

# THE FIRST WORD

April, 2019

## LEGISLATIVE UPDATE

### Major Issues: Transparency and "Oklahoma First"

Thursday, April 11th saw the passing of another major deadline as the 2019 Oklahoma Legislature heads towards adjournment in May.

As of Thursday, all bills had to be out of the Committee in the "opposite" house, i.e., Senate bills out of House committees and vice versa. This is important for two reasons. First, a number of bills didn't clear committee which means that they are "dormant" for the remainder of the session, and, Second, we now know that the remaining 771 bills are truly "live rounds" and have a chance of passage.

For this report, we're going to highlight a couple of bills which we are actively working and watching, but first want to tell you about a bill which ACEC OKLAHOMA worked hard to kill.

**\*\* House Bill 1096 - Transparency.** This bill would have required that any business which had a hourly-rate contract with the State to install on their computer system specialized software which would have tracked the actual time spent on their computer(s) when working on that specific contract.

The software installed on ALL of your computers would track key-strokes and mouse movements every three seconds, and, would take a screen-shot every 3 minutes (+/-) which would be used to verify that the business was actually working on the project for which they were billing the state. The state agency would have access to all of the information being tracked, AND, the business would be required to archive the information for seven years.

Now, here's the backstory. Our colleagues at ACEC Kansas first discovered this when legislation was introduced in Kansas in early January. They alerted all of the other ACEC states, and within a few days, similar legislation was discovered in a vast majority of the states.

It seems that a company, TransparentBusiness, was pushing the legislation, and had hired lobbyists in over 40 states, including Oklahoma, and was getting this legislation introduced nationwide!

The company has developed this tracking software, and their promotional material alleges that state governments are being overbilled millions of dollars by "contractors" who are billing for computer time when not actually "working" on the projects for which they are billing.

Oh, one other thing, the owner of TransparentBusiness, prior to moving to the United States, was one of Russia's largest and richest investment bankers!

Long story short, our ACEC counterparts nationwide were opposing this legislation in their respective states and the leading charge to successfully kill the bills in almost every state.

Here in Oklahoma, the bill was not originally introduced, but ACEC OKLAHOMA was tracking several "shell" bills which looks to be good "vehicles" for this legislation. And, sure enough, one day in a House Committee, a "shell" bill was amended, the language was inserted, and without much discussion/debate, the Committee passed the legislation.

ACEC OKLAHOMA, working closely with several organizations including The State Chamber, immediately set out to derail the legislation. We met with the bill sponsor expressing not only our concerns but strong opposition, and he agreed to not move the bill forward on the House floor.

#### Disaster Averted!

This one piece of legislation shows the POWER OF ACEC! One ACEC state found the bill; alerted all of the other ACEC states; those ACEC states found the EXACT same bill in their legislatures; all ACEC states immediately took the lead in opposing the bill; and, the bill has been defeated/killed/dropped in virtually every state! Additionally, ACEC National has been working this from the federal level, developing a coalition of national groups to not only assist their states, but to avert similar legislation at the Congressional level.

This is truly a TEAM effort nationwide, and ACEC states and national ARE THE REASON this bill is failing not just in Oklahoma, but all across the country!

**\*\* Senate Bill 376 - Oklahoma First.** This bill, in its present form, would give a "preference" in the awarding of highway construction contracts under the Competitive Bidding Act to Oklahoma-owned businesses over out-of-state businesses.

**While the bill, at this time, deals strictly with construction, ACEC OKLAHOMA is concerned that it could eventually be expanded to the QBS engineering selection process.**

## Legislative Report (Cont.)

The Senate author is Senator Rob Standridge, who is also the Chair of the Senate Transportation Committee, and the House sponsor is House Transportation Chair Representative Avrey Frix.

ACEC OKLAHOMA's concern stems from a press release from Senator Standridge when the bill initially passed the full Senate. In the release he stated that the bill was aimed at ensuring more state contracts are awarded to Oklahoma businesses, and, "This truly is about putting Oklahoma First when awarding these contracts. Our focus should be on building wealth and jobs for Oklahomans—not Texans or Floridians."

Standridge added, "Yet I've been told in the last four years alone over 50 percent of our engineering contracts have gone out of state and that it may have been as high as 80 percent. I know we have companies and universities right here in our state who can deliver top-notch results. It's time to put Oklahoma First!"

The latest update on the bill is that it still only addresses construction contracts. The bill has received committee approval in the House, and is awaiting action by the full House. That being said, the "title" and "enacting clause" have been struck, which is a procedural move and generally means that the bill will eventually end up in a Conference Committee. So, while the bill is technically "alive," it is at this point "damaged goods" (for lack of better words) and is on a slow track rather than fast track.

ACEC OKLAHOMA has expressed our concerns to the Representative Frix who indicated the bill may not be heard on the House floor. And, will have further discussions with Senator Standridge very soon.

**Again, in its current form, the bill deals strictly with construction contracts and doesn't, at this time, impact engineering. However, if something changes which does bring engineering into the bill, ACEC OKLAHOMA will strongly OPPOSE any effort and/or language which in any way weakens, imposes undo restrictions, or, eliminates the QBS selection process for engineering services.**

**House Bill 2666 - Construction Management at Risk.** For several months, ACEC OKLAHOMA has been working with the AGC Builders Chapter and a variety of other stakeholders as they seek to update the current statutory language regarding Construction Management at Risk (CMAR).

ACEC OKLAHOMA's interest in the bill deals strictly with proposed changes to current statutory language. Due to confusion regarding CMAR, which is a "delivery system," and Construction Management, a "service" provided by design professionals to their clients, new definitions are being proposed which would clearly delineate the difference between the "delivery system" and the "service" and which ACEC OKLAHOMA assisted in writing.

