

# THE FIRST WORD

June, 2004

## 2004 Legislative Wrap-Up Joint & Several Liability Reform Passed!!!!

The Oklahoma Legislature closed the 2004 regular session May 28th, having passed a number of bills which were met with mixed reaction. The focus of the final days of the session was Tort Reform, which was hailed by the medical community and lambasted by the business community. Additionally, the voters in November will decide on tax increases and a state lottery, both of which were contentious issues throughout the session.

ACEC OKLAHOMA had a successful year on two fronts....Tort Reform and Circuit Engineering....but, along with the rest of the transportation community, failed in efforts to put a motor fuel tax increase on the November ballot.

Below is a wrap-up regarding ACEC OKLAHOMA's major issues:

### **CIRCUIT ENGINEERING**

Thanks to all of the ACEC OKLAHOMA members who contacted their Representatives and Senators opposing HB 2274 which would have given circuit engineering districts unlimited spending of funds received through the County Bridge and Road Improvement Fund.

As you will remember, the County Commissioners Association wanted to be able to use the CBRI funds for "any" expenses incurred by the circuit engineering divisions. These expenses, in our opinion, could have ranged from paper clips and pencils to new SUV's....definitely not the intended use of the CBRI funds.

ACEC OKLAHOMA maintained that the CBRI funds should be only used to build county roads and bridges, not for administrative expenses or to build sign shops.

After a hard-fought battle with the County Commissioners, who seemed to have made this bill their #1 priority, a compromise was reached which struck all of the language which ACEC OKLAHOMA found offensive.

ACEC OKLAHOMA and our compatriots opposing the bill had the bill bottled up in the House Conference Committee, where we had a majority of the members refusing to sign a Conference Committee report releasing the bill for House and Senate action. Basically, we had more votes than the County Commissioners, which forced them to compromise.

In the end, in agreement with the AGC, Asphalt & Concrete Pavers associations, and ACEC OKLAHOMA, the counties received an increase from \$50,000 to \$150,000 for projects below which they can construct the projects using "day labor" or "force accounts". The actual amounts are:

- \* Culvert or bridge construction - \$50,000
- \* Culvert or bridge reconstruction - \$75,000
- \* Grade-and-Drainage development, construction/ reconstruction, or major repair - \$150,000

This was a big victory for ACEC OKLAHOMA! We want to thank Peter Regan and Dale Hill of the Association of Oklahoma General Contractors for their efforts. Peter and Dale were on the firing line with us taking on the County Commissioners head-to-head, and none of this would have been possible without their assistance and leadership.

A word of warning, however. The County Commissioners won't give up! They have as much as said that they would pursue this again next year, so we have to be ready. Time will tell, but for now we can savor the victory.

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## 2004 Legislative Wrap-Up (Cont.)

### TORT REFORM

This was one of those issues which simmered during most of the session, and came to a head in the final days. After the Governor's State-of-the-State speech, there was great hope within the medical and business communities that "meaningful" tort reform could be achieved this session.

With the final passage of HB 2661, and the Governor's signature on the same day the bill passed the Senate, the definition of "meaningful" seems to be the key as to whether or not HB 2661 is good or bad.

Based on everything coming from the medical community, the Tort Reform efforts were very successful. The doctors seem to be very pleased with the outcome, and believe that it addresses most of their concerns.

However, from the business community's perspective, The State Chamber and Oklahomans for Lawsuit Reform, the Tort Reform effort was a failed opportunity and only demonstrated the Trial Lawyers "absolute control" of the Oklahoma Legislature. And, the Trial Lawyers, as best we can tell, have been unusually quiet, which makes one wonder if there's a fox in the henhouse.

So, who's correct in their assessments? Probably everyone.

The medical profession has been in the forefront on this for many years, and it looks like they have reached compromises which meet their needs and which the trial bar can live with.

From the business community's perspective, there were many issues left on the table by the Legislature which are very important to all businesses: class-action lawsuit reform, product liability, collateral source, frivolous lawsuits, and most importantly, Worker's Compensation.

