

THE FIRST WORD

February, 2004

2004 Legislative Session Underway

The 2004 Legislative session got underway on Monday, February 2nd, in what could be one of the more interesting sessions in recent history.

Following Governor Henry's State-of-the-State address that day, committee's began work on over 1700 bills that have been filed, many of which deal with topics that have the promise of the makings of a very contentious session.

Within the past couple of weeks, Tort Reform has become the #1 topic of discussion, with Republicans seizing the issue on the heels of an article in the *Wall Street Journal*. In answer to the Republican's, Governor Henry, a trial lawyer by profession, made the issue one of the prime areas of his State-of-the-State address by proposing a comprehensive initiative that will stamp out frivolous lawsuits and make Oklahoma's civil justice system the best in the nation.

"The citizens of Oklahoma deserve meaningful and genuine tort reform, and we will provide it," said the governor. "We must respect the integrity of our jury system which is still the best in the world. But, we must also do all we can to prevent frivolous lawsuits, abuse and needless waste of resources."

The Governor highlighted many other issues important to Oklahomans, ranging from education to tax reform. However, many in the transportation arena were disappointed that there was no mention in his speech of the funding crisis facing Oklahoma's transportation infrastructure. In weeks prior to the session, Henry had indicated support of a vote of the people on raising the state's motor fuel taxes. But, the word "transportation" was no where to be found in his address.

That's not to say, however, that motor fuel taxes won't be an issue during the session. In fact, at least eight bills addressing the issue have been introduced.

ACEC OKLAHOMA has initially identified some 30 bills of interest, and while we will not go through them all, here are some of the highlights:

* **MOTOR FUEL TAXES:** There are a variety of ideas floating around the Capitol as to how to increase funding for Oklahoma's transportation system. The common theme of the bills is to increase the funding for maintenance of the current system.

Bills have been introduced ranging from changing the allocation system of gas tax dollars which go to the general fund to several varying levels of motor fuel tax increases. Some of the increases are as little as two-cents per gallon on gas and diesel to as high as five-cents on gas and eight-cents on diesel.

Another bill would take all of the "tag" related fees, some \$500 million annually, and move it to ODOT, doing away with the "diversion" of road user taxes to other areas of government. The "diversion" question has been raised repeatedly in recent year, but the beneficiaries of the diversion (education and health care) will probably make any changes virtually impossible.

Another bill would impose a "syrup" tax on soft drink bottlers, which would generate some \$60 million per year, has been proposed with 35% of the proceeds going to highway maintenance.

Also, a "county option" fuel tax bill has been introduced to provide additional funds solely on a county-by-county basis.

It will take a couple of weeks for all of these bills to shake out. But fairly soon there should be one which rises to the top and becomes the vehicle for placing a motor fuel tax increase on the November ballot.

Legislative Update (Cont)

* TORT REFORM: The Republicans have introduced their package, and Governor Henry's plan is expected very soon. While there are many pieces to the Republican plan, one that gained our attention is a "Certificate of Merit" provision. Within the 74 pages of HB 2575, is the following: ***"In any action for damages alleging professional negligence by a design professional, the plaintiff shall be required to file with the complaint an affidavit of a third-party registered architect or licensed professional engineer competent to testify and practicing in the same area of practice as the defendant, which affidavit shall set forth specifically at least one negligent act, error, or omission claimed to exist and the factual basis for each such claim."***

Admittedly it would not be very difficult for a plaintiff to find someone to file an affidavit to satisfy the requirements, and we would prefer to see a three-person panel make a "merit" determination rather than an individual. However, at least this is a good "first step" since there has never been any mention of this for architects and engineers in the past.

ACEC OKLAHOMA will closely monitor the entire Tort Reform issue throughout the session, and make recommendations as opportunities arise.

* OKIE ONE-CALL SYSTEM: A major issue facing consulting engineers designing projects for governments and developers has been the inability to ask the Okie One-Call system for locations of existing utility infrastructure within the design corridor. Under current law, only contractors can request utility location prior to the actual start of construction.

