



AIA Washington Council

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Issue Brief

Certificate of Merit — Support SB 5833

Background

A certificate of merit statute requires that an attorney representing a plaintiff certifies that an impartial third party who practices the same discipline as the defendant has been consulted and agrees in writing that there is a fundamental basis for the complaint. Many states that have certificate of merit statutes also require that the third party be willing to testify to the assertion. States with a certificate of merit law for design professionals include: Arizona, California, Colorado, Georgia, Illinois, Maryland, Minnesota, New Jersey, Oregon, Pennsylvania, South Carolina, and Texas.

Support SB 5833 — Certificate of Merit for Design Professionals

SB 5833 would require a certificate of merit to be filed with the court prior to a suit proceeding against a design professional. It is modeled after a similar requirement passed by the Washington State Legislature in 2006 (RCW 7.70.150) for medical professionals. SB 5833 would apply to “an architect, professional engineer, land surveyor, landscape architect, or geologist who is licensed and authorized by law to practice such profession.” It would also apply to the firms that employ these professionals and employees or subconsultants of those professionals.

Certificate of Merit Requirements Can Reduce Lawsuits

CNA/Schinnerer provides professional liability insurance policy and risk management program to construction-related professional design firms. It performed an analysis of claims data for construction-related professional design firms for 2001-2005 and found that “only 28.8 percent of all claims brought against Washington design firms insured by CNA through Schinnerer resulted in a payment...to correct property or economic damage or provide a remedy for a bodily injury.”

The study observes that for “71.2 percent of the claims, design firms were determined to have had no responsibility for damage or injury as measured by having no indemnity payment by the insurer on behalf of the design firm.”

A certificate of merit in these circumstances would have weeded out the frivolous claims and allowed the court to concentrate on the merits of the original case. Since a certificate of merit requires that a design professional of the same discipline as the defendant certify that a claim has merit, many cases against design professionals may be discouraged. The reason being that many attorneys may decide it is not worth the expense of filing a claim only to have it turned down before the court will entertain it. This in turn, may help the overburdened judicial system focus on cases that actually have merit.

Frivolous Lawsuits Increase Construction Costs

While most lawsuits against design firms are found to be without merit, firms still have expenses related to these suits. First, firms have to pay a deductible when the insurer defends against a claim. Legal fees generally exceed the deductible. Next, firm expenditures for administrative costs, employee salaries and lost productivity can be substantial. Finally, the insurers’ legal costs are transferred back to firms through higher premiums and higher deductibles. All of these expenses are typically passed on to clients through higher fees, increasing the cost of construction.