

# THE FIRST WORD

March, 2004

## Motor Fuel Tax Increase; Elimination of Joint & Several Liability Are Top Issues for ACEC OKLAHOMA

The first deadline of the session has come and gone, and 1,568 bills are now unavailable to use as vehicles for legislative changes. There were 712 Senate measures that failed to make it to the Senate floor, while 856 House measures failed to advance. A total of 1,419 bills are still alive, including 719 House measures and 700 Senate measures.

The hectic weeks of Committee work concluded Thursday, February 19th as the Oklahoma Legislature reached its first major deadline. On that day, any bill that had not received committee approval in the bill's "house of origin" is dead for the session.

To beat the deadline, committee's worked through upwards of 20-30 bill during long, tedious meetings passing many bills and killing a few along the way.

High on ACEC OKLAHOMA's "watch" list were bills dealing with motor fuel taxes; Tort Reform including elimination of Joint & Several Liability; various bills dealing with the State Architectural Act; proposed amendments to the Okie One-Call system; and proposed amendments to the State Board of Registration Act. Also, since our last report, a bill dealing with the County's Circuit Engineers has come up which is causing ACEC OKLAHOMA a lot of concern.

Here's an update on these issues:

### MOTOR FUEL TAXES

Three bills were passed by the House Revenue & Taxation Committee that would put to a vote of the people an increase in the state Motor Fuel Taxes.

\*\* HB 2559 by Nations/Milacek/Langmacher would increase the gas and diesel 6 & 8 cents respectively, bringing the total tax to 23 cents on gas and 22 cents on diesel.

\*\* HB 2632 by Erwin/Milacek/Langmacher would increase gas and diesel 5 & 8 cents respectively, bringing the total to 22 cents per gallon for both.

\*\* HJR1050 by Pettigrew/Milacek would increase both gas and diesel by 3 cents, bringing the total to 20 cents for gas and 17 cents for diesel. Under this bill, the tax would expire in 10 years at which time the tax would revert to current levels.

At the Committee meeting, Speaker of the House Larry Adair and Speaker Pro Tem Danny Hilliard attended and urged the committee to keep the issue alive by keeping the bills alive. As there is no clear cut "favorite" as to which bill will be the final version, the Speaker and Pro Tem want to keep as many options open as possible.

All three passed the committee with only 4 "no" votes. The "no's" were somewhat bipartisan with three of the "no's" coming from Republicans with one lone Democrat voting against all three.

\*\*\* ACTION UPDATE!!!!!! \*\*\*

Last week the House passed two of the three bills; HJR 1050 and HB 2632.

HB 2632 was passed in its original form, however, there were major amendments to HJR 1050.

As amended, HJR 1050 would send a majority of the vehicle title, tag and tax fees from the general fund to the Highway Construction & Maintenance Fund. This would "recapture" what is widely considered to be \$500 million in annually "diverted" highway user fees which are being used for general fund purposes.

## Legislative Report (Cont)

This is a major shift in funding, as most of the "diverted" funds are now going to education. While many believe that these highway user fees should go to highway purposes, the shifting of these funds will only create a hole in a different part of the state budget.

In its current form, HJR 1050 is going to be strongly opposed by the Oklahoma Education Association and others who benefit from the "diverted" funds.

While ACEC OKLAHOMA supports the concept in the amended version of HJR 1050, the reality is that it is very unlikely it will become law in its current form.

Both bills are now headed to the Senate, with Committee action expected in late March.

### OKIE ONE-CALL SYSTEM

\*\* SB 1432 received Senate Committee approval and is awaiting Senate action. This bill 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 has been very active on this bill, and we encourage you to call your Senator asking them to support SB 1432!!!!

