

THE FIRST WORD

May, 2007

Governor Vetoes Tort Reform Bill

Efforts Continuing to Reach Compromise, But Hope Fading

The week of April 16th, in historic votes, the House of Representatives and the state Senate passed a major lawsuit reform bill.

SB 507 (Senators Branan, Laughlin & Williamson and Representatives Rob Johnson, Sullivan & Thompson) passed the House Tuesday evening, April 17th by a vote of 57-39. Democrat Representative Lucky Lamons was the only House member to vote with his Republican colleagues. On Thursday, April 19th, the Senate passed **SB 507** by a vote of 25-23. Democrat Senator Susan Paddock was the lone Democrat (and the tie-breaker) who voted with her Republican colleagues.

Unfortunately, on Saturday, April 28th, Governor Henry vetoed the bill, which was supported by a broad coalition led by The State Chamber and the Oklahoma State Medical Association, and a large portion of the business community including ACEC OKLAHOMA.

As you know, Tort Reform has been a major issue for a number of years. While small, piece-by-piece bills have become law in recent years, this was the first major COMPREHENSIVE bill to ever pass the House and Senate.

While there were several sections of the bill which did not impact the engineering, architectural and/or land surveying professions, key provisions WHICH DIRECTLY IMPACTED YOUR BUSINESS included:

- Complete elimination of Joint & Several Liability
- Expert Testimony - Requires a "Certificate of Merit"
- Better Defines what "Frivolous" means
- Collateral Source Rules
- "Clear & Convincing Evidence" of intentional or gross negligence for punitive damage awards

Despite a lengthy explanation of his reasons for vetoing **SB 507**, according to The State Chamber, it came to two major issues of dispute...both cornerstones of the reform legislation. The governor did not like the cap on non-economic damages and proposed two alternatives:

- Allow the cap to be in place only if an offer of settlement has been made. This would mean that a doctor who did not feel that a lawsuit against him was legitimate would have to choose between offering a settlement (where he believes he did no wrong) and having a cap...or fighting the lawsuit and face the possibility of damages far in excess of the cap; **OR**, allow the judge to lift the cap if the judge feels the evidence shows the cap should be lifted...in essence not having a cap.
- Secondly, the governor did not like the "opt-in" requirement for potential plaintiff members of a class action lawsuit. His alternative would have been to allow the judge to decide if such a requirement should be used...thus removing any teeth from this section also.

Both of these "solutions", according to The State Chamber, would have resulted in gutting the bill and losing somewhere between 60-70% of the bill's true effect. Therefore, the coalition stood firm and refused to accede to his demands. He thus vetoed the bill.

Governor Henry indicated in his news release that he was willing to continue negotiations and hoped for a reform bill by the end of this session. The possibility of that happening depends on whether the Senate Democrat leadership agrees to put Senator Susan Paddock on the conference committee for the bill she is authoring (**SB 824**), a bill which can then be used as the "vehicle" for further negotiations.

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Legislative Report (Cont. from Page 1)

So, what are the chances of some type of compromise language being agreed to prior to the May 25th adjournment deadline? Here's what Legislative Leaders and the Governor are saying:

Senate Co-President Pro-Tem Glenn Coffee, R-Okla-homa City, said: "The short answer is I think it probably is, but I hope not."

House Speaker Lance Cargill, R-Harrah, said Henry's weekend veto made it very difficult to address the issue during the final month of the session. If the bill dies, Cargill said, it will be because of "the confrontational partisan approach of the governor."

"It's very difficult to renegotiate a 126-page bill at the 11th hour," Cargill said.

Senate Co-President Pro-Tem Mike Morgan, D-Stillwater: "I am pleased that Governor Henry has vetoed Senate Bill 507. The governor has shown great courage in vetoing this bill and proven once again he is the governor for all of the people of our state.

"Senate Bill 507 would have severely limited access to the courts for most Oklahomans, leaving civil justice as a commodity only the wealthy could afford. It would have tipped the scales heavily in favor of large corporations and against working families and royalty owners.

"By vetoing this bill today, Governor Henry has kept the doors of the courthouse open and ensured the availability of justice for all in Oklahoma."

Governor Brad Henry: "As governor, I have supported and continue to support reasonable and responsible tort reforms that strike a balance between a citizen's constitutional right to equal justice and the desire to reduce costs for those involved in the legal process," said Gov. Henry.

