

1 COMMONWEALTH OF PENNSYLVANIA  
2 HOUSE OF REPRESENTATIVES  
3 JUDICIARY COMMITTEE  
4 SUBCOMMITTEE ON COURTS

5 \* \* \*

6 IN RE: HOUSE BILL 2070

7 \* \* \*

8 Verbatim record of hearing held  
9 at the Railroaders Memorial Museum,  
10 Altoona, Pennsylvania, on Thursday,  
11 May 25, 2000  
12 9:00 a.m.

13 \* \* \*


14 MEMBERS OF COMMITTEE

15 HON. DANIEL CLARK, CHAIRMAN  
16 HON. FRANK DERMODY  
17 HON. PETER DALEY  
18 HON. STEVE MAITLAND

19 ALSO PRESENT

20 Hon. Richard D. Geist  
21 Brian Preski, Chief Counsel  
22 Beryl Kuhr, Minority Chief Counsel  
23 Dave Callen, Research Analyst to Representative  
24 Peter Daley

25 ADELMAN REPORTERS  
231 Timothy Drive  
Gibsonia, Pennsylvania 15044  
724/625-9101 or 1263



INDEX TO WITNESSES

<u>WITNESSES:</u>	<u>PAGE</u>
Representative Geist	3
Joseph Nypaver, Esq	5
Mr. Callen	25
Joseph Nypaver	27
Dennis Sheehan, PLS, Vice President of Pennsylvania Society of Land Surveyors	44
C. Michael Weaver, Deputy Secretary For Regulatory Programs for Department of State	55
John Over, Vice President of the PEEADS Group	63
Art Schwarz, Deputy Executive Director and General Counsel With the National Society of Professional Engineers in Virginia	66
Maureen Guttman, Licensed Architect	71
Art Schwarz	75
John Over	77
Art Schwarz	79
Representative Daley	81
Engineers' Good Samaritan Laws	82
Testimony of AIA Pennsylvania on House Bill 2070 by Maureen Guttman	88
<u>E X H I B I T S</u>	
1 - 42 Pa CSA 8332.4 "Rights and Immunities"	34
2 - 42 Pa CSA 8501, "Matters Affecting Government Units."	44

1 CHAIRMAN CLARK: Good morning. My name is  
2 Representative Dan Clark and I am the Chairman of the  
3 Judiciary Committee Subcommittee of Courts and today  
4 is the time and place advertised to hold a public  
5 hearing on House Bill 2070 which is introduced and  
6 prime sponsored by Representative Geist and being here  
7 in Altoona, that's Representative Geist's home area,  
8 so to speak. That deals with immunity for profession-  
9 al engineers, land surveyors, et cetera and we'll let  
10 Representative Geist fill us in on the details of  
11 that bill.

12 Before we ask Representative Geist to  
13 testify, I'd like to start down here to my left and  
14 have everybody introduce themselves to the people in  
15 the room and also put them on the record.

16 MS. KUHR: Beryl Kuhr, Minority Counsel  
17 to the committee.

18 MR. CALLEN: I'm David Callen. I'm here  
19 for Representative Pete Daley.

20 REPRESENTATIVE DERMODY: Frank Dermody,  
21 State Representative from Allegheny County.

22 MR. PRESKI: I'm Brian Preski, Chief Counsel  
23 to the committee.

24 CHAIRMAN CLARK: Representative Geist?

25 REPRESENTATIVE GEIST: I'll just sit here.

1 The purpose of this bill is very very simple and it's  
2 in times of disaster and natural calamity, to hold  
3 the disciplines harmless for decisions that are made  
4 in the best professional judgment to get our society  
5 back up and running. We have examples of it here  
6 where we have had highways and bridges that have  
7 washed out in flash flooding and an engineering  
8 company goes in with PennDOT's auspices and you do a  
9 lot of things and you do them to the best of your  
10 ability to get things back up and running and this  
11 bill has been a long time coming and I'm just pleased  
12 to put my name on it and circulate it for sponsorship.

13 CHAIRMAN CLARK: Thank you, Representative  
14 Geist. Does anyone have any opening questions for  
15 Representative Geist?

16 (No response.)

17 REPRESENTATIVE GEIST: Architects need this  
18 a lot more than engineers.

19 CHAIRMAN CLARK: They do. With that, I'll  
20 invite you to join us and listen to the remainder of  
21 the testimony today. The first individual to provide  
22 testimony before the committee today will be Joseph  
23 Nypaver. He is with the law firm of Levine, Reese  
24 and Serbin. If you would like to introduce yourself  
25 again to us, you can probably fill in your law firm

1 probably a little better than I can and provide us  
2 with some background.

3 MR. NYPAVER: Thank you. I appreciate the  
4 opportunity to be here very much. Actually, the name  
5 of my law firm for the last couple of years has  
6 changed since Levine, Reese and Serbin. It is now  
7 Reese, Serbin, Kovacs & Nypaver. I have an office  
8 here with my partners on Logan Boulevard here in  
9 Altoona. I reside in Hollidaysburg, of course, the  
10 County seat here in Blair. My practice in law is  
11 limited to the area of personal injury and I repre-  
12 sent victims who have been injured by the carelessness  
13 or negligence of others. I'm also involved in insur-  
14 ance litigation, representing insureds who have been  
15 victimized by insurance companies in different types  
16 of insurance disputes.

17 I am here today, I guess, in part at the  
18 request of the Pennsylvania Trial Lawyers Association.  
19 I am also a member of the American Trial Lawyers  
20 Association, as well as the Blair and Pennsylvania  
21 County Bar Associations but I am also here as a life-  
22 long resident of Pennsylvania and I have provided my  
23 written testimony, 30 copies, to this committee as  
24 well as additional copies along with a couple of  
25 exhibits and I certainly don't intend to read my

1 testimony over.

2           However, I do appreciate the opportunity to  
3 highlight a few points.

4           I'm excited to be here and I am also, I have  
5 to tell you, a little bit nervous. I feel like I'm  
6 back in my ninth grade Pennsylvania civics class. I  
7 think my civics teacher, Mr. Fred Watson, hopefully  
8 he's looking down on me today with a smile and  
9 hopefully I'll make him proud.

10           In addition to my practice of law, I like  
11 to think that I serve the residents of this community  
12 in a different way, beyond just the practice of law  
13 and representing them when they need help. I also  
14 devote part of my time to volunteerism. I have served  
15 as a member of the United Way of Blair County Board  
16 for a number of years. I was its President and served  
17 in a number of roles within the United Way. I have  
18 served on the Salvation Army Advisory Board, the  
19 Central Pennsylvania Humane Society. I have worked  
20 with that agency; the American Heart Association, the  
21 Chronic Pain Association, that's the Blair County  
22 Chapter; as well as a little bit of, I'll admit,  
23 greedy self-interest volunteerism and that's with the  
24 Western Pennsylvania Golf Association. I am a Rules  
25 Official with West Penn Golf Association. I also

1 officiate at tournaments involving the United States  
2 Golfing Association. That's the greed portion of my  
3 volunteerism.

4 House Bill 2070, when I first received it  
5 coming back from vacation a week and a half ago, I  
6 read it and in my first impression of it was, not a  
7 bad idea. You know, you always want to see protection  
8 for volunteerism. I like to think that volunteerism  
9 was around long before the concept of a thousand  
10 points of lights a few years ago was initiated and I  
11 think volunteerism is critical and plays a vital role  
12 in our County and also Statewide. But then I must  
13 say I put my lawyer hat on and I thought it over and  
14 looked at the proposed legislation a little closer  
15 and the first thing that struck me was while a good  
16 samaritan concept is certainly well intentioned, I  
17 would respectfully submit to you that the intent of  
18 this legislation, while it is indeed well intended,  
19 is really not necessary. There is not a problem in  
20 Pennsylvania involving any type of litigation explos-  
21 ion for volunteers and that's not just with design  
22 professionals, engineers, or surveyors; it's with  
23 volunteers across the gamut,. I would suggest that as  
24 far as this Committee's consideration, that you take  
25 in due account as to if there is a problem, then let's

1 fix it. There is not a problem, then we don't need  
2 to fix anything. Nothing is broke.

3 I did some legal research in the time that  
4 I had to prepare for this hearing and I was not able  
5 to find a single reported case in this Commonwealth  
6 where a design professional and the individuals  
7 within that definition have been sued or any case  
8 that has gone into litigation with any resolved of  
9 anything or any type of volunteerism act that would  
10 be within the context of House Bill 2070. So, I  
11 guess I would start out by making the point that  
12 while it's certainly well-intentioned and I fully  
13 agree it is a well-intentioned proposed legislation,  
14 it is really not necessary because there is not a  
15 problem in Pennsylvania.

