

PLUS

Taking Action in Louisiana, Ohio 4

Engineering, Ethics, and Climate Change 10



Colorado PE Set to Lead Society 32

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Michigan Society Opposes Bill Treading on PE Judgment

It was only last year that the Michigan Society of Professional Engineers, with backing from NSPE, worked to stop the progress of a bill in the state Senate that would have infringed on the PE's judgment in recommending pipe and piping materials on certain public projects. Now, MSPE is speaking out against a similar bill in the House.

The legislation (H.B. 5723), which applies to publicly financed water supply and wastewater projects, may sound reasonable to some. It would prohibit a public entity from adopting or enforcing an ordinance that prohibits, restricts, or limits the evaluation, comparison, or usage of certain pipe and piping materials, specifically those that meet the standards of the American Society for Testing and Materials, the American Water Works Association, the Great Lakes-Upper Mississippi River Board, the American National Standards Institute, and NSF International. The prohibition would also

apply to the performance specifications determined by a professional engineer.

The legislation also states that the provision would not limit the professional judgment of a project's engineer to specify or select any acceptable pipe or piping materials based on the project's performance requirements.

While the bill's language is different from the language originally proposed in last year's Senate version, MSPE believes that it still attempts to solve a problem that doesn't exist. MSPE leaders reached out to the Michigan Competitiveness Committee to explain that operators of the state's public water and wastewater systems design these systems for sustained, long-term operation and with the public health, safety, and welfare as primary design factors.

"It's imperative that the industry allow the design engineers and system operators, the experts in operations and maintenance,

to choose the materials that can provide consistent and safe service," wrote MSPE President-Elect Scott Conners, P.E., in a memo to the committee.

MSPE also asked the committee to consider that licensed professional engineers are already working to include new pipe materials as needed and that it is dangerous to tie pipe supply to a handful of specifications that might not give the end user the performance or maintenance options that they prefer.

In about the last two years, states including Indiana, Ohio, and South Carolina have introduced similar versions of this legislation. NSPE believes that the professional engineer's foremost responsibility is to protect the public health, safety, and welfare. Professional engineers are already obligated to choose the right piping material, based on experience, expertise, qualifications, and the applied knowledge of engineering principles.

Colorado PEs Defeat Occupational Licensure Bills

NSPE-Colorado members helped defeat legislation introduced in the state General Assembly that posed a threat to professional engineering licensure.

In May, a bill (S.B. 18-236) that would have required state licensing boards to presume that consumers are sufficiently protected by market competition and private remedies was tabled indefinitely in committee. The legislation directed boards to impose the "least restrictive regulation necessary to address present, significant, and substantiated harm" in addition to alternative types of regulations.

The bill also would have created guidelines for the Department of Regulatory Agencies to follow when making recommen-

dations to address harm arising from contractual disputes; fraud; unclean facilities or general health and safety issues; a provider's failure to meet contractual obligations or standards; protecting individuals who are not a party to a contract; and providers not located in state.

NSPE-Colorado President Ben Railsback, P.E., testified against the bill during a committee hearing to express concerns about the harm that passage would pose to the public. "The bill would have codified a provision to presume that consumers are sufficiently protected by market competition and private remedies," he says. "In engineering, such a codification could mean that a party was severely injured or even killed before consumer protection was enacted. In my opinion, that is and was dangerous language."

NSPE-Colorado also opposed an additional bill (S.B. 18-193) that would have prohibited state agencies from imposing

personal qualification requirements, such as education or examination requirements, to engage in a profession or occupation unless the agency can demonstrate that the requirement is necessary and narrowly tailored to address a specific, legitimate public health, safety, or welfare objective. The legislation, also referred to as "The Right to a Living Act," passed in the Senate, but died in a House committee.

Railsback credits the partnership between the Colorado Society and NSPE for helping to defeat the legislation. "National provided timely support and analysis of the bill," he says, "and my testimony along with other state groups provided a consistent and unified front."

NSPE-Colorado expects that similar bills will be proposed in the future. The organization plans to work with bill sponsors to craft language that recognizes engineering and other vital professions that protect the public and provide exemptions in new legislation.

