

# THE FIRST WORD

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## Certificate of Merit; Income Tax Reduction Focus of ACEC OKLAHOMA Attention Early in 2007 Legislative Session

The 2007 Legislative Session opened on February 5<sup>th</sup>, and for ACEC OKLAHOMA, things have been eerily quiet.

While there are a few bills we are watching with great interest, there are no major “attacks” on the profession, for which we are very thankful.

There are two specific bills which ACEC OKLAHOMA is watching with great interest; one dealing with Tort Reform and the other regarding Corporate and Personal Taxes. As the session progresses, we very well may be calling on members to contact their Senators and Representatives, especially with regards to the Tort Reform efforts.

Here is a overview of these issues:

### **SB 824 – Certificate of Merit by Sen. Susan Paddack (D-Ada)**

This bill is in response to a recent Oklahoma Supreme Court decision which struck down a 2003 law requiring a “Certificate of Merit” in medical liability cases. The Oklahoma Supreme Court ruled that the 2003 law created a “special class,” since it only applied to medical claims, which is prohibited by the State Constitution.

Senator Paddack’s bill changes the language of the existing statute, changing the words “**medical liability**” action to “**civil**” action and “**medical**” liability to “**professional**” liability, thereby expanding the field of lawsuits included in the reform measure. Another important addition to the existing statute is the requirement of the plaintiff in **any professional liability** case to provide a written opinion from a qualified expert that, based upon a review of the available material, supports a finding that the acts or omissions of the defendant constituted professional negligence and that the claim is meritorious and based on good cause. An affidavit of merit must be filed within 60

days after the complaint is filed with the court and if the plaintiff fails to file such an affidavit, the case would be dismissed. The written opinion would not be admissible or referenced during trial nor would it be referenced in the discovery phase of trial.

Also, the bill provides that, in a professional liability action, the jury may only award punitive damages, in addition to actual damages, if the jury finds by clear and convincing evidence that the defendant has been guilty of intentional or gross negligence. Any punitive damages would be awarded in a separate proceeding conducted after the jury has awarded actual damages.

The Senate Judiciary Committee, on a 7 to 1 vote, gave a “do pass” recommendation to SB 824, and the bill is now awaiting action on the Senate floor.

The bill was amended to place an eight-year statute of repose on any legal action for damages for injury or death against any physician, health care provider or hospital, based in tort and arising out of patient care.

For the design profession, there is already a 10-year Statute of Repose, and SB 824 does not change this. As you may remember, ACEC OKLAHOMA participated in two Supreme Court decisions in the early 1990’s. In both decisions, the Supreme Court upheld the constitutionality of the 10-year Statute of Repose for design professionals. While the 8-year statute proposed for medical professionals might sound good, ACEC OKLAHOMA doesn’t want to jeopardize these two unanimous Supreme Court decisions, and would strongly oppose any effort to change our Statute of Repose in any fashion.

The most interesting thing surrounding this bill is that the bill was introduced by a Democrat and passed on a 7-1 vote, meaning that some Democrat members of the Senate

## Legislative Update (Cont)

Judiciary Committee voted for the bill. Democrats, especially in the Oklahoma Senate, have traditionally opposed Tort Reform efforts of any kind, but in this instance, it seems that some Democrats may be on board, at least with this bill.

ACEC OKLAHOMA strongly supports SB 824. As floor action draws closer, we may be calling on members to contact their Senators. Watch your e-mail for "Legislative Alerts" on this issue.

### **HB 1388 (Committee Substitute) – Tax Reform, by Rep. Randy Terrill (R-Moore)**

Under current law, the top income tax rate is not scheduled to fall to 5.25 percent until 2010. CS for HB 1388, by Rep. Randy Terrill, R-Moore, lowers the state's top income tax rate to 5.5 percent in 2009 and 5.25 percent in 2010 and beyond, according to the fiscal impact report on the bill.

When first introduced, HB 1388 would have cut the tax rate to 4.65 percent but the state's forecast has changed and the reduction changed, Terrill said. The adjustment came after the State Board of Equalization revised its revenue estimate for the coming fiscal year, reducing the amount available for appropriation by nearly \$163 million to a total of \$6.849 million. The board's adjustment was due to forecasts predicting that the state's growing economy will grow at a slower rate than originally expected.

Corporate taxes also would be restructured under HB 1388. The bill would exempt businesses making less than \$10,000 in taxable income from corporate taxes. Companies making \$10,000 to \$50,000 would pay a rate of 1%; \$50,000 to \$100,000 would be taxed at 2.5%; \$100,000 to \$200,000 at 4.5%; and, companies bringing in more that \$200,000 would be taxed at 6%. Currently, all businesses are taxed at 6% regardless of income.