16 Now, I'm not going to tell you that it's  
17 not a concern for other states. Quite frankly, I  
18 don't know. Fortunately, you folks certainly have  
19 enough on your plate to deal within our borders of the  
20 State than to worry about what other states are  
21 involved in.

22 I would like to give you one experience,  
23 and I mention it in my written testimony, of an  
24 experience I had in Blair County. Representative  
25 Geist mentioned about flooding in Blair County and



1 occasionally some of our communities do have such a  
2 problem. Several years ago, and I say several, as I'm  
3 sure your schedules are busy, it kind of runs  
4 together after a while. It's probably about seven or  
5 eight years ago there was a period of flooding in  
6 our community and things were pretty bad and over in  
7 a building office on Sixth Avenue, the Pennsylvania  
8 Emergency Management Association, Red Cross and a  
9 few other nonprofit organizations had called  
10 professionals from different areas to volunteer time  
11 to help with the flood victims. I was pleased to be  
12 called and asked to help out and I provided free  
13 legal assistance and counseling for individuals who  
14 were involved, victims of the flood, and needed help  
15 with insurance questions, particularly homeowners  
16 insurance questions and there was a large room and  
17 we all had different stations and we had signs and  
18 people would eventually make the rounds. Of course,  
19 not everyone stopped at your station but different  
20 people and as you would hear stories of victims and  
21 you tried to help them, it was very difficult for  
22 some people but I never felt so good to miss out on  
23 a quiet peaceful Saturday with my wife than I did  
24 that day and it was a long day, but it was a great  
25 day because there were volunteers ready to help our

1 neighbors and it wasn't some large sanitized group.  
2 It was Blair County people helping Blair County  
3 people, neighbors helping neighbors, and there were  
4 a lot of volunteers there and from that particular  
5 experience I never heard of a single victim ever say,  
6 Geez, the assistance I got was terrible. I want to  
7 sue or what that guy at the next table told me  
8 wasn't right. It was usually a very thoughtful  
9 thank you and I never heard from that experience or  
10 any experience any volunteers that had been sued for  
11 trying to help out. And so, again, it goes from the  
12 practical standpoint of is it really a problem and I  
13 would submit to you that it's not.

14 I would also suggest to you that you  
15 currently have at least two laws on the books that  
16 have been enacted by the legislature that may very  
17 well cover what is intended to be covered by House  
18 Bill 2070 and at first, and I have it attached as  
19 Exhibit 1 to my written testimony, and that's at  
20 42 Pa. C.S.A. Section 8332.4. There is actually  
21 a chapter, subchapter (c) that deals with immunities  
22 in general and I'm sure everyone is familiar with the  
23 Good Samaritan Civil Immunity Act and there are a  
24 number of other different statutes, sections, dealing  
25 with immunities. Well, there is one in particular,

1 this .4, that is titled Volunteer in Public Service  
2 Negligence as standard and I'm not going to go  
3 through the quote in great detail. It just points  
4 out that if someone without compensation renders  
5 volunteer services for a nonprofit organization or  
6 a Commonwealth or local government agencies conducting  
7 or sponsoring a public service program or project is  
8 not exposed to any liability unless that conduct  
9 falls below the standards generally practiced by the  
10 particular profession. So, there is one law.

11 Also, I would refer you respectfully to  
12 the Political Subdivision Tort Claims Act which was  
13 passed in 1980. That drastically limited situations  
14 that an individual, a victim who is injured may file  
15 a lawsuit, make a claim for his or her damages against  
16 any local government agency and there are really only  
17 eight exceptions to this general broad immunity and  
18 Section 8501 of that law defines an employee as one  
19 to include a person who is acting by or on behalf of  
20 a governmental unit, whether or not they are compensat-  
21 ed. Section 8548 of the Political Subdivision Tort  
22 Claims Act also provides that the employees of local  
23 government agencies shall be indemnified. So, there  
24 is a second potential layer of protection for the  
25 types of individuals that are of concern in House Bill

1 2070. Based on those two laws, I would submit to  
2 you that what is intended to be covered by 2070 is  
3 already there.

4 In doing the research in preparing I, of  
5 course, the Chair of your Committee, Mr. Clark,  
6 mentioned that I had Purdon's with me. If you turn  
7 to 8332.4, that particular section, and it's an  
8 annotated version, if you turn to that particular  
9 section, they will have squibs or abstracts of cases  
10 interpreting or involving that. What's interesting  
11 is that there isn't a single case either in the hard-  
12 bound volume or the pocket case that talks about any  
13 challenge to this and because of that, I would  
14 respectfully suggest that 8332.4 being in place has  
15 a very large potential for a broad application and  
16 that brings me to the next point that I have concern  
17 about with this proposed legislation is that if you  
18 have potentially two statutes already on the books  
19 and you bring in a third statute that may or may not  
20 cover certain circumstances, then if I am on the  
21 plaintiff's side and in dealing with House Bill 2070,  
22 I would take the position that House Bill 2070 would  
23 limit non-design professionals who volunteer their  
24 time and services, would limit their or, excuse me,  
25 they would -- House Bill 2070 would limit immunity to

1 those individuals and any other volunteers involved  
2 in a catastrophic or disastrous situation, by virtue  
3 of the fact that you have enacted a very specific and  
4 limiting statute, you have implied that all those  
5 other volunteers should be subject to liability. So,  
6 while you create a specific, then you are exposing a  
7 number of other non-design volunteers.

8 In addition, we don't know where the courts  
9 will run with it. The courts may very well take a  
10 broad application to this. The court may, as I have  
11 previously suggested, interpret this proposed legis-  
12 lation as a way of saying, well, the legislature in  
13 interpreting this new statute, House Bill 2070, they  
14 must not have intended the other two statutes to  
15 apply. So, they would put a very limiting use on the  
16 two laws already on the books.

17 The other point I would like to make is,  
18 and I'll be the first to admit, one could argue that  
19 I have a vested interest in it but since I was a  
20 child and I have lived my whole life believing in our  
21 legislature and believing in our legal system and I  
22 still do despite having developed my interest in  
23 government and law during the Watergate days, I have  
24 faith in our legal system and faith in our judicial  
25 system but more importantly, I have a great deal of

1 faith in our jury system and when you think about it,  
2 we hear a lot of anecdotal evidence about ridiculous  
3 results of juries. You often hear the case, since  
4 most of you are drinking coffee, about the woman  
5 involved with McDonald's. Of course, when you hear  
6 it, snip it, I'm sure you realize just like whenever your  
7 activities and your efforts are not fully reported in  
8 the media, there is a lot more to that case and  
9 having had the honor of being involved in jury trials  
10 my entire practice, I can tell you it is a very rare,  
11 very rare circumstance indeed when a jury will not  
12 fully and adequately respond to their duties as they  
13 sit in the jury box and the jury is made up of your  
14 constituents in the respective community. Usually,  
15 in the jury, there is no less than a hundred to 140  
16 years of experience, of life experiences. That's a  
17 great asset that we have in our legal system, then  
18 on a case by case basis it can be decided.