The bill has passed the full House and is awaiting action by the full Senate. However, the "title" is off, and the bill will in all likelihood end up in a Conference Committee to work out a few last-minute sticking points. ACEC OKLAHOMA supports the bill, but at the same time, we remain diligent in making sure that any changes do not negatively impact the QBS process or the "services" which engineering firms provide their clients.

**\*\* House Bill 2676 - Additional Funding to the CIRB Fund.** This bill would authorize, in addition to the regular annual appropriation, an additional \$30 Million into the CIRB fund. This is to make up for CIRB funds which have been reduced in the past due to the Budget crisis of recent years. This ACEC OKLAHOMA supported bill has passed the House and is awaiting action by the full Senate where approval is expected.

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That's the update for now. Most Committee work is now done for the session with the exception of the Appropriations & Budget Committees. Floor action will now dominate the House and Senate through Thursday, April 25th, and then the Budget and various Conference Committees will be the focus of the final weeks of the session.

The Legislature is Constitutionally required to adjourn no later than Friday, May 31st, but many believe that House and Senate Leadership is aiming for a mid-May adjournment. That means that things are going to be happening very quickly for the next few weeks, and during that time, ANYTHING can happen!

Generally, this time of year can be the most dangerous of the Session as things happen very quickly, and there a lot of "behind the scenes" actions, especially in the Conference Committees. ACEC OKLAHOMA will track things very closely in the so-called "silly season" and will keep you updated as necessary if things go "off the rails."

In the mean time, please don't hesitate to contact us if you have any questions or need any additional information.

## Congratulations to the Graduates of “Leadership For Engineers” Class #10



Nancy Doutey  
McClelland Consulting Engineers



Uwem Ekpenyong  
Guernsey



Aaron Finley  
CEC Corporation



Scott Foster  
Benham Design, LLC



Jonathan Hisey  
MKEC Engineering



Brian Huckleberry  
C P & Y



Heidi Katz  
HNTB Corporation



Kyle Miller  
Meshek & Associates



John Stovall  
MacArthur Associated Consultants



Alec Strassburg  
Terracon



Michael Taylor  
Cowan Group Engineering



Tom Weber  
ZFI Engineering



David Welch  
White Engineering Associates



Michael Winterscheidt  
Garver



Gene Wyckoff  
Poe & Associates

# President's Monthly Update

April, 2019

Linda Bauer Darr, President & CEO

Spring has sprung and the cherry blossoms are blooming in D.C., which can mean only one thing – ACEC's [Annual Convention and Legislative Summit](#) is right around the corner. As you know, the new Congress has brought a new (and hopefully bipartisan) focus on moving major infrastructure legislation in 2019 and our lobbying effort at the Convention will focus on that objective. We need your active participation as ACEC's "Citizen Lobbyists" in that important effort; contact [Steve Hall](#) for further info. As mentioned last month, the new [Last Word Blog](#) is up and running, and I encourage you and your members to not only bookmark the site, but take it a step further and author a post on any issue of importance to you and ACEC's membership; contact [Gerry Donohue](#) if interested. See you all next month in D.C.!

## General

- Three MOs achieved important Minuteman Fund-assisted victories for the industry in April – ACEC/Florida in a court case defending the enforceability of contractual waiver of consequential damages; and ACEC/Virginia and ACEC/Metro Washington for a legislative effort to close a QBS statutory loophole in Virginia.
- Two additional MOs received new Minuteman Fund grants in April – ACEC/Ohio to help support legislative advocacy for greater state transportation funding; and ACEC/Illinois to help support an initiative to enact sustainable funding for Illinois' transportation needs.
- Held first *NAECE Executive Toolkit* webinar on March 21<sup>st</sup>, covering association trends and results of the MO Survey ([recording of the session available here](#)); next webinar – "Save Time by Scaling the Membership Recruitment Process" – scheduled for April 18<sup>th</sup>, [email here](#) to register.
- ACEC's annual membership certification process to verify employee counts begins again on April 1; we perform this for Pay Direct firms and for MOs which have asked us to do it for their firms, and will send final results to each MO in May.

## Government Advocacy

- ACEC was featured in a Bloomberg story on industry efforts to defeat so-called "transparency" legislation in the states; the Council also joined with several industry stakeholders on a letter opposing passage of transparency bills in the states and at the federal level.
- ACEC staff briefed House staff on QBS as a part of a design and construction industry briefing on project delivery on Capitol Hill.

- ACEC staff testified before the Appropriations Committee in Illinois in support of raising revenues to support a robust infrastructure program.
- ACEC staff provided advocacy updates and training to ACEC emerging leaders programs in Oklahoma, Missouri and Maryland.
- Rose Bougher, President and CEO of A.D. Marble and Secretary of ACEC/Pennsylvania, testified on behalf of ACEC at a Small Business Committee hearing on infrastructure investment.
- Sent letter of opposition to the sponsors of H.R. 1099, legislation introduced in the House to mandate that only public employees perform all construction engineering and inspection services on federally funded highway projects.
- Joined multi-industry coalition in support of passing the United States-Mexico-Canada Agreement through Congress.
- Joined with stakeholder allies on letters to House leadership in support of the Water Quality Protection and Job Creation Act, a bill to reauthorize and expand the Clean Water State Revolving Fund (CWSRF) program; ACEC also issued its own endorsement letter of the bill.
- Signed a coalition letter to the bipartisan House and Senate leadership, asking them to suspend the health insurance tax on small business health plans.
- Joined with industry allies on a letter in support of funding for the National Levee Safety Program. ACEC/PAC co-hosted in-state fundraising events for U.S. Representatives Peter DeFazio (D-OR) and Bill Pascrell (D-MD) and ACEC members delivered checks to Representatives Hakeem Jeffries (D-NY) and John Katko (R-NY).

