

TOP PRIORITIES

1. ALTERNATIVE PROJECT DELIVERY

In addition to sole source procurement, we support two specific alternatives to the current design, bid, build model.

- **Integrated Project Delivery (“IPD”)**

Integrated Project Delivery is a collaborative process which breaks down the traditional owner/designer/constructor silos by integrating the talents of all professionals, using technologies and best practices to maximize efficiency, reduce waste and otherwise optimize project results to achieve higher quality and greater sustainability. In an integrated project, key participants are involved at an early stage, which allows for a greater understanding of life-cycle costs and scheduling requirements.

- **Design-Build**

Design-build is one such form of alternative project delivery in which owners contract with a single entity (the design-builder) to provide both design and construction services. Most commonly, the design is provided by an independent architect who is retained by the design-builder as a subcontractor. However, some design-build firms provide the design through officers or employees of the design-builder who are licensed may not be able to freely exercise their professional judgment. We support legislation that would require that the licensed design professional be independent of the design-builder who is acting as such. In allowing design-build contracts, it is imperative that the judgment of the design professional not be constrained for the sake of convenience or cost savings.

2. NON-DESIGN PROFESSIONAL OWNERSHIP

Under current law, architectural, landscape architectural, engineering and land surveying firms (except for grandfathered corporations) must be owned 100% by licensed design professionals. This legislation recognizes that these restrictive ownership provisions subject design professional firms to competitive disadvantages. If enacted, design professional firms would be allowed to offer key personnel such as business managers, human resources managers or computer information and other specialists an equity interest in the firm, up to 25%. Shareholders could include such employees or employee stock ownership plans (ESOPs), provided that at least 75% of the voting shares of the corporation be owned by licensed design professionals. The president, chair of the board, chief executive officer and single largest shareholder would be required to be licensed design professionals. Passage of this legislation would bring New York State law in line with most other states which allow for non-design professional ownership.

3. GREEN SCHOOLS

We support the enactment of legislation to advance the use of green building standards in the design and construction of new and renovated school buildings. Legislation enacted in 2008 to promote green construction of state buildings was a significant first step toward actively incorporating energy efficiencies in building design and construction, and by extending those principles to schools, the long term benefit to New Yorkers will multiply.

BUDGET ISSUES

- **FEDERAL STIMULUS FUNDING FOR SCHOOL RENOVATIONS**

As taxpayers, we understand the need for operating assistance in the short term, but urge you to make sure that funds are also set aside for the modernization and renovation of our schools, which are among the oldest in the country. In the long run, such improvements will actually pay for themselves through improved operating efficiencies. The stimulus is a one time opportunity and long term capital needs must be addressed.

- **ENACT HISTORIC PRESERVATION TAX CREDIT AS PART OF THE 2009-10 BUDGET**

In conjunction with the intent of the stimulus package, it would make sense to enact a meaningful historic preservation tax credit, which could be phased in to mitigate current year fiscal impact. The rehabilitation of historic buildings, especially those which have a commercial purpose, will create jobs, boost the economy, and revive inner city neighborhoods. This tax credit would allow projects to move forward quickly and work in conjunction with the stimulus.

OTHER BILLS SUPPORTED

- **QUALIFICATIONS-BASED SELECTION OF PROFESSIONAL DESIGN SERVICES**

The present State Finance Law, Section 136-a, provides state agencies with open competition among design professional firms in the areas of competence, experience, prior performance, and technical qualifications, followed by negotiated compensation. This bill would extend these QBS procedures to public authorities and public benefit corporations.

A qualifications-based approach to granting public building design contracts specifies that architects, landscape architects, engineers and land surveyors be selected on their qualifications and abilities, subject to negotiation of fair and reasonable compensation. Price is considered in QBS during negotiations between the selected architect/engineer and the owner, when the scope of services are being fully defined.

The QBS process is recommended by the American Bar Association in its Model Procurement Code, the U.S. Office of General Services, the National Society of Professional Engineers, the American Consulting Engineers Council, the New York State Construction Industry Council and the New York State Conference of Mayors, all of whom believe QBS is in the best interest of the taxpayer.

- **SMART GROWTH/LIVABLE COMMUNITIES**

Smart growth protects open space and the environment by reducing sprawl and environmental problems, including surface water run-off and carbon dioxide emissions. It supports public transportation systems and affordable housing through the promotion of mixed income neighborhoods. The creation of diverse, attractive, walkable neighborhoods furthers the AIA's goals of livable communities and provides a foundation for economically viable and sustainable communities.

National, state and local officials are becoming active players in the smart growth movement. No longer an academic endeavor alone, policies promoting smart growth have taken hold in the public and private sector. Smart, mixed-use development, including residential, commercial, and retail within close proximity of each other cuts down on automobile use, saves energy and promotes walkable, healthy, well-designed neighborhoods.

The legislation sets out a smart growth policy for the State's public works development in a manner that would maximize existing infrastructure and minimize the negative effects of dispersed development and sprawl. It sets out a series of criteria agencies would be required to use for evaluation and approval of public works projects, including the protection of state resources, encouragement of mixed use development, and improved use of public transit and reduced auto dependency. The bill would also create smart growth advisory committees in various state agencies, consisting of community and environmental interests, to advise the agency regarding proposed project's consistency with smart growth principles.

- **GOOD SAMARITAN ACT**

This legislation is important to design professionals and state/local jurisdictions. Architects, landscape architects, engineers and land surveyors can provide essential services during natural or man-made disasters and emergencies to help protect the public, with the confidence that there will be sufficient immunity from liability while providing these services.

