

**TESTIMONY IN SUPPORT OF SB 5833
CERTIFICATE OF MERIT
SENATE JUDICIARY COMMITTEE
February 16, 2007**

TESTIMONY BY:

James A. Miller, PE, LG
Chief Executive Officer
GeoEngineers, Inc.
Redmond, Washington

Beth Andrus, Esq.
Vice President
Skellenger Bender P.S.
Seattle, Washington

DESCRIPTION OF THE PROBLEM

- The construction industry faces a systemic problem in the way in which disputes are resolved on difficult projects. When a lawsuit is filed, the typical approach for claimants and respondents alike is a “shotgun” approach in which litigants name as parties every entity who has had anything to do with the design or construction oversight of a project.
- Design professionals (such as architects and engineers) are named as parties frequently on the mere suggestion that a design error occurred, without an adequate factual basis to demonstrate fault or liability on the part of that design professional. Little investigation or analysis is done to confirm this “suggestion” before initiating the claim.
- Once involved in the legal process, the design professional incurs significant costs of defense, intrusive business disruptions and demoralizing stress to respond to a claim that may have no basis in fact. Part of the emotional impact is related to the fact that design professionals, by virtue of their state license, can bear personal liability for damages arising from professional negligence.
- Although current court rules and case law require a claimant to identify an expert witness to substantiate such a claim, this disclosure comes very late in the litigation process.
- It is often less expensive to pay some money to settle a meritless claim than it is to wait and see if the claimant ever substantiates the negligence claim. It leaves many design professionals with a deep dissatisfaction with our judicial system and a sense that our civil dispute resolution process amounts to “legal extortion.”

- National experience has shown that more than 8 out of 10 claims against design professionals are not sustained with a finding of fault against the professional. But it is a very expensive and disruptive proposition to carry a legal proceeding to final resolution. Furthermore, the legal costs of the proceeding are typically not fully recoverable even in the event of a complete exoneration of the design professional.
- Business and insurance costs are increased substantially because of the cost of meritless litigation against design professionals.

THE CERTIFICATE OF MERIT BILL AND HOW IT WILL HELP

- SB 5833 is modeled after the Certificate of Merit provisions that are part of last year's medical malpractice legislation (codified at RCW 7.70.150). The wording of SB 5833 follows the logic and precedent of that statute.
- Identical to the requirements under the medical malpractice legislation, SB 5833 would require that anyone claiming a design professional violated a standard of care must obtain a Certificate of Merit signed by a qualified expert before filing a claim of professional negligence against a design professional.
- The definition of "design professional" in SB 5833 includes individual licensed professionals as well as the organizations that employ them. This definition would help governmental organizations (such as the State of Washington), as well as private businesses, by ensuring that there is an adequate factual basis for a lawsuit before that lawsuit is filed.
- The requirements of SB 5833 do not limit or impede anyone from filing claims against design professionals (the claimant would need to produce an expert to show a factual basis of fault during the course of the legal proceeding anyway). The Certificate of Merit would simply change the timing for producing an expert to the outset of a claim.
- A Certificate of Merit would appropriately focus litigants' time and money on claims against design professionals determined by a qualified expert to have a factual basis. Not only would this limit the number of parties that may be involved in a construction dispute, but it would also streamline resolution of the claims.

APPEAL FOR SUPPORT

- More than half of the states in the United States already have certificate of merit statutes that cover design professionals.
- Over time, the proposed Certificate of Merit statute will improve business conditions in Washington State, reduce court congestion, reduce professional liability insurance premiums, and reduce the time and money that is wasted in unnecessary litigation.
- Please support this important bill and vote it out of Committee.