



Top Priorities

1. Alternative Project Delivery

Legislation Pending

Alternative Project Delivery methods are a series of practices which break 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 optimize project results to achieve higher quality and greater sustainability. Using alternative project delivery methods, key participants are involved at an early stage, which allows for a greater understanding of life-cycle costs and scheduling requirements. These processes represent a dramatic shift in the industry, allowing for more efficient project delivery.

Design-build is one such form of alternative project delivery in which owners contract with a single entity (the design-build firm) to provide both design and construction services. The design-build firm is a corporation organized under Article 15 of the Business Corporation Law that includes an architect or engineer and contractor qualified to engage in building design and construction in New York. The proposed legislation would require the architect within the design-build firm to be responsible for all design elements and have the responsibility for complying with the requirements of Article 147 of the Education Law.

Construction Management-at-risk is another alternative project delivery method involving a construction manager who assumes the risk for building a project. The proposed legislation defines construction manager-at-risk as a sole proprietorship, partnership, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the state agency regarding construction during and after the design of the facility. Such consultation services may include advice on the time and cost consequences of design and construction decisions, scheduling, coordination of construction contract negotiations and awards, timely purchasing of critical materials, and coordination of construction activities.

2. Non-Design Professional Ownership

A.6787-A (Canestrari)

Cosponsors: Abbate, Calhoun, Cook, Cusick, Glick, Englebright, Jaffee, John, Koon, Magee, Magnarelli, Markey, McEneny, Morelle, Pretlow, Tobacco

Status: In Assembly Higher Education Committee

S.3226-A (LaValle)

Cosponsors: DeFrancisco, Diaz, Dilan, Flanagan, Hannon, Krueger, Larkin, Morahan, Onorato, Ranzenhofer, Valesky, Volker

Status: In Senate Corporations Committee

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

AIA NYS supports 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.

Bills We Support

- **Qualifications-Based Selection of Professional Design Services**

A.7056-B (Benedetto)

Cosponsor: Lupardo

Status: Passed Assembly March 4, 2010

S.3531-B (Dilan)

Cosponsors: Diaz, Hassell-Thompson, Huntley, Klein, Krueger, Onorato, Thompson

Status: In Senate Finance Committee

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.

- **Good Samaritan Act**

A 1269 (Englebright)

Cosponsors: Christensen, Colton, Galef, Lupardo, Perry, Reilly, J Rivera, Schimel, Schimminger, Tobacco

Status: In Assembly Higher Education Committee

S.3720 (Stachowski)

Cosponsors: Breslin, Diaz, Dilan, Hassell-Thompson, C. Johnson, Onorato, Oppenheimer, Savino, Thompson

Status: In Senate Veterans, Homeland Security and Military Affairs Committee

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**

A.4394 (Canestrari)

Cosponsors: Cook, John, Koon, Latimer, McEneny, Ortiz

Status: In Assembly Higher Education Committee

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.

- **Historic Preservation Tax Credit**

A.10168 (Hoyt)

Cosponsors: Bacalles, Barclay, Benjamin, Boyland, Cahill, Christensen, Corwin, Crouch, Delmonte, Destito, Englebright, Espaillat, Gabryszak, Giglio, Hevesi, Koon, Latimer, Lifton, Lupardo, Magee, Magnarelli, McKeivitt, MCENENY, Millman, Molinaro, Morelle, Oaks, Peoples-Stokes, Quinn, Reilly, Russell, Sayward, Schimminger, Schroeder, Skartados, Stirpe

Status: In Assembly Ways and Means Committee

S.7042 (Valesky)

Cosponsors: Aubertine, Foley, C. Johnson, Stachowski, Stewart-Cousins, Thompson

Status: In Senate Investigations and Government Operations Committee

This legislation would strengthen the historic tax credit program by allowing banks and insurance companies to claim the credit for rehabilitation of historic commercial and residential properties. Several projects in Central and Western New York that have been unable to advance are awaiting passage of the legislation in order to move forward. AIA NYS believes that by opening the

program to a larger pool of investors the larger goals of job creation, urban revitalization, increased property value and historic preservation are more likely to be realized.