The one thing for the business community that was included in the final bill was Joint & Several Liability Reform, which ACEC OKLAHOMA pushed for and applauds the Legislature for including.

Under the new Joint & Several Liability rules, defendants found to be less than 50% at fault are only responsible for a judgment equal to their percentage of fault. If a defendant is found to be 50% or more at fault, that defendant could still be responsible for 100% of the

judgment. For example, if an engineering firm is found to be 5% at fault, then the firm is only responsible for 5% of the monetary judgment. Under current law, anyone found at fault, even as little as 1%, could have been forced to pay 100% of the monetary judgment.

Admittedly this is not "pure" Joint & Several Liability Reform, i.e., those found at fault are ONLY responsible for their percentage of fault. But, it is certainly a big improvement over the current system.

For that reason, ACEC OKLAHOMA sees this as a big victory for our member firms and are proud of the role we played in securing this major statutory change.

### MOTOR FUEL TAX INCREASE

At the beginning of the session, hopes were very high that the Legislature would allow a motor fuel tax increase to be put to a vote of the people on the November General Election Ballot. Three bills sailed through both houses and were sent to Conference Committee for the writing of the language for the voters consideration in November.

Then.....gas prices increased 30+ cents per gallon in a matter of days/weeks!

That, more than anything else, was the death knell for any hopes of voters considering a motor fuel tax increase. Shortly after gas prices skyrocketed, a local television station conducted an "unscientific" poll which showed that over 80% of the people would vote "no" if the issue reached the November ballot.

With that, the transportation funding crisis will continue for another year. ODOT will have to do the best they can with what limited dollars they have, and can only hope that SAFETEA, the federal highway bill, will pass and infuse some new funding into their program.

That's the wrap for the 2004 Session. There were some hard fought battles, some great victories, and some frustrating losses.

If you have any questions regarding these issues or other bills that were considered, please do not hesitate to contact ACEC OKLAHOMA.

## 2005 Elections Will Change the Face of the Oklahoma Legislature

Now that the 2004 Legislative Session is over, political watchers attention turns to the November elections.

Due to term limits, 42 setting members of the House and Senate will not be returning; 14 in the Senate and 28 in the House. A total of 27 Democrats are term limited (18 House, 9 Senate), with the Republicans losing 15 members (10 House, 5 Senate).

Some big names won't be returning including the Speaker of the House Larry Adair, House Majority Leader Danny Hilliard, House Transportation Committee Chairman Mike Tyler, Senate Judiciary Committee Chairman Jerry Smith, former Senate Minority Leader James Dunlap and several other key House and Senate members.

In addition to the 28 term limited members of the House, there are 7 other members who will voluntarily not be returning to the House. Three are retiring prior to their term limitation; one has already been elected to the Senate in a special election; two are running for Senate seats, and the last, Dan Boren, is running for Congress in the 2nd District.

Altogether, among the 35 incumbent House members who are not returning, 24 are Democrats and 11 are Republican.

Control of the House will be the battle in November. Currently the Democrats hold a slim 4 seat majority, and the Republicans believe that with all of the open seats they can wrestle control of the House away from the current majority. They are so confident that the Republican caucus elected current Minority Floor Leader Todd Hiatt as Speaker-designate for the 2005-06 session. The Democrats have also elected a Speaker-designate, current Deputy Majority Floor Leader Jari Askins, who, if the Democrats hold the House, will become the first female Speaker in history.

On the Senate side, the Democrat's control seems safe with an 8 member majority (28-20), but with 9 Democratic seats open verses only 5 on the Republican side, nothing is a sure bet. However, house odds favor the Democrats since most of the open seats are "safe" Democrat seats.

All-in-all, it should be a very interesting election in November. There will be some very heated battles as the Republicans try to take control of the House for the

first time since the 1920's while at the same time making inroads on the Democratic majority in the Senate.

Democrats on the other hand, will be doing everything possible to duplicate their successes of the 2002 elections when they fought off what many believed was a "sure bet" Republican takeover of the House. On the Senate side, the Dem's will look to expand their majority, or at the very least, hold even.

