

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1520

Short Title: Cert. of Merit/Civil Act./Engineer/Architect.

(Public)

Sponsors: Representative McComas.

Referred to: Judiciary I.

April 21, 2005

1 A BILL TO BE ENTITLED
2 AN ACT REQUIRING A CERTIFICATE OF MERIT ON CIVIL ACTIONS FILED
3 AGAINST A PERSON OR FIRM PROVIDING ARCHITECTURE OR
4 ENGINEERING SERVICES IN THIS STATE.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Subchapter VI of Chapter 1 of the General Statutes is amended
7 by adding the following new Article to read:

8 "Article 12A.

9 "Certificate of Merit for Civil Actions Against Design Professionals.

10 **"§ 1-123.1. Definitions.**

11 The following definitions shall apply in this Article:

12 (1) Certificate of merit. – A certification from a third-party licensed
13 professional engineer or licensed architect that a civil action filed
14 against a design professional has merit.

15 (2) Design professional. – A professional engineer licensed pursuant to
16 Chapter 89C of the General Statutes, an architect licensed pursuant to
17 Chapter 83A of the General Statutes, or any firm in which the licensed
18 engineer or architect practices, including a corporation, professional
19 corporation, limited liability corporation, partnership, limited liability
20 partnership, sole proprietorship, joint venture, or any other business
21 entity.

22 (3) Practice of architecture. – The same as defined by G.S. 83A-1(7).

23 (4) Practice of engineering. – The same as defined by G.S. 89C-3(6).

24 **"§ 1-123.2. Certificate of merit for civil actions against design professionals.**

25 (a) In any civil action or arbitration proceeding for damages arising out of the
26 provision of professional services performed by a design professional, the plaintiff shall
27 be required to file with the complaint an affidavit of a third-party licensed professional
28 engineer or licensed architect. The third-party licensed professional engineer or
29 licensed architect shall be competent to testify and hold the same professional license

1 and practice in the same area of practice as the defendant design professional. The
2 affidavit shall specifically state at least one negligent act, error, or omission claimed to
3 exist and the factual basis for that claim. The third-party licensed professional engineer
4 or licensed architect shall be licensed in this State and actively engaged in the practice
5 of engineering or architecture respectively.

6 (b) The contemporaneous filing requirement of subsection (a) of this section shall
7 not apply to any case in which the period of limitation will expire within 10 days of the
8 date of filing the action, and because of these time constraints, the plaintiff has alleged
9 that an affidavit of a third-party licensed professional engineer or licensed architect
10 could not be prepared. In these instances, the plaintiff shall have 30 days after the filing
11 of the complaint to supplement the pleadings with the affidavit. The court may, on
12 motion, after hearing and for good cause, extend the time within which the affidavit is
13 to be filed, as justice requires.

14 (c) The defendant shall not be required to file an answer to the complaint and
15 affidavit until 30 days after the filing of the affidavit.

16 (d) The plaintiff's failure to file the affidavit in accordance with subsection (a) or
17 (b) of this section shall result in a dismissal of the complaint against the defendant. In
18 the court's discretion, the dismissal may be with prejudice.

19 (e) An order granting or denying a motion for dismissal is immediately
20 appealable as an interlocutory order.

21 (f) This section shall not be construed to extend any applicable period of
22 limitation or repose.

23 (g) This section does not apply to any suit or action for the payment of fees
24 arising out of the provision of professional services performed by a design
25 professional."

26 **SECTION 2.** G.S. 1A-1, Rule 9, is amended by adding the following new
27 subsection to read:

28 "(j1) Civil Actions Against Design Professionals. – Any complaint alleging
29 damages arising out of the provision of professional services performed by a design
30 professional, as defined by G.S. 1-123.1(2), shall be filed in accordance with Article
31 12A of Chapter 1 of the General Statutes."

32 **SECTION 3.** G.S. 89C-10 is amended by adding the following new
33 subsection to read:

34 "(j) The Board shall have the power to adopt rules to discipline professional
35 engineers licensed under this Chapter who certify a civil action that is without merit in
36 violation of Article 12A of Chapter 1 of the General Statutes."

37 **SECTION 4.** G.S. 83A-6(a) is amended by adding the following new
38 subdivision to read:

39 "(a) The Board shall have the power to adopt bylaws, rules, and standards of
40 professional conduct to carry out the purposes of this Chapter, including, but not limited
41 to:

42 ...

1 (6) The disciplining of architects licensed under this Chapter who certify a
2 civil action that is without merit in violation of Article 12A of Chapter
3 1 of the General Statutes."

4 **SECTION 5.** This act is effective when it becomes law.