



AIA Washington Council

A Council of The American Institute of Architects
Stan L. Bowman, Executive Director
724 Columbia St NW Suite 120 (360) 943-6012
Olympia WA 98501-1291 1-800-722-0394
info@aiawa.org www.aiawa.org

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.



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Issue Brief

School Construction — Support HJR 4204 / SJR 8207 Simple Majority for School Levies

Background

The quality of education offered by a school district is directly affected by the quality of permanent facilities available to the district. Many districts deal with inadequate housing for students because of failed bond elections, particularly in high-growth districts where portable buildings are almost a way of life.

The need for modernization and new construction for school facilities has reached a critical stage throughout the state. Schools face the enormous challenges of record high enrollments, new demands for education technology, the need for school-based before- and after-school programs, and the health and safety hazards of deteriorating facilities. The overwhelming need to improve the condition of Washington's schools and to construct new buildings to accommodate rising enrollments affects school districts throughout the state. Because of this situation, the AIA/WA supports legislation to approve school district bonds by a simple majority vote, eliminating the sixty- percent majority and the forty- percent voter turnout requirements.

Support HJR 4204 / SJR 8207 — School Construction Levies

The Washington Constitution requires a supermajority of three-fifths of voters to support school maintenance, remodeling or new construction levy before it can be passed. This extraordinary burden has left many school districts with inadequate housing for students because of failed bond elections. Several school districts have had to go back to the ballot several times to pass a levy, even though a majority of voters supported them. Because of this situation, the AIA/WA supports legislation to allow voters to approve school district bonds by a simple majority.

HJR 4204 / SJR 8207 changes the requirement to pass a school maintenance and operations levy to a simple majority of voters and eliminates the forty- percent voter turnout requirements. Passage of these levies is vital to the upkeep of our schools. Regular maintenance of school facilities can delay the need for major renovations or new school construction, saving taxpayers millions of dollars in future construction bonds.

Americans Support School Construction Funding

In a nationwide poll of voters conducted December 16-22, 2004, (1,000 sample, margin of error +/- 3.1) by two respected national pollsters - The Tarrance Group, a Republican firm, and Lake Snell and Perry, a Democratic firm - it was found that when considering projects that government could spend tax dollars on, an overwhelming 91 percent of voters surveyed said that "repairing unsafe and dilapidated school buildings" was an important priority. Of those, a large 66 percent rated it "very important."

On another question, 77 percent of voters polled said they agreed with the statement, "We are in urgent need of renovating existing school buildings." Moreover, a majority of the electorate polled - 51 percent - said they "strongly agreed" while 26 percent said they "somewhat agreed." High percentages of all demographic groups were in agreement on the need for renovating schools - notably, 82 percent of women and 86 percent of Hispanics were in agreement.

Additionally, the survey found that voters nationwide believe state and local governments are not doing a particularly good job when it comes to repairing dilapidated school buildings. Only 27 percent positively rate "state and local governments' ability to repair dilapidated school buildings." In fact, a whopping 11 times more voters rate them "poor" than "excellent" on this issue.



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Issue Brief

Oppose Anti-Vesting Bill — HB 1463/SB 5507

Background

Washington state laws on building codes and growth management include a provision that allows a project to be protected from future changes to the laws by allowing them to lock-in the laws under which a project must be completed. This process is called “vesting.” In Washington, vesting occurs when a permit application is filed and certified as complete. This is the most appropriate time in a project to vest because designs and project plans are substantially complete and construction is often poised to begin when a permit application is filed.

Vesting Laws Provide Clarity and Predictability

The current process for vesting projects provides owners, architects and building officials with clear and predictable guidelines for construction and development. Washington’s current laws provide that when the documentation is submitted for a permit and the application is certified to be complete, the project is vested and the laws in effect on that date are applied. This system gives the owner, the public, design professionals and building officials predictability as the project moves through the review process.

Property owners spend large sums of time and money preparing to apply for permits to build structures or develop land. During the design process, it is the architect’s responsibility to research the existing laws and be sure that the project conforms to these laws. But, there is no way for an architect to predict how those laws may change in the future. Some changes take several years to work through the public process, and may go through dozens or even hundreds of revisions during their development. It is impossible to predict which revisions will be finally adopted and which provisions will not be kept by a government entity revising laws or adopting new laws.