The bill received a recommendation of "do pass" and now moves on to the full House for consideration.

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The first of the major committee deadlines have passed with several bills which ACEC OKLAHOMA was "tracking" failing to receive consideration. Both the House and Senate face a March 15<sup>th</sup> deadline for bills to clear their "house of origin."

ACEC OKLAHOMA will continue to closely watch the activities at the Capitol, and will keep you up-to-date as the session progresses.

## ACEC OKLAHOMA Working On Grant Program for Oklahoma Communities

At the January ACEC OKLAHOMA General Membership meeting, Steve Thompson, Executive Director of the Oklahoma Department of Environmental Quality discussed several issues of interest to ACEC OKLAHOMA members.

Of particular interest was a proposal which DEQ and ACEC OKLAHOMA are discussing under which small Oklahoma communities would be able to apply for small grants to allow the communities to procure "engineering reports" to be used for construction loan and/or grant applications.



Steve Thompson addresses the January ACEC OKLAHOMA meeting

In many cases, small communities which are under Consent Orders from DEQ do not have available funds to procure the engineering reports, much less take the corrective actions required by DEQ.

Under the proposal, which is in a very-early developmental stage, a fixed appropriation by the Legislature, for example \$500,000 per year, would be set-aside under which communities could apply for, again for example, \$25,000 grants to be used for the required engineering reports. How the grant applications would be judged and what state agency would administer the grant program has not yet been determined.

Currently, ACEC OKLAHOMA is talking with Legislative and State Regulatory leaders, educating them about the problem, and "floating" this conceptual grant program.

To that end, Phil Brown, Brown Engineering, Stillwater, and Jim Sullins met with Senate President Pro-Tem Mike Morgan in late February. Sullins has a meeting scheduled with Co-President Pro-Tem Glenn Coffee in the next few days, and, ACEC OKLAHOMA made a presentation to the Funding Agency Coordinating Team, a group of stakeholders including the Community Resource Group, USDA Rural Development, Water Resources Board, DEQ, Rurul Water Association, and others.

This is in a very early stage, and may or may not come to fruition this session. We will keep you informed as things progress.

## President's Update March 1, 2007

Here's an update on ACEC activities during the past month from ACEC President David Raymond:

### General

- The Executive Committee approved the 2007 legislative agenda, deliberated on the three-year budget proposal, and considered a concept for "broadening ACEC's base" to reach more members.

### Government Affairs

- Submitted a letter to the USDOT's Inspector General office protesting detailing the flawed procedures used in the IG's audit on overhead and executive compensation.
- Helped secure reintroduction of legislation to repeal 3% contractor withholding mandate through Representatives Kendrick Meek (D-FL) and Wally Herger (R-CA), both members of the House Ways and Means Committee.
- Secured new QBS provision in the committee-passed Water Quality Financing Act, which authorizes \$20 billion over 5 years for wastewater projects.
- Hosted fundraiser for Congressman Tim Bishop (D-NY), a member of the House Transportation and Infrastructure Committee.
- Engaged in successful grassroots campaign to restore highway and transit funding in the final version of the long-term funding resolution passed by Congress and signed into law by the President.

## ACEC to Submit "Updated" Budget Proposal

In last month's "The First Word", we reported that ACEC OKLAHOMA had strongly objected to the proposed ACEC national three-year budget. Many other state's have also voiced strong concern and objections, which has led to ACEC apparently re-thinking the proposed budget.

While we don't know the specifics, David Raymond has informed member organization leaders that, "**next week you will receive an Updated Budget Proposal taking into account comments and suggestions received from MOs over the past several months.**"

We thank the ACEC leadership for "listening" to the grassroots. The ACEC OKLAHOMA Board will be meeting in April and will review the proposal to see if it addresses our concerns and warrants ACEC OKLAHOMA's support.

## Critical Issues to be Discussed with Congress During Consulting Congress Day

ACEC OKLAHOMA wants to remind members that the ACEC Annual Convention will be held in Washington, DC, May 3-6. The Convention includes the Annual Consulting Congress Day activities along with many outstanding educational opportunities.

