

ACEC OKLAHOMA

AMERICAN COUNCIL OF ENGINEERING COMPANIES OF OKLAHOMA

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The American Council of Engineering Companies of Oklahoma
(ACEC OKLAHOMA) respectfully requests

SUPPORT

of

HOUSE BILL 2880

**Making Peer Review Records of Design Professionals Privileged Information;
Providing Immunity from Civil Liability**

SUMMARY:

- 1) Peer reviews are utilized by many professions to ensure quality and improve performance.
- 2) All fifty states provide physicians legal immunity to perform most medical peer reviews. **HB 2880** would extend the same immunity to design professionals.
- 3) Engineers take an oath to protect life, safety, and welfare of the general public.
- 4) Effective peer reviews require a critical and uninhibited set of “2nd eyes” providing open and honest feedback to the design engineer of record for benefit of the public.
- 5) Professional liability insurance providers recommend their engineer clients **NOT** perform peer reviews because of increased risk assumed by peer reviewer and shifting of risk from the engineer-of-record to the peer reviewer.
- 6) Providing legal protection to peer reviewers encourages more participation and more open communication in the engineering design process.
- 7) Granting legal protections to those who perform peer reviews places full responsibility on the engineer of record and originator of the engineering work (where liability should rest) and motivates the engineer of record to seek the most qualified and experienced peer reviewer for their own benefit.

EXAMPLE

Current building codes require peer reviews in the design of most community and school storm shelters. Many highly experienced and qualified engineering firms are refusing to conduct peer reviews on the advice of insurance providers. This lack of participation encourages lesser qualified and uninsured firms to perform the required peer reviews, which is not in the public’s best interests.

The practice of engineering is a complex and continually-evolving profession. The public demand for better, faster, and more cost effective solutions to engineering problems is at an all-time high. New research and advances in technology are being achieved at a pace the profession has never seen before.

Engineers take an oath to protect life, safety, and welfare of the general public to become licensed to practice engineering. Engineers are human, and human factors are often the biggest obstacle in fulfilling this oath. Minimizing these human factors requires awareness, understanding, and discipline.

Peer reviews are utilized by many professions to maintain quality, improve performance, and provide credibility. In engineering, peer reviews are sometimes mandated to ensure these goals are achieved. These peer reviews are conducted by independent engineering professionals to maximize their effectiveness.

For example, the **International Code Council/National Storm Shelter Association** *Standard for the Design and Construction of Storm Shelters* **REQUIRE peer reviews in the design of most community shelters and shelters included within elementary schools, secondary schools, day cares, and essential facilities** before construction begins. This standard was developed with assistance from the Federal Emergency Management Agency.

Effective peer reviews require open and honest communication for benefit of the public without fear of discoverability. All fifty states provide physicians legal immunity to perform most medical peer reviews. House Bill 2880 would extend the same immunity to design professionals.

Many competent and established engineers avoid performing peer reviews at the urging of their professional liability insurance carriers, avoiding increased risk and/or higher premiums. In other words, it is currently bad business practice to protect public safety.

If legal protection for engineering peer reviews is not extended in Oklahoma as done in other states, only those practitioners who are either **unaware of the risk or uninsured** will be willing to conduct peer reviews for others. Without participation by the best and brightest professionals in any industry, the profession does not advance and the public does not benefit.

Granting legal protections to those who perform peer reviews places full responsibility on the engineer of record and originator of the engineering work. This was the original intent for risk allocation in engineering, well before people began using contractual language as a means to shed their professional obligations. This also places an incentive on the engineer of record to seek the best and most informed individuals to perform peer reviews for their benefit, achieving the original ideological goals of peer reviews.

**ACEC OKLAHOMA respectfully requests
your support of HOUSE BILL 2880!**