Coupled with the Congressional, Senatorial and Presidential elections, the Legislative races in the November General Election should make for a very interesting Fall.

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### ACEC OKLAHOMA PAC

#### Your Chance To Be Heard in November

ACEC OKLAHOMA had a successful year during the 2004 Legislative session. But, there were some very close calls and some bullets dodged.

For the ACEC OKLAHOMA legislative program to continue to be successful, we need to be more involved in seeing that "pro-business" and "pro-engineer" individuals are elected to the Oklahoma Legislature. And, the Leadership in both houses need to know that ACEC OKLAHOMA members are interested and want to be "at the table" when critical decisions are being made.

ACEC OKLAHOMA PAC can play a very important role in the success of our Legislative program. But, to be successful, your participation in ACEC OKLAHOMA PAC is vital.

Simply put, WE NEED YOUR CONTRIBUTIONS!!!!

Oklahoma law only allows "individual" contributions; no corporate check can be accepted. This means that you have to write the check from your personal checkbook. For ACEC OKLAHOMA to be a "player" at the Capitol, we need your support.

Please go to the ACEC OKLAHOMA website ([www.acecok.org](http://www.acecok.org)), scroll down to ACEC OKLAHOMA PAC, and download the contribution forms. Then, send your check to ACEC OKLAHOMA PAC.

ACEC OKLAHOMA PAC is your voice in the November elections. Let your voice be heard!!! Contribute Today!

## DOL Releases Final FLSA Regulations

U.S. Secretary of Labor Elaine Chao released final regulations on April 28 that will update the Fair Labor Standards Act for the 21st Century.

ACEC has endorsed the final changes, and is currently engaged in fighting last-ditch efforts in Congress to halt the reform process.

Proposed regulations released in March 2003 sought to establish new standards for classifying employees as exempt and non-exempt from the Act's minimum wage and overtime requirements.

The Labor Department modified the proposal in response to the 80,000 comments received, but the final rule generally adheres to the goals originally set forth to make the regulations easier to follow, and protect businesses from unfair enforcement actions and lawsuits.

Among other changes, the new rules will: raise the minimum salary level necessary to qualify for exemption to \$23,660 a year; create standard "duties tests" through which executive, administrative, and professional employees are evaluated for classification as exempt and non-exempt; establish a new exemption test for highly compensated employees earning \$100,000 or more; revise the requirements for payment of exempt employees on a "salary basis"; and create a "safe harbor" to protect employers from penalties stemming from unintentional violations of the salary basis requirements.

The new rule is slated to take effect in late summer, although it is already under attack by reform opponents seeking to prevent the Labor Department from moving forward.

Similar to action taken late last year, the Senate once again adopted by a close vote an amendment offered by Senator Tom Harkin (D-IA) that would prevent any regulation from taking effect that might result in an employee losing overtime, effectively gutting the new regulations if enacted into law.

ACEC and its coalition allies were able to remove a similar Harkin amendment that was added to a spending bill in late 2003, and efforts are underway to ensure that this latest challenge is beaten back.

## ODOT/ACEC OKLAHOMA Partnering Conference Draws Record Crowd



Director of Transportation Gary Ridley addresses the 3rd Annual Partnering Conference

Over 200 ODOT staff and consulting engineers participated in the 3rd Annual ODOT/ACEC OKLAHOMA Partnering Conference in late April.

The program featured a seminar presented by Mike Ingardia entitled "Design & Delivery in an Electronic World." Additionally, there were three concurrent afternoon sessions which address current initiatives which ODOT & ACEC OKLAHOMA are studying: The ODOT Selection Process; Consultant Evaluations; and, Development of Overhead.

Director Gary Ridley opened the conference with an enlightening and frank discussion of the current highway funding situation, and challenged those in attendance to become active in the efforts to secure adequate funding for the state highway system.

ACEC OKLAHOMA thanks all who attended, as well as ODOT's Project Management staff for all of their hard work in the planning of the program.



Julie Guy, David Streb & Tim Gatz lead Session on ODOT Consultant Selection