### TORT REFORM

Lawsuit reform emerged early as a critical issue in the current session. Following national headlines made by a letter to Texas attorneys, the issue gained even greater attention from both Democrats and Republicans. Currently, two active lawsuit reform measures remain alive:

\*\*Committee Substitute for HB 2661, by Rep. Larry Adair, D-Stilwell, Rep. Wayne Pettigrew, R-Edmond, and Sen. Cal Hobson, D-Lexington, would require attorney fees in class action lawsuits to include non-cash benefits in certain circumstances and authorize the court to decline to exercise jurisdiction in class action lawsuits.

The committee substitute contains the following provisions listed in Gov. Brad Henry's tort reform plan:

- \*Requires loser to pay attorney fees and costs.
- \*Eliminates joint and several liability for defendants less than 50 percent at fault.
- \*Places cap on non-economic damages.
- \*Limits liability for doctors and hospitals providing charitable care.
- \*Includes liability protection for teachers and school officials.
- \*Prohibits "junk science" from court.
- \*Appoints district and associate judges in Tulsa and Oklahoma counties.

The proposal also contains the class action reforms:

- \*Right to immediate appeal.
- \*Stay on proceeding until certification.
- \*Attorney fees in the same pay form as class.
- \*Exhaustion of all administrative relief first.
- \*Decline jurisdiction if better forum.

\*\* SB 1369, by Sen. James Williamson, R-Tulsa, would create the Comprehensive Lawsuit Reform Act of 2004 for the purpose of modifying and improving the civil justice and medical liability system in the state to protect the citizens of Oklahoma. The Republican answer to the Governor's proposal contains the following class action reforms:

- \*Right to immediate appeal.
- \*Stay on proceeding until certification.
- \*Attorney fees in the same pay form as class.
- \*Decline jurisdiction if better forum.
- \*Attorney fees must be agreed in advance by majority of plaintiffs.
- \*All plaintiffs must be informed and sign representation agreements.
- \*Restriction on out-of-state plaintiffs.

The measure also includes several provisions relating to product liability. It would provide for a state of repose (seven years) and would mandate that products known to be inherently unsafe cannot be the basis of a lawsuit.

The Adair/Pettigrew/Hobson seems to be the vehicle that will receive the most attention as it is the Governor's tort reform plan. Two provisions which we will watch closely are the "loser pays" and "elimination of joint & several liability if the defendant is less than 50% responsible" sections.

ACEC OKLAHOMA will closely monitor the issue throughout the session.

## Legislative Report (Cont)

### CIRCUIT ENGINEERS

\*\* HB 2274 would allow Circuit Engineering districts to use County Road and County Bridge Fund to pay for "any cost or expense incurred by a Circuit Engineer...including...costs for administration, program management, engineering, and construction inspection." This is a major change to current law, and we believe that it is a "step backward" to the 1970's.

As we see it, if HB 2284 becomes law, CR/CB funds would be used not to build county roads and bridges, but instead to hire staff, cover overhead, and effectively build a larger organization within the county commissioners organization.

The circuit engineer districts were originally developed to allow smaller counties who did not individually have county engineers to "band together" to hire a shared county engineer to oversee their road and bridge programs. Instead, the program has grown to the point where the county commissioners association has started their own "internal" engineering company which provides services to circuit engineering districts.

As we see it, HB 2274 becomes almost a "blank check" under which the circuit engineering districts can increase staff, equipment, benefits, etc., using the resources of the CR/CB fund.

ACEC OKLAHOMA believes that the CR/CB funds should be used to build roads and bridges.

While the section of the bill which concerns ACEC OKLAHOMA received some close scrutiny, the bill did receive Committee approval due to other provisions in the bill. The bill is awaiting House action, and we urge ACEC OKLAHOMA members to contact their Representative expressing opposition to the provisions outlined above.

### ARCHITECT ACT

Two bills we reported on last month failed to get Senate Committee approval.

\*\* SB 1221 would have made several changes in the State Architects Act that were discussed during the summer Task Force meetings.

\*\* HB 2362 would have licensed Interior Designers under the State Architects Act, but failed in committee.

