423 / A6063 2025. Last December Governor Hochul vetoed stand-alone legislation to expand damages in wrongful death cases. (See S 8485B / A9232B 2024 veto memo # 122.)

NYSSPE, along with the business community (as well as the medical community including the association of hospitals), had urged that the 2024 wrongful death bill (A9232B / S8485B) be vetoed 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 was 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.

5. The Offering of Geology by Grandfathered Engineering Firms

S620-A / A 2517-A (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.

6. Emergency Responder - Support

A 4680 (Assemblyman Eachus) 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.

7. Bachelor's Degree in Geology Educational Requirement for Licensure

S6482 / A5622 (Senator Webb / Assemblyman Eachus)

This legislation would remove the 12-year work experience ladder currently permitted to be used as a substitute for a Bachelor Degree in Geology (or equivalent) for those seeking licensure as a professional geologist. The bill parallels legislation secured by NYSSPE pertaining to licensure as a professional engineer effective in 2024. While removing the 12-year experience ladder prospectively those currently pursuing the experience route can file an application with the State Education Department within two years of the bill's effective date, thereby preserving an exemption from the Bachelor's Degree requirement. This bill passed the Senate but did not move in the Assembly.

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

S7217 / A7675 (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 5266/ A 8582 (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

S 4877 (Senator 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. Delivery of Design Services by Not-for-Profit Corporations

S 5392 / A483 (Senator Scarcella-Spanton / Assemblyperson Clark)

This legislation would permit foreign not-for-profit corporations to secure a certificate of authorization to provide professional engineering services in specified wetland areas with respect to specified projects. Enactment of this legislation would permit an exemption from the current requirement that control of newly authorized engineering firms be governed by professional design licensees. New York State has among the most stringent laws guarding the delivery of professional engineering and other professional design services in the nation. NYSSPE has opposed the bill on the grounds that New York’s requirements served to protect New Yorkers from management decisions that pose unnecessary risks. All of the projects targeted by this legislation can readily proceed by employing professional engineering firms which are structured to assure that public safety is prioritize. This bill passed the Senate but did not move in the Assembly.

12. 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 2025. [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: mkriss@krisslaw.com.) (Updates, including bill numbers, will be provided throughout the session.)