19 One last point and it's really not  
20 developed in my notes but I did, I'm proud to say,  
21 type up myself on my own computer. I finally  
22 finished at 1:30 this morning and I don't think my  
23 wife believes me. I think she thinks I may have had  
24 my secretary do this whenever I showed it to her,  
25 but I didn't develop it in my written testimony and

1 it's, I would call it a practical consideration. As  
2 a lawyer who represents people who are injured, who  
3 have claims, it's not realistic to take on a case  
4 without a great deal of forethought and consideration  
5 whenever it involves someone who is volunteering their  
6 services in any aspect, whether it be a fire, an  
7 explosion, an earthquake, whatever the catastrophic  
8 category would be. When someone has volunteered their  
9 time and efforts to help one out, as an attorney, it's  
10 not a situation where I'm going to think, oh, I got  
11 a lawsuit here. We are going to go after these people  
12 because it does not make sense to automatically go  
13 through. So, I would suggest to you that there is a  
14 screening authority. Attorneys typically have a lot  
15 of time and cost involved in every case that we  
16 handle. So, while there certainly may be a few  
17 attorneys, and I would suggest it's in the very small  
18 minority, that would take a case without putting the  
19 effort into it, the true and tested attorney would  
20 not just willy-nilly take on such case. It would  
21 only be in a circumstance where there may very well  
22 be justification to move forward with a legal claim.  
23 So, from a practical standpoint, there is also that  
24 shield or that protection beyond the two pieces of  
25 litigation or, excuse me, the two statutes that I

1 mentioned are already on the books. Along with that,  
2 as one who has volunteered for a number of years in a  
3 number of activities, one does not volunteer looking  
4 over their shoulder, wondering whether or not they  
5 will be sued. One volunteers out of a desire within  
6 your heart and your mind to help your fellow man or  
7 woman. That's where you volunteer from. I think that  
8 most people in this state recognize that. When you  
9 think about it, if you are giving that immunity to  
10 design professionals, potentially, I'm not suggesting  
11 that it will happen but there is certainly the  
12 potential that the standards of work will be lowered  
13 because they will know that there is immunity for  
14 only the wanton and willful conduct. Now, I dare  
15 not suggest and I certainly am not suggesting that  
16 there is a design professional, surveyor, engineer or  
17 whatnot that would actually carelessly or recklessly  
18 disregard their efforts because they are volunteering  
19 in the first place, they probably have their heart  
20 and mind in the right place but there certainly is  
21 that potential. Taking it to a practical side, not  
22 only can an individual suffer, for example, we have a  
23 great new ballpark that hopefully you have all been  
24 to, let's say I have tickets for the game tomorrow  
25 night. There is an explosion or a fire. An engineer



1 comes in and does work with the repair. It turns out  
 2 that the repair work on the arches and whatnot was  
 3 certainly defective and not up to a professional  
 4 standard. The following year individuals are at that  
 5 stadium. A number of individuals are severely injured  
 6 or killed. Let's say there might be a claim against  
 7 the County. There is a limitation as to how much  
 8 you can recover. When you have parents that have  
 9 lost a couple of children or even worse, children  
 10 who have lost a parent and you tell them, sorry,  
 11 that's the most that is going to be recovered for  
 12 the loss of your parents because the engineer who  
 13 was careless or reckless in doing the repair work,  
 14 they have immunity and we can't prove that it was  
 15 willful or wanton conduct. Now, certainly, that is  
 16 a very unique and unlikely situation. However, look-  
 17 ing at it in the broad context, trying to see the  
 18 entire force, that is the potential negative effects  
 19 of 2070.

20 I guess what I'm saying in conclusion is  
 21 that there is no litigation crisis in this area of  
 22 the law. It is not a problem. We have at least that  
 23 I know of, there may be more, but from my limited  
 24 research to laws on the books that I believe may very  
 25 well protect the engineers. While it's certainly a

1 well intentioned effort, I would respectfully suggest  
2 to you that this legislation should be defeated and  
3 it's simply not necessary. I would be happy to answer  
4 any questions.

5 BY REPRESENTATIVE GEIST:

6 Q I have to take exception. I'm part of a  
7 volunteer group that Agro Capa G Snyder sued.

8 A What volunteer group is that?

9 Q Tortatuna (phonetic).

10 A Pardon?

11 Q Tortatuna.

12 A Okay. I'm familiar with what you are  
13 saying The situation, and I'm not so sure I'm aware  
14 of the exact fact. I think I may be if you are  
15 talking about the officer --

16 Q No. The people driving the car back to a  
17 hotel and they went through an intersection and got  
18 T-boned.

19 A Has that case gone through the litigation  
20 process?

21 Q I have no idea. The insurance companies  
22 took over. We paid for the right to be volunteers,  
23 five million dollars per occurrence. So, the biggest  
24 cost that we have for our little volunteer group is  
25 insurance to protect us to be volunteers.

1           A.     Mr. Geist, I certainly would not be critical  
2 of the Tortatuna and the volunteers that are involved  
3 in that because it is a huge mass of volunteers. With  
4 all due respect, sir, when I have addressed my  
5 comments to volunteerism, the volunteers, and that  
6 concept that I'm dealing with, was in the context of  
7 2070 where there have been people as the, I believe  
8 it's Section 3 of the proposed legislation addresses,  
9 those dealing with catastrophic events. I would  
10 respectfully suggest that that volunteerism that you  
11 are talking about is in a different category.

12           Q     Oh, it is. I just wanted to get that in.  
13 Edgar named everybody.

14           CHAIRMAN CLARK: Edgar may have taken that  
15 case because nobody else would.

16           MR. NYPAVER: I will not comment on that.  
17 You can take this as a **freebie** to your insurance  
18 company and suggest to them that they look at 8332.4  
19 and also the Political Subdivision Tort Claims Act.

20 BY REPRESENTATIVE GEIST:

21           Q     It's amazing how many attorneys are working  
22 on this.

23           A     I will not comment on Mr. Snyder and his  
24 operations. With all due respect, I was joking with  
25 my secretary that I was going to come in here and say

1 I never have been and never will be a member of the  
2 American Communist Party and talk about the old, you  
3 remember the Godfather. On that I'll take the  
4 Fifth Amendment, if I may. Any other questions?

5 CHAIRMAN CLARK: I think we have some  
6 additional Judiciary Committee Members show up. So,  
7 I think we will let them introduce themselves.

8 REPRESENTATIVE MAITLAND: Steve Maitland,  
9 91st District, Adams County, Gettysburg area. I took  
10 the scenic route in.

11 REPRESENTATIVE DALEY: Representative  
12 Pete Daley from the 49th Legislative District which  
13 encompasses the Mon Valley Section of Washington  
14 County and Fayette County.

15 BY CHAIRMAN CLARK:

16 Q I have a few observations or questions.

17 A Yes.

18 Q I think maybe one of the points of this  
19 Bill where it differs from what's currently on the  
20 books is the standard of finding a negligence. In  
21 the Bill it's wanton, willful and intentional and in  
22 the first section you cited, 8332.4, it's substantial-  
23 ly below the standards generally practiced and maybe  
24 you could comment on why some Good Samaritans have a  
25

1 standard of wanton and willful while other Good  
2 Samaritans just have a standard of general practice  
3 to delineate the different conducts?

4 A. Representative Clark, that is a very astute  
5 point that you draw, the difference to that, and when  
6 you think about it, if House Bill 2070 does have that  
7 level of protection and when I talk to juries and  
8 talk about legal standards, I always use the scales  
9 of justice and tell them if the scales tip ever so  
10 slightly, we have met the fair preponderance of the  
11 evidence in our favor. Willful and wanton, you are  
12 taking it to that level. Now, think about the context  
13 of willful and wanton in this proposed legislation and  
14 it's for some catastrophic or disaster event. The  
15 practical possibility of gathering evidence to be  
16 able to go to that willful and wanton level if we have  
17 a calamity of this nature, I would suggest to you is  
18 slim to none and that is certainly an overreaching  
19 protection that is in House Bill 2070; that it goes  
20 that far. There are other immunities that deal with  
21 the gross negligent and that may be perceived as a  
22 technical or legal difference. If you talk to juries  
23 sometimes about different standards and burdens of  
24 proof and different types of conduct and it's what  
25 I call the smell test. If it smells bad, regardless

1 of what the Judge tells the jury to apply the law,  
2 they are going to be able to sort through it all.  
3 They are going to be able to sort through that but  
4 I would suggest that that is a very far and over-  
5 reaching protection granted in 2070. Why is that  
6 carelessness or negligence standard appropriate,  
7 because that's a standard that I am guided by when  
8 I leave here to go back to my office, whenever I do  
9 anything and everything. That's a standard we are  
10 all guided by and to give this increased and extra-  
11 ordinary protection is simply not warranted; I would  
12 suggest to you.

13 Q You don't think we should add that standard  
14 to 8332.4 to be consistent but you mean to drag 2070  
15 back to the standards that are in 8332?