- **Smart Growth**

A.8331 (Hoyt)

Status: In Assembly Environmental Conservation Committee

S.5549 (Montgomery)

Cosponsors: Marcellino, Parker

Status: In Senate Finance Committee

A.543 (Hoyt)

Cosponsors: Alfano, Barra, Cahill, Christensen, Clark, Conte, Cook, Colton, Englebright, Errigo, Fields, Galef, Gottfried, Jaffee, John, Kavanagh, Koon, Lavine, Lifton, Lupardo, Magee, Magnarelli, Markey, McDonough, McEneny, Millman, Molinaro, Paulin, Peoples-Stokes, Rosenthal, Schroeder, Spano, Sweeney, Towns, Weisenberg

Status: In Assembly Environmental Conservation Committee

S.992 (Marcellino)

Status: In Senate Environmental Conservation Committees

A.697 (Hoyt)

Cosponsors: Alfano, Barra, Clark, Colton, Conte, Cook, Errigo, Fields, Gabryszak, Galef, Gordon, Gottfried, John, Kavanagh, Koon, Lifton, Lupardo, Magee, Magnarelli, McDonough, McEneny, Millman, Molinaro, Paulin, Peoples-Stokes, Rabbitt, Rosenthal, Schroeder, Spano, Sweeney, Towns, Weisenberg

Status: In Assembly Local Governments Committee

S.2526 (LaValle)

Cosponsors: Hannon, Larkin, Padavan, Ranzenhofer

Status: In Senate Local Governments Committees

A.8011 (Hoyt)

Cosponsors: Alfano, Barra, Cahill, Christensen, Clark, Colton, Conte, Cook, Englebright, Errigo, Fields, Galef, Gottfried, Jaffee, John, Kavanagh, Koon, Lavine, Lifton, Lupardo, Magee, Magnarelli, Markey, McDonough, McEneny, Millman, Molinaro, Paulin, Peoples-Stokes, Rosenthal, Schroeder, Spano, Stirpe, Sweeney, Thiele, Towns, Weisenberg

Status: In Assembly Environmental Conservation Committee

S.5560 (Oppenheimer)

Cosponsors: Krueger

Status: In Senate Finance Committee

A.8331/S.5549 and A.543/S.992 would amend the Environmental Conservation Law to require state agencies to consider smart growth principles in state policy and program implementation. Both pairs of bills are identical, though A.8331/S.5549 is effective 120 days after enactment, while A.543/S.992 is effective 180 days after enactment.

A.697/S.2526 would enact the Smart Growth for the New Century Act as part of the General Municipal Law, providing a process for localities to integrate smart growth principles into their planning efforts. It would also establish a statewide smart growth review board and provide a mechanism for municipalities to offer incentives for developments adhering to smart growth principles.

A.8011/S.5560 would add a new article to the Environmental Conservation Law, requiring various state agencies to apply a series of smart growth criteria when making financing decisions for new public infrastructure construction or reconstruction projects.

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.

Bills We Oppose

- **Professional Certification, prohibition**

S. 1665 (Krueger)

Cosponsors: Diaz, Dilan, Hassell-Thompson

Status: In Senate Cities Committee

A. 4424-A (Brennan)

Cosponsors: Boyland, Clark, Gottfried, Hevesi, Jaffee, Jeffries, Kellner, Lancman, Millman, Pheffer

Status: In Assembly Ways & Means Committee

S. 1665/A. 4424-A would 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 self-certification process, in New York City specifically, could 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).

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.

- **Criminal Prosecution for Building and Fire Code Violations**

A.3094-A (Benjamin)

Cosponsors: Clark, Errigo, Espiallat, Hooper, Jeffries, John, Robinson, Weisenberg

Status: In Assembly Governmental Operations Committee

S. 2489-A (Klein)

Cosponsors: Hassell-Thompson, C. Johnson, Krueger

Status: In Senate Housing, Construction and Community Development Committee

This bill would allow law enforcement to pursue criminal liability against an individual who knowingly does not remedy a violation of the uniform fire and prevention and building code which results in serious physical harm or death of a person. Such individual would have to have been served, either personally or by registered mail, with an order to correct the violation.

We oppose the bill as overly broad in its reach. As contemplated in this bill, a remedy to a violation may be beyond the scope of work of the individual served. A builder, architect, tenant contractor, subcontractor, construction superintendent, or their agents, may not be able to compel the correction of a violation since they do not control the building or the project. As written, the bill is overly broad and should not be enacted.

- **Construction Threshold**

A.8257 (Koon)

Cosponsors: Bacalles, Burling, Lifton

Status: In Assembly Higher Education Committee

S.5487 (Aubertine)

Cosponsors: Stachowski, Valesky, Winner, Young

Status: In Senate Higher Education Committee

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.

- **Damages for Delay**

A.7255-B (V. Lopez)

Status: In Assembly Governmental Operations Committee

S. 5411-A (Klein)

Status: In Senate Finance Committee

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.

April 7, 2010