"While Senate Bill 507 contained some positive provisions, it ultimately failed to strike such a balance and instead tipped the scales of justice to favor one party over the other. Furthermore, the measure tied the state's hands in legal actions designed to protect the citizenry, and the legislation did little to curb frivolous lawsuits, the chief complaint of many business owners."

"There are good people with good intentions on both sides of this issue, and that made this decision very, very difficult," said Gov. Henry. "While this legislation did not pass the test, I do think it is possible to pass a reform measure that

protects the public's access to justice and addresses the concerns about frivolous lawsuits raised by the business community. I will work to negotiate such a reform package in the days to come."

ACEC OKLAHOMA understands that negotiations are still in progress, and that there is at least a glimmer of hope for an agreement prior to adjournment. However, there would have to be almost a "perfect storm" for all of the parties to come together, and the reality of that happening are probably very slim this session.

Senate Bill 95 Engineers & Land Surveyors Exemption

As reported in a "Legislative Alert" a couple of weeks ago, Senate Bill 95 would have eliminated the exemption for Engineers and Land Surveyors from the state's trespassing statutes. Currently, engineers and land surveyors, in the normal course of their professional services, can enter property unless specifically forbidden by the land owner either orally or in writing.

After a massive calling campaign by engineers and land surveyors, the House amended the bill and re-inserted the exemption which had been removed by the Senate.

The bill has now returned to the Senate, and will end up in a House/Senate Conference Committee.

Once the Conference Committee is named, ACEC OKLAHOMA will work to assure that the Senate accepts the House amendments with regards to the engineer and land surveyor exemption.

Our thanks to all who called their House members expressing their concern with the elimination of the exemption. Your efforts were heard by the House loud and clear!

We're down to the final three weeks of the session, with the Constitutionally mandated adjournment of 5:00pm on the last Friday of May (this year, May 25th) looming on the horizon.

The Legislature has many issues still on the table, not the least of which is the State's Budget.

ACEC OKLAHOMA will keep a close eye on things as the session draws to a close, and keep you informed should any issues of concern arise in the final three weeks.

OFFICIAL NOTICE OF ACEC OKLAHOMA ANNUAL MEETING

As required by the ACEC OKLAHOMA By-Laws, this shall serve as official notice of the Annual Meeting of the Council, scheduled for 9:00am, Friday, June 8, 2007. The meeting will be held at the Chateau on the Lake in Branson, MO.

The 2007-08 ACEC OKLAHOMA Annual Budget will be presented for consideration and approval, annual reports will be presented, and election of officers for the 2007-08 year will be conducted.

All members are urged to attend.

NOMINATING COMMITTEE REPORT

ACEC OKLAHOMA Nominating Committee Chairman Jerry Farrar presented his Committee's report at the April 26th ACEC OKLAHOMA General Membership Meeting. The Committee, comprised of Chairman Farrar and Past President's Don Vick and Mike Homan, presented the following slate of officers for the 2007-08:

- Chairman-Elect - **Steve Ford**, Zahl-Ford, Inc., Oklahoma City
- Vice Chairman of Membership - **Tom Hendrick**, Wallace Engineering, Tulsa
- Treasurer - **Jim Benson**, Poe & Associates, Oklahoma City
- Vice Chairman Business Practice - **Stacy Loeffler**, BKL, Inc., Tulsa
- Vice Chairman Education/P.R. - **Alan Soltani**, The Benham Companies, Oklahoma City

Darold Davis, Garver Engineers, Tulsa, will automatically assume the position of Chairman of the Board at the conclusion of the Annual Meeting. **Mike Homan** will continue as ACEC National Director beginning the second year of his three year term, and **Jim Stewart** will remain on the Board as Immediate Past Chairman.

The election of officers will take place during the Annual Meeting of the Council on June 8th.

Members not attending the Convention may vote by mail ballot. If you desire to vote, please mail a letter to ACEC OKLAHOMA expressing your vote no later than Wednesday, June 6th.

ACEC OKLAHOMA Annual Convention Set for Branson

Branson, MO will be the site of the ACEC OKLAHOMA Annual Convention. The meeting, held jointly with ACEC Missouri, Arkansas, and Kansas, will be held June 7-9 at the beautiful Chateau on the Lake.

Since the Chateau is the Branson area's most popular resort, **EARLY** hotel reservations are a must. **May 9th** is the cut-off for reservations, so call the Chateau today to make your reservations. Contact the hotel at **(888) 333-5253** and tell them you are with the **ACEC Midwest States Conference** to receive the \$164.00 nightly rate.