16 A Well, I wouldn't characterize it as dragging  
17 it back. I would suggest --

18 Q Bringing it back; how does that sound?

19 A I would suggest to you that if you look at  
20 the research and you look at the law, 8332.4, and  
21 the fact that, as you read it, you have that protect-  
22 ion but that standard of reasonableness is one that  
23 everyone else that does volunteer work, the nondesign  
24 professionals are suggested and limited to. That's  
25 the extent of where we really need to

1           Q     And the other question about this bill was  
2 when I think of Good Samaritan emergency situations,  
3 you know, I'm looking at the township bridge that  
4 might be about ready to go down. They go down the  
5 street and say, hey, you know, Joe works with this  
6 engineering firm. Let's bring him down and see what  
7 we can do to shore it up and get the people out and  
8 about, so to speak. And Joe comes down and says,  
9 last year, pour something here or roll that rock over  
10 there and if he's wrong, we did the best we could.  
11 I'm trying to figure out, and that's the situation  
12 I apply to that. I'd be interested in maybe even the  
13 people who testify after you to expand that because  
14 this Bill extends to 90 days following the end of the  
15 emergency and in the first scenario I set forth, you  
16 don't have much time to research or react. You take  
17 what is there and do the best you can with it and use  
18 your education and experience. When you go down 40,  
19 60, 75 days, you know, you may have time to plan,  
20 draw, test, et cetera. I was wondering -- if you  
21 can't tell me that, maybe someone after you can tell  
22 me where the situations are; why we need to extend  
23 that to 90 days following the end of the emergency.

24           A.     I would suggest that you don't need to  
25 extend it at all because you don't need the legis-

1           lation. Given your scenario, sir, as to that time  
2           limit, I would have to defer to the author of the  
3           Bill as to the reasoning of it. I can see it. I  
4           guess you have to draw a line somewhere as to what  
5           work is or is not but if Joe goes down to the bridge  
6           and says, move that rock and that there or there,  
7           he's not going to be guided by some equally, potential-  
8           ly equally thoughtless analysis of whether that  
9           conduct fell below his professional standards as to  
10          what he or she was required to do. It's going to be  
11          another peer. It's going to be another professional  
12          evaluating that standard as to whether or not it fell  
13          below an appropriate conduct that will provide that  
14          input as to whether or not it was negligence or  
15          carelessness. When you take a step back, that sounds  
16          great. Boy, let's take care of that design profession-  
17          al but what about the mother taking the child, the  
18          children to school four months, five months after  
19          that 90-day period? The bridge just collapses because  
20          that design professional didn't put forth that effort.  
21          What do you say to the children?

22                Q       My assumption in this Bill is that's  
23                temporary to save the bridge for the time and then  
24                after the emergency is over, then the design comes  
25                back and does a professional job. Like he said,



1 your arch, I don't see that next year, that temporary  
2 fix, to get you through the emergency is then going  
3 to be redesigned into a permanent fix when the  
4 emergency and things have settled down. That doesn't  
5 consist of a year or four or five months later.

6 A That's hoping and relying that that problem,  
7 the defect, the calamity was taken care of, at least  
8 from, as you suggest, as to a temporary standpoint  
9 and then dealt with again. Given the nature and  
10 degree, I mean, we can talk in the hypothetical but  
11 given the nature and degree of the calamity, that  
12 may or may not happen in that short period of time or  
13 in the four or five months down the road. Then,  
14 what do you say to the innocent victim, sorry? Yes,  
15 we know that the design professional was doing  
16 defective work but too late?

17 CHAIRMAN CLARK: Any other questions?

18 BY MR. CALLEN:

19 Q The material that you provided with your  
20 testimony, 8501?

21 A Yes.

22 Q At the end, the definition of the ploy,  
23 at the very end, it says, independent contractors  
24 under contract to the government unit and their  
25 employees and agents and persons performing tasks

1 over which the government unit has no legal right of  
2 control are not employees of the government unit for  
3 the purposes of the act. Do you have any ideas, I  
4 mean, are there any cases on point that explain what  
5 that means? It's a peculiar kind of exemption or  
6 exclusion.

7 A Well, I would agree with you. I can't  
8 provide you with cases dealing with that last section.  
9 I would suggest to you that the individuals covered  
10 under 2770 or dealt with under 2070 would not fall  
11 into that category.

12 Q What does the government not have a legal  
13 right of control over that? They would still  
14 contract with?

15 A Well, I perceive that last sentence as  
16 distinguishing the first part of the definition. In  
17 other words, the last sentence would be more of a  
18 definition of clarifying the concept of employee and  
19 that would exclude the independent contractor or  
20 someone where the government has no legal right to  
21 control their actions. In other words, that furthers  
22 the definition of nonemployee. I'm sorry, I do not  
23 have any cases that would help us interpret. I mean,  
24 as one of the staff people that writes legislation,  
25 it seems to be just a terribly ambiguous phrase.

1 I'm wondering if 2070 wouldn't help to clarify that?

2 A. I would suggest that you already have  
3 that covered, at least potentially.

4 CHAIRMAN CLARK: Any additional questions?

5 (No response.)

6 CHAIRMAN CLARK: Thank you very much for  
7 your testimony. I hope it was an enjoyable experi-  
8 ence and you are certainly welcome to stay the rest  
9 of the morning to see how the rest of the government  
10 process is going to follow.

11 MR. NYPAVER: I most certainly intend to  
12 and I appreciate the opportunity to talk to you.  
13 Thank you.

14 (The following was submitted for inclusion  
15 in the record:)

16 WRITTEN TESTIMONY OF JOSEPH J. NYPAVER

17 RE: HOUSE BILL 2070, AS AMENDED

18 My name is Joseph J. Nypaver. I am a  
19 life-long resident of Pennsylvania. I presently  
20 reside in Hollidaysburg. I am a partner at  
21 Reese, Serbin, Kovacs & Nypaver, L.P.P. in  
22 Altoona. I have been practicing law in Blair  
23 and its surrounding Counties since 1987,  
24 limiting my practice to representing individuals  
25 injured or killed by the carelessness (negligence)

1 of others. I also engage in insurance liti-  
2 gation on behalf of the insureds when they have  
3 been mistreated or victimized by their insurance  
4 company.

5 Professionally, I am a member of the  
6 Blair and Pennsylvania Bar Association, the  
7 Pennsylvania Trial Lawyers Association and the  
8 American Trial Lawyers Association.

9 In addition to my law practice, I have  
10 tried to serve this community in various other  
11 ways. I have served as a volunteer for the  
12 following non-profit organizations. United Way  
13 of Blair County, Board Member, President  
14 1996-1997; Salvation Army Advisory Board;  
15 Central Pennsylvania Humane Society; Blair  
16 County Chapter of the American Chronic Pain  
17 Association; and the West Penn Golf Association.  
18 I am also a veteran, having served four years  
19 in the 101st Airborne Division of the United  
20 States Army.

21 Regarding this Committee's consideration  
22 of HB2070, as a resident of this Commonwealth  
23 and a trial lawyer, I would respectfully  
24 recommend that this proposed legislation  
25 be defeated. In support of this position,

1 there are four significant points justifying  
2 this position.

3 First, while the concept of encouraging  
4 the "good samaritan" is certainly vital to  
5 our communities, liability exposure for work  
6 performed as a part of a volunteer effort in  
7 response to a disaster or catastrophic event  
8 by design professionals is NOT a problem in  
9 Pennsylvania. My legal research has not reveal-  
10 ed a single reported case in the Commonwealth  
11 of Pennsylvania where such an individual was  
12 sued in connection with professional services  
13 being volunteered in such circumstances. If  
14 there is no problem, there is nothing to fix.

15 I would offer one experience from here  
16 in Blair County. Several years ago, a number  
17 of our communities experienced tremendous  
18 flooding. PEMA and other organizations were  
19 put into action to respond to the various needs  
20 of the flood victims. A victim could obtain  
21 help for a variety of problems from volunteers  
22 in different fields. I had the pleasure of  
23 volunteering my time to provide free legal  
24 assistance/counseling to victims with questions/  
25 problems regarding their homeowners insurance.

1 Some tears were shed, followed by a lot of  
2 sweat and hard work but I never heard of  
3 any volunteer being sued for trying to help  
4 the victims of this disaster.

5 The people in Blair County and most  
6 of this state offer thanks when a volunteer  
7 helps, not legal papers. Unless you receive  
8 evidence of a real discernible problem in  
9 this regard, one must conclude that while well  
10 intended, HB 2070 just is not necessary.

11 Second, I would respectfully suggest  
12 that design professionals volunteering in  
13 circumstances outlined in Section 3 of HB 2070  
14 may already enjoy immunity. I would direct your  
15 attention to 42 Pa. C.S.A. Section 8332.4,  
16 titled "Volunteer-in-public-service negligence  
17 standard:. (See Exhibit 1 attached). Since  
18 1988 "no person who, without compensation  
19 and as a volunteer, renders public services  
20 for a nonprofit organization...or for a  
21 Commonwealth or local government agency  
22 conducting or sponsoring a public service  
23 program or project shall be liable to any  
24 person for any civil damages as a result of  
25 any acts or omissions in rendering such

1 services unless the conduct of such person  
2 falls substantially below the standards  
3 generally practiced..."