This year's Consulting Congress Day activities are the following issues which ACEC OKLAHOMA will be discussing with our Congressional Delegation:

- **Repeal the 3 Percent Withholding Mandate** on government contracts which is scheduled to take effect in 2011. It applies to all contracts of federal, state and local governments that spend \$100 million or more annually. It is patently unfair, adds another layer of taxation, and slows progress on building America's infrastructure.
- **Pass New Water Legislation:** The Water Resources Development Act, which would authorize more than \$10 billion for future Corps of Engineers projects, and the Water Quality Financing Act of 2007, which authorizes \$20 billion over five years for wastewater projects and includes a new QBS provision, will help address America's high priority water needs.
- **Promote Expansion of H-1B Visa Program and Education Measures** to ameliorate the growing shortage of engineers. Acquiring more engineering talent from abroad, as well as promoting education measures at home to encourage more young Americans to pursue engineering careers, is critical to the nation's economic growth and security.
- **Promote Long-term Solution to the Transportation Funding Shortfall** – The Transportation Trust Fund is expected to go bankrupt by 2009, the final year of SAFETEA LU, unless remedial action is taken. Among options Congress needs to consider are increasing and indexing for inflation the motor fuels tax, and innovative financing options to raise private capital and dedicated user fees.

All ACEC OKLAHOMA members are encouraged to get involved with ACEC's Consulting Congress Day and the Convention. Registration information has been sent to all members and can be found on the ACEC website at [www.acec.org](http://www.acec.org)

## William N. (Bill) Holway

William Nye (Bill) Holway, 86, a pioneering civil engineer for over 60 years in Tulsa, who together with his late father W.R. Holway is responsible for much of Oklahoma's water and hydroelectric infrastructure, died Friday, January 26, 2007.

Born in Tulsa, November 24, 1920, he was the son of W.R. and Hope Holway. He graduated from Tulsa Central High School in 1938, attended Dartmouth, and received a BS degree in Civil Engineering from the Massachusetts Institute of Technology. During active duty with the U.S. Navy, he received a Certificate in Naval Architecture from the University of Michigan.

In 1942, Bill married Polly Pollock, whom he had known since fifth grade at Lee School.

A founding partner in W. R. Holway and Associates, Consulting Engineers, he became President in 1972. He was in charge of developing much of the City of Tulsa water system improvements, including the second Spavinaw project. In 1948, Holway provided engineering design services for a dam, 56-mile pipeline and water treatment facilities on Spavinaw Creek, which more than doubled the capacity of the Tulsa water supply.

Ten years later, Holway led the team that designed and built the Markham Ferry Dam for the Grand River Dam Authority, a 120 MW generating plant.

Hundreds of other civil engineering projects followed, including the engineering design of the Muskogee Turnpike in northeast Oklahoma, the Lawrence Hydroelectric Project in Massachusetts and the Gantt and Pint A Dams in Alabama.

The firm was later acquired by The Benham Group of Oklahoma City, where he remained active until his retirement.

"Bill Holway represented the very best in engineering leadership," said Lance Benham, president and chief executive officer of Benham. "His gift was exceptional professional competence, grounded in knowledge and wisdom, balanced with gentleness in purpose and delivery.

"He is revered in our company and in the engineering profession as a beacon of integrity and faithful service to mankind," Benham said.



After retiring at age 71 from Benham in 1991 – Holway continued to serve as a consultant for Benham in hydroelectric, thermal generation and other water-related projects until December 1999.

Whether religious or professional, organizations with which he was associated soon placed Bill in a leadership position.

Dedicated to his profession, Bill served as President of the Consulting Engineers Association of Oklahoma (now ACEC OKLAHOMA) in 1962-63; was Secretary-Treasurer of the Consulting Engineers Council of the United States (CEC/US) from 1967 to 1969, and in 1973 presided over the merger of CEC/US and the American Institute of Consulting Engineers to become the first President of ACEC, then known as the American Consulting Engineers Council.

He was a Past President of the Board of Trustees of All Souls Unitarian Church and founding member and first President of Hope Unitarian Church in Tulsa. The national Unitarian Universalist

Association and Southwest District benefited from his service in many capacities from 1967 to 2006.

His greatest enjoyment was the Grand Lake home he and Polly built and shared with so many family members and friends. To his many professional, religious, and lake families, he was an inspiration and mentor.

Survived by: Polly, his wife of 64 years; brother, Donal (Louise), Tulsa; daughters, Marcia Schaefer, (Sherrill Womeldorf) Tulsa, and Shirley Adams (Brad), Disney, OK; and son, William P. Hamilton-Holway (Barbara) of Berkeley CA; 11 grandchildren and 14 great-grandchildren in their blended families.

A Memorial service was held Saturday, February 3, 2007 at All Souls Unitarian Church, 2952 S. Peoria, Tulsa. The family asked that in lieu of flowers donations be made to the Hope Development Foundation, c/o Hope Unitarian Church, 8432 S. Sheridan Rd., Tulsa, OK 74133.

ACEC OKLAHOMA extends our deepest sympathies to Polly and the family. Bill has left a lasting mark on the engineering profession and the projects which he led will continue for many years to provide a better quality of life for all Oklahomans.