



## LEGISLATIVE AGENDA 2017-2018

### **Preserving Michigan's Infrastructure**

Despite the increase in transportation funding that will begin January 1, 2017 through increases in motor fuel taxes and registration fees, the overall condition of our roads and bridges will continue to decline.

ACEC/Michigan supports the recommendations contained in the December 2016 report released by the 21<sup>st</sup> Century Infrastructure Commission that call for an additional \$4 billion per year over the next 20 years to address infrastructure deficiencies.

Investing in our infrastructure will improve the quality of life for Michigan residents. Many elements of our infrastructure have been in place past their design life and are failing. Safe drinking water, adequate wastewater collection and treatment systems, reliable energy generation and transmission, and a safe and efficient transportation system will propel Michigan's economy, protect the safety of its residents, and provide an acceptable quality of life for all Michiganders.

#### ***ACEC/M Recommendation:***

Support a comprehensive solution for fully funding state and local infrastructure projects and ensuring a fair allocation of those resources throughout the state. Help to educate the legislature and the public on our aging infrastructure and be a reliable resource for information and knowledge.

### **Procurement: Qualifications-Based Selection of Design Professionals**

Since 1972, the Federal government has required the use of a Qualifications-Based Selection (QBS) process for procurement of engineering and architectural services (Public Law 92-582, the Brooks Act). Currently, forty-five (45) states have passed similar QBS legislation.

The American Public Works Association (APWA) Policy Statement: *"APWA believes that the public is best served when government agencies select architects, engineers, and related professional technical consultants for projects and studies through Qualification-Based Selection (QBS) procedures. Basing selections on qualifications and competence (rather than price) fosters greater creativity and flexibility, improves the delivery of professional services, increases the value to the owner in construction and life cycle expenses, and minimizes the potential for disputes and litigation."*

High quality engineering and design services represent a very small percentage of total project costs, however these services will significantly affect the construction, operation and maintenance costs for the life of the project.

#### ***ACEC/M Recommendation:***

Pass legislation in Michigan requiring the use of a Qualifications-Based Selection (QBS) process for procurement of consulting engineering services by state and local agencies for all infrastructure projects.

## **Reducing Frivolous Lawsuits**

Engineers face a substantial degree of liability exposure in their practice for breach of contract, property damage, personal injury and wrongful death resulting from alleged negligence or malpractice. Engineers, whom most presume to have malpractice insurance, are also likely targets of suits from injured parties who seek relief from anyone that may be remotely involved in a death, or alleged injury or damage. Many malpractice and negligence claims brought against engineers have no material basis or justification in fact or in law. Nevertheless, these groundless suits are a source of considerable costs to engineers in terms of direct expenses, increased insurance premiums, loss of productive time and tarnished professional reputation. In addition, such meritless suits waste valuable public resources and cause backlogs in the nation's civil justice system.

Certificate of Merit statutes are successfully curbing the number of baseless claims brought against engineers by implementing procedures that place the responsibility for demonstrating that a lawsuit has merit on the plaintiff. Certificate of Merit laws require the plaintiff to consult with a third-party design professional to review the facts of the claims and make a determination about whether or not the accusations have merit or if they are of a frivolous nature. Once a certificate has been filed with the court declaring that the third-party design professional, based on their review of the allegations, believes that there is a sufficient basis in the contract or in law for commencement of the action, the case is permitted to move forward.

### ***ACEC/M Recommendation:***

Support the introduction and passage of *Certificate of Merit* legislation that will weed out baseless claims and reduce legal fees for engineering firms forced to defend their reputation.

## **Improving Michigan Lien Laws**

A majority of design professional services occur at the beginning of a construction project often before an actual physical improvement is made to a property. These services could include survey/layout work, soil boring and testing, architectural or engineering planning, or the preparation of plans and drawings. If a project fails to be constructed and a design professional has not been paid for their services, they currently have no protection under Michigan statute to utilize a lien against a property/owner to recoup the costs of their services.

Licensed architects, engineers and surveyors deserve to have protections for payment of their services, regardless of whether an "actual physical improvement" occurs or not.

### ***ACEC/M Recommendation:***

Introduce legislation that will modify the current lien law to offer greater protection for design firms that perform professional services.