4 In 1980 the Political Subdivision Tort  
5 Claims Act became law. Generally this legis-  
6 lation drastically limited the situations in  
7 which a local agency or its employees may be  
8 subjected to liability regardless of the  
9 specific acts or omissions involved or the  
10 extent of damages suffered by the innocent victim.

11 In pertinent part, when 42 Pa. C.S.A.  
12 Sections 8501 and 8548 are considered, again,  
13 immunity may exist for design professionals  
14 volunteering services related to disasters  
15 or catastrophic event as outlined in HB 2070.  
16 Pursuant to Section 8501, an "employee" is  
17 defined to include "any person acting or who  
18 has acted on behalf of a government unit  
19 whether on a permanent or temporary basis,  
20 whether compensated or not..." In conjunction,  
21 pursuant to Section 8548, "employees" are  
22 indemnified (Exhibit 2 attached). See,  
23 Murray v. Zarger, 164 Pa. Commw. 157, 642  
24 A.2d 575 (1994) (definition of "employee" for  
25 purposes of indemnification does not require

1 that employee be compensated or have formal  
2 employment contract with government unit,  
3 as long as he is acting in its interests).

4 It is submitted that when the two  
5 statutes above are considered in the context  
6 of situations set forth in Section 3 of  
7 HB 2070, the call for the proposed legislation  
8 at issue may very well be, at best redundant.  
9 Again, if there is no problem, there is nothing  
10 to fix.

11 The third point in opposition to HB 2070,  
12 may appear to be a simple one but is neverthe-  
13 less important. How will the courts interpret  
14 and apply such a law, given the statutes  
15 noted above? One may argue that since the  
16 legislature has carved out a special immunity  
17 statute for design professionals notwithstanding  
18 the above noted laws, the two previous statutes  
19 must have a very limited application. This  
20 could be very detrimental to non-design  
21 professionals who volunteer their expertise in  
22 their respective field.

23 A fair reading of HB 2070 reveals concern  
24 for its scope, particularly with regard to  
25 Section 3. For example, if a design professional



1 is driving in connection with work at a  
2 disaster area and carelessly strikes another  
3 volunteer who is a pedestrian, does the care-  
4 less design professional have immunity even  
5 there may be motor vehicle liability insurance?  
6 What do you tell the innocent victim? HB 2070  
7 may bring about more litigation for the design  
8 professional because Section 3 will be subject  
9 to a host of interpretations otherwise avoided  
10 in laws already on the books for over ten years.

11 As a fourth and final point, it is  
12 respectfully suggested that our legal system  
13 and more specifically our jury system can  
14 better deal with obviously unique and hope-  
15 fully, infrequent careless or grossly negligent  
16 situations arising from catastrophic events  
17 on an individual case by case basis. Trial  
18 by jury has been called the "jewel" of anglo-  
19 saxon jurisprudence. If immunity though the  
20 above referenced laws may not apply in a  
21 specific situation let a jury comprised of  
22 representatives of that community decide  
23 liability, if any. Observing our legal system  
24 Alex DeTouqueville commented about the great  
25 significance of our jury system in civil cases.

1 He concluded that juries in civil cases are  
2 more important than in criminal cases. He  
3 recognized that service on a jury in a civil  
4 case requires each person to look beyond him-  
5 self and wipe away ones own self-interest that  
6 has become the rust of our society. Trust  
7 your constituents and their judgment.

8 In conclusion, until proven otherwise  
9 with documented proof, the position that no  
10 "litigation crisis" exists in this area of law  
11 in Pennsylvania must prevail. Instead of  
12 creating one special immunity statute that  
13 may result in more litigation, give the existing  
14 laws a chance to work as intended when enacted.  
15 Trust our legal system and the members of our  
16 communities to make the right decision as  
17 necessary.

18  
19 Respectfully submitted,

20  
21 Joseph J. Nypaver

22 EXHIBIT 1

23 RIGHTS & IMMUNITIES 42 Pa. C.S.A. #8332.4  
24 #8332.4. Volunteer-in-public-service  
25 negligence standard.

1 (a) General rule. --Except as provided  
2 otherwise in this section, no person who, with-  
3 out compensation and as a volunteer, renders  
4 public services for a nonprofit organization  
5 under section 501(c)(3) or (4) of the  
6 Internal Revenue Code of 1986 (68A Stat. 3,  
7 26 U.S.C. #501(c)(3) or (4) or for a Commonwealth  
8 or local government agency conducting or sponsor-  
9 ing a public service program or project shall  
10 be liable to any person for any civil damages  
11 as a result of any acts or omissions in rendering  
12 such services unless the conduct of such  
13 person falls substantially below the standards  
14 generally practiced and accepted in like cir-  
15 cumstances by similar persons rendering such  
16 services and unless it is shown that such  
17 person did an act or omitted the doing of  
18 an act which such person was under a  
19 recognized duty to another to do, knowing  
20 or having reason to know that such act or  
21 omission created a substantial risk of  
22 actual harm to the person or property of  
23 another. It shall be insufficient to impose  
24 liability to establish only that the conduct  
25 of such person fell below ordinary standards  
of care.

1 42 Pa. C.S.A. #8332.4 CIVIL ACTIONS &  
2 PROCEEDINGS

3 (b) Exceptions. --

4 (1) Nothing in this section shall be  
5 construed as affecting or modifying the  
6 liability of such person for acts or omissions  
7 relating to the transportation of participants  
8 in a public service program or project or  
9 others to or from a public service program or  
10 project.

11 (2) Nothing in this section shall be  
12 construed as affecting or modifying any existing  
13 legal basis for determining the liability, or  
14 any defense thereto, of any person not covered  
15 by the standard of negligence established by  
16 this section.

17 (c) Assumption of risk or contributory fault. --  
18 Nothing in this section shall be construed as  
19 affecting or modifying the doctrine of assumption  
20 of risk or contributory fault on the part of  
21 the participant.

22 (d) Construction. -- The negligence standard  
23 created by this section shall not be deemed to  
24 abrogate or lessen any immunity or other  
25 protection against liability granted by statute

1 court decision.

2 (e) Definitions. -- As used in this section,  
3 the following words and phrases shall have the  
4 meanings given to them in this subsection.

5 "Compensation." The term shall not include  
6 reimbursement for reasonable expenses actually  
7 incurred or to be incurred.

8 "Public service program or project." An  
9 organized program, or other public service  
10 ordinarily conducted or rendered by volunteers.  
11 1998, Dec. 21, P.L. 1862, No. 179, #1, effective  
12 in 60 days.

13

14

EXHIBIT 2

15

16

MATTERS AFFECTING GOVT UNITS . 42 Pa. C.S.A. #8501

17

18

Enactment

19

20

Title 42, Judiciary and Judiciary Procedure,  
of the Pennsylvania Consolidated Statutes, was  
enacted by Act 1976, July 9, P.L. 586, No. 142,  
generally effective 60 days from the date of  
final enactment of Act 1978, April 28, P.L. 202,  
No. 53 (June 27, 1978).

21

22

23

24

25

Chapter 85, "Matters Affecting Government

1 Units" was added by Act 1980, Oct. 5,  
2 P.L. 693, No. 142, #221(1).

3 Former Chapter 85, "Matters Affecting the  
4 Commonwealth" consisting of #8501, was repealed  
5 by Act 1980, Oct. 5, P.L. 693, No. 142, #221(k).

#### 6 Tables

7 Disposition and Derivation Tables are pro-  
8 vided in the first volume immediately preceding  
9 the text of this title in order to determine  
10 both the disposition of sections repealed or  
11 otherwise affected by the Judiciary Act  
12 Repealer Act (JARA) and the derivation of  
13 Sections of Title 42.

### 14 SUBCHAPTER A. GENERAL PROVISIONS

#### 15 Cross References

16 Original jurisdiction of Commonwealth Court,  
17 see 42 Pa. C.S.A. #761.

#### 18 #8501. Definitions

19  
20 The following words and phrases when used in  
21 this chapter shall have, unless the context  
22 clearly indicates otherwise, the meanings  
23 given to them in this section:  
24

25 "Act." Includes a failure to act.

1 "Commonwealth party." . A Commonwealth agency  
2 and any employee thereof, but only with respect  
3 to an act within the scope of his office or  
4 employment.

