



Numerous State Transportation Funding Initiatives Approved By Voters

Many states, feeling the financial squeeze as a result of Congress' inability to pass a long-term TEA-21 reauthorization bill, voted in favor of ballot initiatives during the November election to boost infrastructure funding by approximately \$28 billion.

Of 55 transportation related ballot initiatives across the nation, 44 passed, most notably a Missouri initiative that would prevent the state from diverting highway user fees away from transportation projects.

Counties in Arizona, California, Colorado, and South Carolina voted in favor of increasing or extending sales taxes that would create billions of dollars for road and transit projects.

Arkansas, Rhode Island, and ten local



regions voted in favor of bond initiatives that would be used for rail and transportation improvements, while citizens in Austin, Texas endorsed the building of a commuter rail line in their city that wouldn't require a tax increase.

"I believe the broad success of these ballot initiatives underscores the public's frustration with the lack of funding for much needed projects," said ACEC's Chairman Elect Ed Mulcahy of TransSystems in Missouri. "Congress will pass a major highway bill in the near future, so it's important that the states take action to ensure that they have the matching funds necessary to move ahead with needed projects." ■

New CASE Contract Available for Structural Condition Assessments

CASE Document #16

Officially entitled "An Agreement between Client and Structural Engineer for a Structural Condition Assessment," this brand new document is intended to be used where owners of various types of structures require a structural condition assessment of their existing structure(s). It may be for upgrading the structure for increased loads; for damage from fire, wind or earthquake; for seismic retrofitting; for historic preservation or change in occupancy; or, for adding new structures upon or adjacent to an existing structure. Financial lending institutions and/or insurance companies, at times, require a structural condition assessment survey prior to an acquisition or for insurance purposes. Included are a letter agreement, an exhibit that defines the scope of services and an exhibit defining the terms and conditions. This 11 page document can be downloaded from the internet for \$14. Go to www.acec.org/case and click on "Contracts and Publications". ■



ACEC Annual Convention Neil Armstrong, James Carville, Mary Matalin to Highlight 2005 Annual Convention in D.C.

Washington, D.C. plays host to ACEC's Annual Convention, April 10-13, 2005, featuring Consulting Congress Day, Engineering Excellence Awards and a variety of educational and social activities. CASE will be holding meetings and hosting activities that will include a program by the Risk Management Program (RMP) and a reception for structural engineers.

The lineup of speakers includes the first man to walk the moon, astronaut Neil Armstrong, who will receive ACEC's 2005 Distinguished Award of Merit, as well as James Carville and Mary Matalin, who will provide a spirited debate on political issues.

The Grand Hyatt Washington (www.hyatt.com), located in the heart of D.C. will host Convention activities. Call the Hyatt at 202-582-1234 to secure your hotel room. ACEC's discounted room rates expire on February 1, 2005.

Be sure to watch for the Annual Convention brochure in the mail. Up-to-date Convention information also will be available by visiting the ACEC website at www.acec.org. ■

The First Thing We Do... A More Modest Approach To Tort Reform

"The first thing we do, let's kill all the lawyers." W. Shakespeare, King Henry VI, pt. II, Act IV, scene 2, line 72.

Tort reformers can be heard daily beating their drums for radical overhaul of the tort system. Doctors and other professionals claim the costs of frivolous lawsuits drive them out of practice. Trial lawyers are blamed because, without any investigation of the facts or law, they file lawsuits that have no merit.

Trial lawyers file frivolous lawsuits with impunity, extorting nuisance settlements from innocent victims. The unchained appetites of these unprincipled attorneys damage the public perception of the legal system, clog overcrowded courts, and victimize innocent parties.

Some may find Shakespeare's tort reform proposal appealing, if only for visceral reasons. Before considering Shakespeare's proposal, I offer a more modest proposal: Allow victims of frivolous lawsuits to sue the opposing lawyers for negligence.

A Tort Reform Proposal:

Treat All Professionals, Including Lawyers, Equally

How the Tort System Applies to Other Professionals

Doctors, engineers, accountants, and most other professionals can be sued for negligence not only by their clients, but also by third parties. They can be liable whenever they owe a duty to the injured person. The concept of duty is rooted in public policy, and the determination of whether a duty should be imposed on a professional involves a balancing of public policy considerations.

Courts impose a duty on a professional despite the express contrary direction of the professional's client. An engineer cannot design a building that is unable to withstand expected loads because the client demanded a less costly design. A doctor cannot allow his patient to drive home when the patient is impaired and may injure others. In each of these situations, courts are justified in imposing a duty. The engineer and doctor will be deterred from exercising less than appropriate care. This deterrent effect of the tort system is one of its most important functions.

Many professionals believe that a disciplinary proceeding by a licensing board is a more appropriate deterrent than



tort liability. They believe that only those who have mastered the professional body of knowledge are capable of evaluating a professional's performance. Doctors argue that a lay jury is not competent to pass judgment on a doctor because jurors are not qualified by education, training, or experience, and may base their decision upon their emotions. They argue that trial by jury is unfair and harmful to the profession because it usurps the power of the professional boards established to punish professionals who violate the profession's standards.

Trial lawyers respond to this argument by pointing out that the purpose of professional licensing boards is to discipline members. These boards do not redress the wrongs inflicted by professionals against the innocent public. The primary purposes of the tort system are not to discipline professionals, but to redress and deter wrongs. The disciplinary system and the tort system complement each other, and both are necessary.

Trial lawyers argue that disciplinary boards, composed of members of that profession, are more concerned with protecting their colleagues than with protecting the public. Trial attorneys also complain that they are unable to find an expert witness willing to testify against his brother professional because of a "conspiracy of silence." If it is known that the disciplinary boards will protect their colleagues, professionals will not exercise appropriate care as consequences are unlikely. The tort system is needed to deter wrongful behavior....▪

To read this article in its entirety, go to

www.acec.org/rmp.

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