\*\* SB 1476 survived, and is awaiting full Senate action. If approved, the bill would require any school purchasing or leasing a retrofit metal roof to use of an architect to evaluate the "financial and structural" suitability of the proposed roof.

### STATE BOARD OF REGISTRATION

The State Board's Sunset Review has already received House approval and been sent to the Senate. The bill will extend the Board until 2010.

HB 2714 did receive House Committee approval, and would take away the Board's ability to refuse a license to a convicted felon. This bill not only impacts the State Board of Registration, but all state licensing Board's that have similar language in their authorizing statutes.

The issue, according to proponents of the bill, is that convicted felons are being kept from pursuing their chosen careers, even after they have "paid their debt" to society.

The counter-argument to the bill, however, is that the state licensing boards, including the State Board of Registration, do not automatically reject convicted felons. The boards have the "authority" to revoke, refuse to renew, etc., but it is "permissive" language. Each case is weighed on its own merits, and sometimes felons are allowed to become licensed or keep their existing license.

ACEC OKLAHOMA opposes HB 2714 as we believe that the State Board of Registration should be allowed to keep the "option" open, and be allowed to judge each case on its individual merits.

We urge members to contact their Representatives and voice their opposition to HB 2714.

That's how things shape up now. ACEC OKLAHOMA will keep you updated on major developments as we head to the next deadline on March 11th.

Links to all of the above referenced bills can be found on the ACEC OKLAHOMA website ([www.acecok.org](http://www.acecok.org)), in the "State Legislative Issues" session.

If you have any questions about these or other bills, please feel free to give us a call.

## "Developing Persuasive Proposals" Seminar set for March 24th

The next in ACEC OKLAHOMA's "Lunch & Learn" seminar series will be held on Wednesday, March 24th beginning at 12:30pm.

The one-and-a-half hour program is entitled "DEVELOPING PERSUASIVE PROPOSALS", and will be lead by Clare Ross, one of ACEC's most highly rated presenters.

The key to getting new business in the consulting engineering industry is presenting a proposal that persuades the client that you are the right firm for the job.

Times are tight and there are fewer projects out there, which mean stiffer competition for every available project.

In this session, a highly-regarded marketing and management consultant who specializes in serving engineers, architects, and environmental services firms, will lay out what makes a proposal persuasive and how to win new business.

Registration information will be sent shortly, but MARK YOUR CALENDAR today for this highly informative program.

## Financial Management Guidelines CD Now Available from ACEC

Achieve your financial goals and re-familiarize yourself with important lessons in financial management.

Competition from firms of all sizes makes it even more critical that a firm be properly managed if it expects to remain in practice and to grow and reward its principals and staff. This book covers: using financial information to improve performance, financial planning, trend analysis, assembling a budget income statement, negotiating agreements, invoicing and collections, developing a Net Revenue Forecast, and using IT effectively.

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## A Great Member Benefit to Help Customers Find Your Firm

ACEC's national website receives nearly two million "hits" a month from visitors, many of whom are looking for an engineering firm. How can you make sure that potential customers get all the accurate information about your firm? Just log into the ACEC website and update your company information.

To view your information, go to [www.acec.org](http://www.acec.org). First click on the "membership" tab and then click on the "member directory" tab.

Once you find your firm, you will notice that there is a primary contact listed. This is the person who has the user rights to update information in the directory.

To update information, the primary contact just follows these easy steps:

1. go to [www.acec.org](http://www.acec.org).
2. click on the left tab that says "Member Portal"
3. fill in your e-mail address and password
4. then click on "view/change my information"
5. if you are the primary contact, you may also use the "view/change my company information" tab

People who are not primary contacts can still update their personal information. If you have trouble logging in, or don't remember your password, just follow steps one and two, scroll down and click on "create a user account." All you need is your business e-mail address and last name. The site will automatically send a link that will allow you to log in.

If you need further assistance, contact ACEC at [memberservice@acec.org](mailto:memberservice@acec.org) or call the ACEC Membership Department at 202-347-7474.