5 "Employee." Any person who is acting or who  
6 has acted on behalf of a government unit whether  
7 on a permanent or temporary basis, whether  
8 compensated or not and whether within or without  
9 the territorial boundaries of the government  
10 unit, including any volunteer fireman and any  
11 elected or appointed officer, member of a  
12 governing body or other person designated to act  
13 for the government unit. Independent contractors  
14 under contract to the government unit and their  
15 employees and agents and persons performing  
16 tasks over which the government unit has no  
17 legal right of control are not employees of  
18 the government unit.

19  
20 42 Pa. C.S.A. #8547 CIVIL ACTIONS & PROCEEDINGS  
21 #8548. Indemnity.

22 (a) Indemnity by local agency generally. --  
23 When an action is brought against an employee  
24 of a local agency for damages on account of an  
25 injury to a person or property, and he has given

1 timely prior written notice to the local  
2 agency, and it is judicially determined that an  
3 act of the employee caused the injury and such  
4 act was, or that the employee in good faith  
5 reasonably believed that such act was, within  
6 the scope of his office or duties, the local  
7 agency shall indemnify the employee for the  
8 payment of any judgment of the suit.

9 (b) Indemnity by employee generally. -- No  
10 employee of a local agency shall be liable to  
11 the local agency for any surcharge, contribution,  
12 indemnity or reimbursement for any liability  
13 incurred by the local agency for damages on  
14 account of an injury to a person or property  
15 caused by an act of the employee which was  
16 within the scope of his office or duties or  
17 which he is good faith reasonably believed to be  
18 within the scope of his office or duties. No  
19 employee of a local agency shall be liable to  
20 the local agency for any surcharge, contribution,  
21 indemnity or reimbursement for any expenses  
22 or legal fees incurred by the local agency  
23 while defending the employee against a claim  
24 for damages on account of an injury to a person  
25 or property caused by an act of the employee.



MATTERS AFFECTING GOVT UNITS 42 Pa. C.S.A. #8548  
Note 1

(c) Cooperation. -- In any action against a local agency or an employee thereof for damages on account of an injury caused by the act of the employee in which action the employee has not fully cooperated with the local agency in the defense of the action, the provisions of subsection (b) shall not apply.

1980. Oct. 5, P.L. 693, No. 142, #221(1), effective in 60 days.

HISTORICAL AND STATUTORY NOTES

Prior Laws:

1978, Nov. 26, P.L. 1399, No. 330,  
#304(53 P.S. #5311.304).

Library References

Substantive tort law, sovereign and governmental immunity, general structure of the immunity acts, a comparative overview, see Litvin & McHugh, 3 Pennsylvania Practice #10.3.  
Substantive tort law, sovereign and governmental immunity, civil rights cases, see Litvin & McHugh, 3 Pennsylvania Practice #10.49.

Notes of Decisions

In general 1

1	Attorney fees and costs	6
2	Crime, fraud, malice or willful misconduct	3
3	Employee	4
4	Entitlement, generally	2
5	Insurers	5
6	Intentional torts	3

7

8

---

1. In general

9

10

Indemnification by local agency is mandatory for any judgment entered against employment.

11

12

Indemnity Ins. Co. of North America v. Motorists Mut. Ins. Co., 678 A.2d 418 Cmwlt 1996, appeal granted 687 A.2d 380, 546 Pa. 697, reversed 710 A.2d 20.

13

14

15

16

17

18

19

20

21

22

23

24

25

Nothing in statute requiring local agency to indemnify employee for judgment arising out of acts within scope of officer duties relieves local agency of obligation to indemnify employee just because employee may have coverage under personal insurance policy. Indemnity Ins. Co. of North America v. Motorists Mut. Ins. Co., 687 A.2d 418, Cmwlt 1996, appeal granted 687 A.2d 380, 546 Pa. 697, reversed 710 A.2d 20.

If actions constituting violation of whistleblower law fall within scope of public

1 employee's authority, when acting only in his  
2 official capacity, public body shall be responsi-  
3 ble for any damages awarded plaintiff, so long  
4 as public body is afforded sufficient notice of  
5 action and opportunity to participate in  
6 proceedings. Retenauer v. Flaherty, 642 A.2d 587,  
7 164 Pa. Cmwlth. 182, Cmwlth. 1994, appeal denied  
8 668 A.2d 1135, 542 Pa. 672.

9 Action under Tort Claims Act, which mandates  
10 specific procedures for indemnification by  
11 municipalities for judgments rendered against  
12 public employee faced with such judgment when  
13 public body is not named in suit. Retenauer v.  
14 Flaherty, 642 A.2d 587, 164 Pa Cmwlth. 182,  
15 Cmwlth. 1994, appeal denied 668 A.2d 1135,  
16 542 Pa. 672.

17 To extent that public employee against  
18 whom claim has been entered possesses right to  
19 indemnification, employee's rights are governed  
20 by indemnity provisions of Tort Claims Act.  
21 Retenauer v. Flaherty, 642 A.2d 587, 164 Pa.  
22 Cmwlth. 182. Cmwlth. 1994, appeal denied 668  
23 A.2d 1135, 542 Pa. 672.

24 Compliance with statutory procedures for  
25 indemnification as outlined in Tort Claims Act

1 is proper avenue for employee of local agency as  
2 violator to pursue if public body is not named  
3 as party to suit brought under whistleblower law.  
4 Retenauer v. Flaherty, 642 A.2d 587, 164 Pa.  
5 Cmwlth. 182, Cmwlth. 1994, appeal denied  
6 668 A.2d 1135, 542 Pa. 672.

7 CHAIRMAN CLARK: The next person to speak  
8 to us is Dennis Sheehan, the President-elect of the  
9 Pennsylvania Society of Land Surveyors.

10 MR. SHEEHAN: Good morning. I don't have  
11 near as many words as what Attorney Nypaver had but  
12 I am honored to be able to be here and speak to you  
13 this morning.

14 As your introduction said, my name is  
15 Dennis Sheehan, PLS. I am a licensed Professional  
16 Land Surveyor and I'm currently the Vice President  
17 of the Pennsylvania Society of Land Surveyors. I  
18 have practiced land surveying in Pennsylvania since  
19 1975, having been involved in a surveying profession  
20 since 1968. I'm a graduate of Penn State University.

21 Currently, I am in private practice with  
22 an office located near Patton, 18 miles north of  
23 Altoona, offering services mainly in boundary retrace-  
24 ment, small subdivisions and construction layouts.

25 The Pennsylvania Society of Land Surveyors

1 support House Bill 2070. PSLs is a statewide  
2 professional organization of individuals or certain  
3 firms having interest in the practice of land survey-  
4 ing, whom under the laws of Pennsylvania were incorpor-  
5 ated on May 6, 1969 as a non-profit corporation with  
6 the purposes as set forth in their Articles of  
7 Incorporation as recorded in the Recorder of Deeds  
8 Office in Delaware County, Pennsylvania. The Society  
9 currently represents over 1,000 land surveyors in the  
10 Commonwealth of Pennsylvania.

11 The mission statement of the society is  
12 that the society exists for the purpose of supporting,  
13 improving and enhancing the land surveying profession,  
14 the practice of land surveying and the education and  
15 protection of the public. To serve these ends, the  
16 goal of the society focuses on providing education,  
17 legislative involvement, and enhancing public aware-  
18 ness, and the promulgation of the ethics of the  
19 profession.

20 PSLs feels strongly that its members  
21 should volunteer their service in time of crises,  
22 like all good Pennsylvania citizens. Unfortunately,  
23 courts often hold licensed professionals to much  
24 higher standards of conduct than average citizens and  
25 fear of litigation causes many surveyors to hesitate

1 to expose themselves to additional liability. House  
2 Bill 2070 attempts to create an atmosphere in which  
3 design professionals can respond to the legitimate  
4 request for assistance during an emergency without  
5 fear of lawsuits resulting from their Good Samaritan  
6 activities.

7 I didn't have the luxury to research all of  
8 the Pennsylvania statutes that Attorney Nypaver could  
9 for us. In the event that a lot of these articles  
10 in this Bill are covered in other bills, just by the  
11 assumption that everybody holds licensed professionals  
12 to the higher standards, we believe that this Bill is  
13 important because it clarifies how it would protect  
14 the design professionals.