Architects are often willing to volunteer their time and services if asked by government agencies to ensure the preservation of a community's health, safety and welfare. During such situations a licensed architect may be exposed to questions of liability even though he or she is acting in good faith. While most states have statutes that cover certain volunteers from liability during an emergency situation, it is questionable if they would protect an architect. This ambiguity is corrected in the proposed legislation.

- **DESIGN LIABILITY REFORM**

This legislation is an important step in the effort to protect the rights of injured victims while at the same time restoring fairness and balance to a tort system that has grown costly.

In an action brought by an owner/client against a design professional, a three year statute of limitation applies and the cause of action accrues at the time of injury. Third party suits, however, create a situation of perpetual liability, whereby the injured party has never contracted with the design professional. As a result, design professionals are answerable for an indefinite period after project completion, long after the facility has been subjected to wear, tear and potentially insufficient maintenance.

Design liability reform legislation would strengthen the existing statute by enacting a ten-year statute of repose, plus a one-year limit for any suit brought against a licensed design professional. The legislation recognizes that the design professional has no control over the structure long after construction is complete.

- **FUNDING FOR PROSECUTION OF ILLEGAL PRACTICE**

Chapter 615 of the Laws of 2003 provided the State Education Department with the authority to seek injunctive relief against illegally practicing individuals, to issue cease and desist orders and to seek civil restitution and penalties from unlicensed individuals. Resources are necessary to assist the Department in implementing this important legislation.

BILLS OPPOSED

- **PROHIBITING PROFESSIONAL CERTIFICATION**

S. 1665 (Krueger) / A. 4424 (Brennan)

Legislation has been introduced to require that city employees in all cities of New York State approve plans for new construction of any structure within its boundaries. In so doing, the legislation would prohibit any architect or engineer from certifying building plans. Abolition of the professional certification process, in New York City specifically, would result in a tremendous administrative backlog in the already overburdened Department of Buildings, and have long-term negative consequences for both the building community as well as its occupants (commercial tenants or residents). Furthermore, such a change would be contrary to the stimulus' objective of moving construction projects forward expeditiously.

AIA New York State, Inc. is as committed as the New York State Legislature to preventing abuses that have occurred in the professional certification process. Such abuses are detrimental to the public safety and welfare of New York City residents and every other city in the State, and are a detriment to our profession. We believe, however, that it is in the best interest of all New Yorkers to strengthen the existing statute rather than abolish the self-certification process all together, as is contemplated in S. 1665/A. 4424. Timely approval of permits and plans by the Department of Buildings in New York City is essential to our economic well-being, and should remain a priority, ever more so in light of enactment of the recent federal stimulus package, which requires expedited local processes for funding to have its intended stimulative effect on job creation and economic development.

- **CONSTRUCTION THRESHOLD**

This bill, introduced at the request of the Legislative Commission on Rural Resources, would increase the threshold for which the professional services of an architect are required from \$20,000 to \$50,000 for alterations to buildings/structures outside New York City. The threshold for new public projects requiring the services of a professional engineer or land surveyor would also be raised to \$50,000. This threshold would also apply to alterations to public or private projects. The minimum square footage threshold for architects, engineers and land surveyors would also rise from 1,500 to 3,000 square feet for residence buildings. We believe these provisions would compromise public safety and are not in the public interest.

- **DESIGN DELEGATION**

This bill would require the primary design professional to assume sole responsibility for specialized services, regardless of whether the primary design professional has the relevant expertise. While proponents claim the bill addresses safety concerns, our view is that a much greater risk of injury exists by imposing responsibility to one less qualified to provide the specialized service.

The issue of design delegation has a long history in New York State. From 1991 – 1997, AIANYS worked closely with the State Education Department, the New York State Society of Professional Engineers, the New York State Council of Consulting Engineers and the Contractor and Subcontractors Association to negotiate a compromise on the issue of acceptable design delegation. Effective June 1996, the Board of Regents clarified that a design professional may delegate certain responsibilities to certain non-licensed entities including but not limited to fabricators, manufacturers of system components and product manufacturers. The Regents interpretation permitted design professionals to rely upon these products and systems without approving them. We believe this interpretation accurately addresses the realities of construction projects today. After the Board of Regents interpretation, the General Building Contractors and Subcontractors filed suit against the Education Department. In December 1997 the Supreme Court for Albany County astutely upheld the Regents interpretation.

The current framework allows contractors or subcontractors to assume responsibility for such specialized projects as curtainwalls, fire sprinkler systems, welding or riveting steel beams by ensuring that they meet the overall design concept developed by the primary design professional. This allows owners to reduce costs by not paying their primary design professional more to assume responsibility for ancillary project components with which they may be unfamiliar. Owners also have the advantage of contracting directly with those who possess the most knowledge and expertise.

- **DAMAGES FOR DELAY**

This legislation invites New York State to revert back to a time when damages for delay claims were filed on virtually every public works project against public owners, who in turn sued their architects and engineers. The current framework of having a “no damage for delay” clause for public works projects has been a safeguard for public owners, local and state municipalities, and school districts against frivolous claims by contractors and others whenever delays occurred on the project. In those instances under the current process, contractors know that unless the public owner is grossly negligent, delay claims can only result in time extensions, not monetary awards. Responsible contractors know that delays occur on public projects for reasons other than an owner’s gross negligence, and that these delays are factored into the project bid.

AIANYS believes that the current framework should be maintained. The bill is too vague regarding its treatment of “extended delays,” and the language which would allow for recovery by a contractor for additional claims is an invitation for contractors to bid low and then claim for additional costs, resulting in substantially more litigation against public owners and design professionals, and ultimately having a negative impact on the taxpayer.