The Convention is packed with a variety of educational and social opportunities. Here's a brief outline of the convention schedule:

Thursday, June 7th

6:00pm - **Opening Reception**

Friday, June 8th

7:30am - **Breakfast & Program: Secure Retirement: Redefining the Retirement Planning Paradigm**
 9:00am - **ACEC OKLAHOMA Annual Meeting**
 1:00pm - **Successful Engineering Company of the Future**
 8:00pm - **"Branson Belle Showboat" Dinner & Show**

Saturday, June 9th

7:30am - **Breakfast & Program: Charles E. Gemar, Bombardier Learjet**
 9:00am - **Integrated Practice & Application of BIM, Charles Mies, Autodesk**
 12:00pm - **Annual Golf Tournament** - (Afternoon Free for the non-golfers)
 6:30pm - **Joint State Reception & Installation Banquet**

Registration information has been sent to all members.

It's going to be a GREAT Convention, and we hope to see you there!!!!

Federal "Good Samaritan" Legislation Introduced

Contact the Oklahoma Congressional Delegation Today!!!!

Legislation has been introduced in the United States House of Representatives that would provide "Good Samaritan" protection for engineers and their employers responding to emergencies.

HR 2067, The Good Samaritan Protection for Construction, Architectural, and Engineering Volunteers Act, was recently introduced by Connecticut Congressman Chris Shays and several other representatives and has been referred to the Judiciary Committee.

Although some states, including Oklahoma, have passed similar legislation, a federal law would increase the protection of volunteers and cover engineers who respond to emergencies.

Please fax the Oklahoma Congressional Delegation to express your support for this important bill. (Because of security concerns, regular mail is often delayed.)

Here's sample wording:

Dear Congressman _____,

On behalf of _____ company name _____ and our employees, I am writing to ask you to support the Good Samaritan Protection for Construction, Architectural, and Engineering Volunteers Act (H.R. 2067).

In the aftermath of disasters such as the April 19, 2005 Murrah Federal Building bombing, the terrorist attacks of 9/11, and Hurricane Katrina, the construction, architectural, and engineering industries answered the call for help. These companies and the professionals they employ stepped in at the request of government officials and volunteered their expertise and assistance in recovery and reconstruction efforts.

Also, I am a member of the American Council of Engineering Companies (ACEC) and ACEC OKLAHOMA. ACEC and ACEC OKLAHOMA organize volunteer engineers to assist the public in natural disasters and terrorist attacks. Members of ACEC OKLAHOMA are proud to have assisted in the evaluation of damaged structures immediately after the April 19, 1995 bombing of the Murrah Federal Building in Oklahoma City.

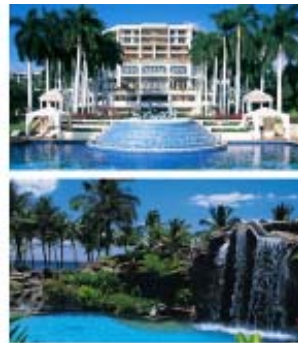
Unfortunately, some of these same "good Samaritans" have faced lawsuits because of the work they did for their communities. The fear of lawsuits should not deter those who want to offer their expertise in a time of need.

H.R. 2067 provides construction, architectural, and engineering entities qualified immunity from liability when volunteering their services in the aftermath of a declared disaster. The legislation does not cover gross negligence or willful misconduct. Moreover, liability relief is only extended to those operating at the direction of a public official. On behalf of the employees of our company and the 5700 member firms of ACEC, I urge you to cosponsor H.R. 2067 and to actively support this legislation.

Thank you for your consideration, and I look forward to hearing from you.

Maui in September

After a long, hot Oklahoma summer, what could be better than a tropical paradise to help you shake off the summer doldrums? Nothing!!!! That's why we urge you to attend this years ACEC Fall Conference September 26-29, at the luxurious **Grand Wailea Resort & Spa** on the island of Maui.



As always, the ACEC Fall Conference is an outstanding meeting, jam-packed with educational opportunities as well as plenty of free time to enjoy the island.

Plus, the Grand Wailea Resort (www.grandwailea.com) is the "crown jewel" of Maui resorts. With rooms rates starting at only \$210.00 per night, it's almost too good of a deal to pass up.

For more information on the ACEC Fall Conference, go to the ACEC website: www.acec.org/conferences/fall-07/index.cfm for information regarding hotel reservations and Conference registration.

It's going to be a great Conference in the world's greatest location! We look forward to seeing you there!!!!