15 In case you are not familiar with the  
16 types of activities land surveyors would typically  
17 construct during an emergency, here are a few areas  
18 which are pertinent to this legislation:

19 Monitoring flood elevations to be used for  
20 short term emergency planning as well as data-  
21 base information for the planning of facilities for  
22 long term flood prevention.

23 The photogrammetry of areas ravished by  
24 flooding, tornadoes, earthquakes or other similar  
25 disaster or catastrophic event, to determine the

1 extent of damage to structures and utilities, persons  
2 trapped in isolated areas needing evacuation, and  
3 determining which access routes might still be usable  
4 as well as those roadways no longer usable for access.

5 Laying out on the ground the boundaries  
6 of utilities easements for reconstruction.

7 Laying out on the ground the boundaries  
8 of unopened streets for additional access into  
9 ravished areas for emergency personnel.

10 Using that GIS mapping to locate shutoff  
11 valves on gas or water lines, and to locate other  
12 pertinent underground utilities.

13 The list could go on and on.

14 In conclusion, I urge the Committee to act  
15 favorably on House Bill 2070, even if some of this is  
16 already covered in the Act, 8332.4, as was quoted.  
17 This legislation will go a long way in creating an  
18 environment in which professional land surveyors and  
19 other design professionals can offer special skills  
20 in time of crisis without the dark cloud of litigation  
21 hanging over their heads. Again, I thank the  
22 Committee for an interest in this Bill and the  
23 opportunity to testify on this important topic. I  
24 would be happy to try and answer any questions you  
25 may have at this time.

1 CHAIRMAN CLARK: Thank you very much, Mr.  
2 Sheehan. Do members have any questions?

3 BY REPRESENTATIVE MAITLAND:

4 Q Thank you, Mr. Chairman. Mr. Sheehan, do  
5 you know of any cases where a suit has been brought  
6 against a volunteer?

7 A Not specifically, not at this time, no.  
8 But as I stated earlier, you know, if the fear of  
9 litigation is keeping one qualified expert from  
10 stepping forward to volunteer and if this could help  
11 erase that fear, the entire Commonwealth would be  
12 better served.

13 Q Thank you. Thank you, Mr. Chairman.

14 CHAIRMAN CLARK: Chief Counsel Preski?

15 BY MR. PRESKI:

16 Q I have a question, Mr. Sheehan. Not every  
17 case makes it to the books. So, we don't know  
18 numbers, whether there are or there aren't. I guess  
19 my question to you is as a surveyor, do you think  
20 that you would think twice when you got the call from  
21 the County or the State before you went out with your  
22 equipment to figure out where the property lines are;  
23 those kinds of things?

24 A I'm not saying that I wouldn't volunteer  
25 but in the climate we have today, I would give it a



1 little bit of thought; yes, I would, because I do a  
2 lot of volunteer work myself. I sit on the School  
3 Board. I volunteer on church committees. I have  
4 worked with the Cancer Society and the American Heart  
5 Society and so on but you're not really setting  
6 yourself out there to be picked off in those  
7 situations like you would be here.

8 Q Okay. Let me ask, you are a land surveyor,  
9 right?

10 A Yes.

11 Q As I read through the Bill and I look at  
12 it as far as it attaches to you or affects the land  
13 surveyors, basically the assumption I have is there  
14 is a flood and the tree that they used to mark the  
15 property line or the road that they used to mark the  
16 property line is gone. So, they come to you and they  
17 say, we need to know the boundaries of whatever lines  
18 there were. My assumption is, and this is a layman's  
19 understanding, that you go around with the proper  
20 tools and you put the sticks in the ground to show  
21 where the lines should be or where the lines are. As  
22 I see this bill, for someone like yourself, if there  
23 is a miscalculation or a mistake, that mistake won't  
24 be known within one year, two years, three years. It  
25 may not come for another 20 years when they go to

1 sell the property and then they have another surveyor  
2 come in and say, oh look, these lines are wrong.  
3 Where did you get these lines from? Well, these lines  
4 came from Mr. Sheehan when he did the surveying after  
5 the flood of 2000. My question is, for a firm like  
6 yours or a gentleman like yourself, that kind of  
7 liability exposure is devastating, is it not? I mean,  
8 you are not part of some big firm that has five  
9 million dollars worth of liability insurance. Can  
10 you just give me an idea of what the effect of a  
11 lawsuit upon yourself would do, either to your  
12 business or to your practice?

13 A It potentially could be devastating, yes.  
14 It could force individuals that are working on a  
15 small scale to go out of business, to just fold their  
16 practice.

17 Q But that is a concern, I mean, that could  
18 literally be over your head for a number of years that  
19 you don't even know about?

20 A That's correct.

21 Q Thank you.

22 A And as far as the number of cases that are  
23 on the books, how many cases was there action brought  
24 and settled before they ever got to the courthouse?

25 Q Right.

1           A.     It's not that they weren't instituted.  
2           It's where did they end.

3           BY CHAIRMAN CLARK:

4           Q     Mr. Sheehan, I'm trying to figure out what  
5           emergency situation would require quick action by  
6           a surveyor where he wouldn't have time necessarily  
7           to get his tools or he wouldn't have time necessarily  
8           to be able to make a determination or a decision as  
9           to where something is located.

10          A     What situation?

11          Q     The situation and the architect or the  
12          engineer that the township bridge is about ready to  
13          crumble; they want to get the family out of the  
14          valley and they say, hey, can you shore this up for  
15          us quick. I'm trying to figure out in an emergency  
16          situation what do you call upon a surveyor to do?

17          A     Well, in the exact example that you used,  
18          you may need to bring a surveyor in to take measure-  
19          ments of this bridge. You may take those same  
20          measurements again this afternoon and you may take  
21          those same measurements again tomorrow morning to see  
22          if that bridge is stable or if, indeed, the bridge  
23          itself is moving and an engineer would use the results  
24          of those measurements to come up with the immediate  
25          design information, what he's going to do to shore

1 that bridge.

2 Q So, the engineer would say, gee, we need a  
3 surveyor to come in here to do this part because I'm  
4 a civil engineer or an engineer, et cetera. We need  
5 a surveyor for me to do a complete job and call you  
6 in?

7 A Right.

8 Q Because I was --

9 A The design professionals supplement each  
10 other.

11 Q Because I'm not real concerned about finding  
12 property lines and having the old oak tree not be  
13 able to be replaced.

14 A I don't see the property lines on personal  
15 property being much of a factor in this bill. It's  
16 the utilities, the structures and other such matters.  
17 Also in there, as I stated, the photogrammetrists  
18 are part of the survey community and they are called  
19 on quite often in an emergency situation because you  
20 need that aerial photography to see just what your  
21 situation is. You may have, in the flooding situation,  
22 you may have isolated areas out there that you have  
23 people in. You have no way of knowing that they are  
24 isolated and if you have the value of that aerial  
25 photography, you can see what you have and then you

1 can access how you want to get these people out.

2 Q That aerial photography would be something  
3 that you have in your file. It would just be the  
4 reading of that?

5 A No. They will put a plane in the air and  
6 get right now aerial photography.

7 Q They'll fly. They can do it that quick?

8 A Yes, as long as it's daylight.

9 Q They will fly that plane and print out the  
10 topo before the plane lands?

11 A Not before the plane lands.

12 Q Pretty darn quick?

13 A Pretty quickly.

14 Q Of course, my engineers and surveyors don't  
15 work that fast.

16 CHAIRMAN CLARK: Representative Dermody?

17 BY REPRESENTATIVE DERMODY:

18 Q Did I understand earlier, Mr. Sheehan, you  
19 stated that you are not aware of any suits or lawsuits  
20 that have been filed in any one of these emergency-  
21 type situations?

22 A No, I'm not.

23 Q Does your society keep track of cases of  
24 this type if any were filed ever?

25 A We may have that in our records in

1 Harrisburg. I can't answer that question.

2 Q So, you could check for us because you  
3 mention there may have been suits filed and settled,  
4 those types of things, but from your own personal  
5 knowledge, you are not aware of any having been  
6 filed?

7 A No.

8 Q Thank you.

9 REPRESENTATIVE GEIST: Other states  
10 this has happened. There are a bunch of other states  
11 that have this law in place.

12 REPRESENTATIVE DERMODY: Presumably, their  
13 society keeps track of these things and maybe you  
14 could check that for us and get back to us?

15 MR. SHEEHAN: Certainly. I'll make a note  
16 of that.

17 REPRESENTATIVE DERMODY: All right. Thank  
18 you.

19 CHAIRMAN CLARK: Any additional questions?

20 (No response.)