HB 1463/SB 5507 Would Create Chaos in the Construction Markets

The anti-vesting legislation would result in project delays and projects being cancelled for the lack of predictability. If the project is not vested at the time a permit is submitted, any change in any regulation could send the owner “back to the drawing board” requiring considerable expense and time delay. That degree of unpredictability would be an unfair burden, and it would fall on all homeowners, business owners and developers working responsibly within the regulatory and statutory framework.

The certainty that vesting provides is particularly important to large infill developers, who must contend with both a complex regulatory environment and high pre-construction costs compared to projects typically associated with suburban sprawl. HB 1463/SB 5507 would have a disproportionately negative impact on dense urban redevelopment, which Washington’s Growth Management Act seeks to encourage. It would provide a substantial market advantage to low density development, and, accordingly, is squarely inconsistent with Washington’s core growth management objectives.

It would affect every project from low income housing to hospitals to schools to transportation.

HB 1463/SB 5507 Would Increase Architect Liability Costs

This lack of predictability would also create a huge liability concern for architects. Architects are responsible for ensuring that projects are designed to meet all applicable codes, laws and regulations. If an architect’s designs do not meet such standards, he or she can be held liable for the cost of changes to bring the project into compliance. This is a reasonable standard, provided that the laws are clear and are not changed after the designs are completed. Applying changes retroactively to completed designs creates an unreasonable burden on architects to predict the future.



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info@aiawa.org

Issue Brief

Permanently Remove the Alaska Way Viaduct

Background

After more than 50 years of use and a major earthquake, the Alaska Way Viaduct is now a public safety hazard and must be removed. The decision on its replacement will set the course of Seattle region's urban landscape and natural environment for the next 100 years.

Seattle is not the first city to have to deal with replacing an urban elevated highway in the heart of its downtown. Other cities such as, Portland, San Francisco, New York, Milwaukee, Seoul and Birmingham, England, have all removed elevated urban highways and chosen to reconnect to their waterfronts with surface street designs. In Washington State, the Seattle Art Museum's new Olympic Sculpture Park gives us a sense of what is possible.

Environmental and Economic Consideration

Removal of the viaduct should be seen as part of the city's and the state's deep commitment to environmental stewardship. We must take responsibility for preserving Puget Sound's fragile eco-system. Automobile capacity should not be the primary criteria for choosing the viaduct's replacement. The solution should be part of a long term strategy for regional transit that reduces automobile use and resultant pollution.

Connecting the city and the waterfront provides a physical connection between the region's urban and natural landscapes, opportunities for much needed public space and amenities and a long-term stimulus to economic development. A renewed waterfront would be an economic boon, allow for rehabilitating natural habitats and promote establishing a green urban environment in Seattle.

Not Another Elevated Viaduct

The American Institute of Architects (AIA) Washington Council believes that the first decision to be made is to permanently remove the elevated viaduct and take consideration of another elevated structure off the table. The city and the state need to have an environmentally responsible, long-range vision for the growth of our state's largest urban center. An elevated highway through heart of the city's waterfront is detrimental to the environment, health of its citizens and a drag on the city's economy. It depresses property values next to it and inhibits the redevelopment of the entire waterfront for the benefit of its citizens and tourists.

The Next Steps

Create a public facilities district (PFD) to move the project forward. The state should take this project out of WSDOT's hands and put it into the hands of an agency that can take a larger view of the problem and can represent a broader set of interests. A PFD could fairly represent state-wide and local needs.

Immediately implement transit enhancements, surface street improvements and other mitigation projects. The PFD should immediately begin implementing the mitigation projects already planned for any replacement project, starting with increasing the utilization of mass transit for getting into and around in the Seattle region. Several local street and connection improvements are also planned for any replacement and can begin immediately.

Once the traffic mitigation is in place, demolish the viaduct and remove the public safety hazard.

Create a new design for the waterfront. While the mitigation and demolition are occurring, the PFD will have time to thoroughly evaluate new options for moving people into and around in the City of Seattle. Because the mitigation will take several years to complete, the overall project schedule would not be delayed by moving a decision on the final replacement design. In fact, this process would be faster and less invasive than WSDOT's current plan, which calls for an incremental replacement of the viaduct over the next seven to ten years.