HB 1432 would give consulting engineers statutory authority to request utility location during the design phase. By allowing this, it is believed that engineers would in many cases be able to "design around" existing utility conflicts, or at the very least, identify unavoidable conflicts well before the construction phase of the project.

ACEC OKLAHOMA worked with contractor groups and municipal representatives in drafting the legislative language, and will be actively involved in seeking the bills passage.

* ARCHITECTS ACT: As reported throughout the summer, a Task Force studied the State Architects Act and discussed issues of contention between Architects and Building Designers. While no specific recommendations came from the Task Force, three bills have

been introduced addressing specific topics which were discussed.

SB 1221 would raise the current baseline where an architect is required from \$40,000 to \$100,000 in total costs of the project. Additionally, it would exempt public works in communities with a population of less than 5,000. Many of the concerns aired before the Task Force were those of small communities which contended they "can't afford" to hire an Architect due to funding restrictions and size of the projects.

HB 2363 would expand the licensing authority of the Board of Governors for Architects and Landscape Architects to include licensing of Interior Designers.

SB 1476 would require that before purchasing or leasing a retrofit metal roof, school districts ***"shall employ an architect for the purpose of evaluating the financial and structural suitability of the proposed roof."*** This was one of the issues discussed before this past summer's Task Force.

* STATE BOARD OF REGISTRATION: This is the year that the State Board's "Sunset" is up for extension. Under current law, the State Board will cease to exist at the end of the next fiscal year unless the Legislature extends the "life" of the Board. The sunset bill has already had a committee hearing, with the Committee approving the bill extending the State Board until 2010. Generally sunset extensions are a "legislative exercise" and easily gained.

HB 2714, however, would make a major change in the State Board's authority regarding convicted felons. Current law allows the Board to revoke or refuse to issue, renew, or restore the license of a convicted felon. If passed, HB 2714 would remove this authority from the Board based solely on the felony conviction.

We have yet to determine the reasoning behind HB 2714 or the possibility of the bill passing. ACEC OKLAHOMA will watch this closely and take appropriate action as necessary.

These are the issues as things now stand. Committee's must have bills out by February 19th. Until then ACEC OKLAHOMA will be active at the Capitol, and will keep you updated as necessary.

As always, if you have questions regarding any of these bills or any other bills at the Capitol, don't hesitate to contact ACEC OKLAHOMA. And, be sure to check the website (www.acecok.org) for updates.

Bucher, Willis &Ratliff Recieves ACEC OKLAHOMA's 2003 Grand Conceptor Award



Mark Johnston, Bucher, Willis & Ratliff, receives the 2003 Engineering Excellence "Grand Conceptor" Award from ACEC OKLAHOMA Chairman Mike Homan.



ODOT Division 1 Construction Engineer Mike Oller (right), with Mark Johnston, Bucher, Willis & Ratliff, shown with BWR's entry.

Bucher, Willis & Ratliff Corporation (BWR) was awarded ACEC OKLAHOMA's 2003 "Grand Conceptor" Award at the January ACEC OKLAHOMA meeting. BWR's entry for the upgrade of a seven-mile corridor on Highway 51 in Wagoner County, will now be entered in ACEC's national Engineering Excellence Awards competition.

The project in ODOT Division One, was part of the ODOT's five-year, \$1 billion capital improvement program,

BWR served as the primary engineering consultant, providing overall project management, all highway/bridge design and plan production services, and digital mapping from aerial photos. Huffman Surveying Co., Muskogee, OK, and Terracon, Tulsa, OK, served as subconsultants, providing surveying and geotechnical services, respectively.

Our congratulations to Bucher, Willis & Ratliff Corporation, and we wish them good luck in the national competition!

Sixteen Years & Counting

February 1, 2004 was a special day for me...one that in 1988 I could have never envisioned. While it's hard for me to believe, February 1st was my 16th anniversary with ACEC OKLAHOMA!

I want to take this opportunity to let all ACEC OKLAHOMA members know how enjoyable and fulfilling the past 16 years have been for me personally, and to thank everyone for the opportunity you have given me to serve your profession.

When I came here I had virtually no knowledge what consulting engineers did or the remarkable and valuable service consulting engineers provide to their clients and the public. What I have learned about the profession, and from the people with whom I have been privileged to work for and with during the past 16 years,

have given me a tremendous amount of respect and admiration for your profession and you individually.

It's been a fun and interesting ride. We've faced many challenges and opportunities together, and have many left to face. And throughout, I can't imagine any group of professionals that I would have rather faced those opportunities and challenges with.

Please accept my deepest thanks for allowing me to serve you and ACEC OKLAHOMA for the past 16 years, and it is my sincere hope that we enjoy many more years together.

Thank you so very much!!!!!!!

Jim

You'll Never Guess What Led to Engineer and Architect Registration Laws

Every once in a while you run across headlines for news stories which really pique your interest. No, I'm not talking about the "Dog with three human heads", National Inquirer, type stories. I'm referring specifically to a January 23, 2004 Associated Press story about the Great Molasses Flood of 1919. So, yes, I took a few minutes of my "valuable" time to read about how a slow moving flood of thick, gooey molasses could be considered a "flood."

Here are some excerpts from the AP story: "BOSTON, Massachusetts (AP) — Danny O'Brien looked at a photograph of firefighters knee-deep in molasses trying to rescue people trapped in a collapsed firehouse, and remembered his grandfather's tales of sticky horror.

"Those stories were something ... horses stuck in this sea of molasses, a lot of cars, people stuck, houses smashed to pieces," said O'Brien, looking through a Boston Public Library exhibit commemorating the 85th anniversary of Boston's Great Molasses Flood, which killed 21 people and injured 150.

"His grandfather lived in the city's North End, where on January 15, 1919, a gigantic steel vat exploded, spewing 2.3 million gallons of molten molasses. Thirty-foot waves of gooey liquid plowed through the streets, catching men, women, horses and vermin in its sticky flow, crushing freight cars, wagons and automobiles and reducing entire buildings to broken planks of wood.

"...The tank, 50 feet high and 240 feet around, was built in 1915, just as the demand for molasses — used to produce industrial alcohol for ammunition as well as rum — was skyrocketing at the peak of World War I.

"But the tank, built in a hurry with faulty design, was at the edge of the city's most densely-populated neighborhood, the North End, where politically-inactive Italian immigrants had little clout, said Stephen Puleo, the author of "Dark Tide," a book about the flood released in September.

"The tank leaked constantly, worrying employees and neighbors. But in their rush to keep up with demand, company officials just repainted the tank in the same color as the leaking molasses.

"In 1919 the war had just ended and Prohibition was looming. Purity Distilling, wanting to make a last batch

of alcohol before it was banned, dumped a large shipment of molasses into the tank on January 14, filling it to near capacity. Warm molasses in the tank mixed with cold molasses from the new shipment, starting fermentation and creating gases that pushed on the tank's weak walls, according to Puleo's book."

As the story goes, the tank "exploded" sending molasses spurting high in the air and flowing through the streets of the waterfront. Pieces of steel from the tank were thrown into an elevated railroad causing the tracks to buckle.

As the molasses rolled through the streets, wood-frame buildings collapsed under the weight against their walls. Roofs caved in from molasses which pooled on the flat roofs. The property damage, including a leveled commercial warehouse yard, was easily more than \$1 million.

According to AP, "In the lawsuit that followed — a combination of 119 separate legal claims — Purity's parent company, United States Industrial Alcohol Co., claimed Italian anarchists from the neighborhood had blown up the tank with dynamite.

"That tactic failed. USIA ended up paying almost \$650,000 to settle the claims. Considered enormous at the time, the settlement forced fast-flourishing industries in Boston to impose stricter safety standards, and the flood's cause and effects contributed to a politically active Italian-American voice."

Then, I got to the part that really caught my eye!

"The Boston Building Department tightened its regulations after the flood, including requiring engineers and architects to sign stamped drawings and new engineering certification laws that eventually became standard across the country."

That's right! According to the story, Molasses led to engineering and architectural registration laws!

Who would have thought!

So, next time someone asks you why engineers have to be licenced, just tell them it all started with a "sticky" situation in Boston in 1919.