21 CHAIRMAN CLARK: I want to thank you very  
22 much for your testimony today. You are welcome to  
23 stick around for the rest of the morning.

24 MR. SHEEHAN: It was an honor to speak before  
25 you.

1                   CHAIRMAN CLARK: The next gentleman to  
2 testify for the Committee is Michael Weaver. He is  
3 the Deputy Secretary for Regulatory Programs for the  
4 Department of State.

5                   MR. WEAVER: Good morning, Representative  
6 Clark and members of the Subcommittee. I am  
7 C. Michael Weaver, the Deputy Secretary for  
8 Regulatory Programs for the Department of State.  
9 In my capacity as Deputy Secretary, I am responsible  
10 for the 27 licensing boards and commissions within  
11 the Bureau of Professional and Occupational Affairs.  
12 I'm here today representing the Secretary of the  
13 Commonwealth, Kim Pizzingrilli, and the Department.

14                   We support House Bill 2070, Printer's  
15 Number 2661, and the amendment, A0988. This  
16 legislation and accompanying amendment would allow  
17 individuals licensed by the Commonwealth of  
18 Pennsylvania as an Architect, Geologist, Land  
19 Surveyor, Landscape Architect, or Professional  
20 Engineer who voluntarily and without compensation  
21 provides design services related to a declared  
22 National, State or local emergency caused by a major  
23 earthquake, hurricane, tornado, fire, explosion,  
24 collapse or other similar disaster or catastrophic  
25 event to be immune from liability for any personal

1 injury, wrongful death, property damage or other loss  
2 stemming from the design professional's acts, efforts  
3 or omissions in rendering professional services. This  
4 immunity would apply to the performance of those  
5 services for any structure, building, piping or  
6 other engineered systems, publicly or privately owned.

7           These services must have been requested or  
8 approved by a National, State or local public  
9 official, law enforcement official, public safety  
10 official or building inspection official acting in  
11 an official capacity. The immunity provided under  
12 this Act would apply only to a voluntary design  
13 service that occurs during the emergency or within  
14 90 days following the end of the period for any  
15 emergency, disaster or catastrophic event unless  
16 extended by an executive order issued by the Governor  
17 under the Governor's Emergency Executive Powers.  
18 Nothing in this Act would provide immunity for wanton,  
19 willful or intentional misconduct.

20           We believe the legislation would encourage  
21 licensed architects, geologists, land surveyors, land-  
22 scape architects and professional engineers to donate  
23 their professional services during major disasters  
24 and catastrophies by protecting them against civil  
25 liability or negligence committed in the course of



1 rendering donated services.

2 The swift employment of design resources  
3 is often of critical importance in limiting the scope  
4 of major disasters and catastrophies and in undertak-  
5 ing subsequent clean up and reconstruction. The  
6 legislation's grant of limited immunity from sole  
7 liability to design professionals who voluntarily  
8 participate in such relief efforts seems to be a  
9 reasonable trade-off for increasing the availability  
10 of resources that are essential to the successful  
11 management of disasters and catastrophies. Significant-  
12 ly, this legislation does not limit the authority of  
13 the affected licensing boards to impose disciplinary  
14 or corrective measures against the design profession-  
15 als who violate their respective licensing laws.

16 I will also state that the Department of  
17 State has supported health care voluntary licenses  
18 which have been enacted and we also support this  
19 particular legislation thinking it will provide the  
20 same type of services in needed emergency situations.  
21 Thank you.

22 BY CHAIRMAN CLARK:

23 Q Thank you very much. The health care  
24 legislation you talked about, is that part of the  
25 Commonwealth's Good Samaritan law or is that separate?

1           A       It is a separate and free-standing law  
2       that provides immunity to health care practitioners  
3       who are retired and working in approved designated  
4       clinics. The impetus for that is to be able to  
5       provide services to rural or urban areas that are not  
6       receiving the necessary treatment and medical ser-  
7       vices that could be provided.

8           Q       That rings a bell. I guess the two things  
9       that I have thought about what the 90 days possibly  
10      being removed far enough from emergency situations  
11      that you ought to be able to get good sound pro-  
12      fessional advice that is going to be sealed and backed  
13      up by a liability insurance policy and the second one  
14      is the immunity for wanton, willful and intentional  
15      misconduct which is a stricter standard than the  
16      rest of our Good Samaritan laws. Would you comment on  
17      both of those? I'd appreciate it.

18          A       In our assessment of the legislation, the  
19      proposed legislation, we did not find objections to  
20      the 90 days. The Bureau's examination of it did not  
21      identify that as something objectionable.

22                 On the standards, under our administrative  
23      actions that we would take against a licensee, we  
24      have preponderance of the evidence and that still is  
25      in effect and we feel that that would be an incentive

1 to do the job professionally and to a standard that  
2 is acceptable for the safety of the citizens. That  
3 is the standard that we operate by.

4 Q Even in emergencies?

5 A Yes, yes.

6 Q That's just that light shift?

7 A In any situation we would be operating by  
8 the preponderance of the evidence which, again, is  
9 the tilting of the scales and that's how we operate  
10 and that would be tried before our Licensing Boards  
11 or hearing examiners that are appointed to represent  
12 them.

13 Q So, if someone makes an error during an  
14 emergency and injures someone, he could lose his  
15 license but the injured person couldn't be compensat-  
16 ed?

17 A We only take action to protect the public  
18 by removing or suspending those individuals that are  
19 a threat to the public health. That is based on  
20 their professional conduct and their professional  
21 ability to execute on the duties that they have been  
22 licensed to do. So, we feel that that is an incen-  
23 tive to be able to lose your means of employment to  
24 assure that there is safe practice in our 27 different  
25 professions.

1 Q Okay.

2 A We feel it's an effective means to protect.  
3 I am a former prosecutor and from my own experience,  
4 I do find that our professionals defend their licenses  
5 as strong as anything probably but for criminal  
6 actions because we would take away their ability to  
7 earn a living. So, it's very serious when we do take  
8 action.

9 CHAIRMAN CLARK: Representative Dermody?

10 BY REPRESENTATIVE DERMODY:

11 Q Thank you, Mr. Chairman. I guess following  
12 up a little bit, what you are saying is if your  
13 licensee's conduct falls substantially below the  
14 standards generally practiced, the license would be  
15 subject to your discipline?

16 A Yes, it would. I will re-emphasize that  
17 we use the preponderance of the evidence.

18 Q Right. But if this were law, that  
19 professional, that licensee could have their license  
20 implicated, their ability to make a living, but an  
21 injured person would not be able to sue?

22 A That's correct.

23 Q Why isn't the law that is in effect --  
24 what's wrong with that? Why doesn't that solve the  
25 problem?

1           A.     As far as our licensing law?

2           Q.     Well, as far as there is an immunity statute  
3 in effect that would probably cover the standard;  
4 the licensee would have to show their conduct was  
5 substantially below the standards generally practiced.  
6 I'm interested in why those wouldn't be sufficient  
7 to protect the licensee and the public?

8           A.     We have found with, and I'm going to have  
9 to compare it to the health care volunteer licensees  
10 because that's our only other standard that we have  
11 and it provides for them to provide services where  
12 services are not being provided and it encourages  
13 the provision of those services and this particular  
14 Bill I see more along the lines where specifically  
15 it addresses that for these professions, these design  
16 professions.

17          Q.     Does it bother you a little bit where you  
18 would have the results, potentially have the result  
19 where a licensee, because of their conduct in a  
20 particular emergency, have their license taken away  
21 and yet an injured party not be able to have any  
22 recourse?

23          A.     Because of the exigent circumstances, the  
24 Department feels this is a valuable situation.

25          Q.     I agree. But the scenario is where you

1 have the situation where somebody's conduct results  
2 in you taking their license away, which would mean  
3 it's pretty bad.

4 A Yes.

5 Q But still if this were in effect, an  
6 injured person would not have any recourse.

7 A I understand that and I believe we are  
8 basing it on the fact that there is an emergency  
9 situation and we feel that we will be able to protect  
10 the public as a whole through our Licensure Laws.

11 Q Are you comfortable with that?

12 A Yes.

13 Q Thank you. Thank you, Mr. Chairman.

14 CHAIRMAN CLARK: We thank you very much for  
15 your testimony and you're also welcome to stay with  
16 us for the rest of the morning.

17 MR. WEAVER: Thank you.

18 (The hearing recessed at 10:40 a.m. and  
19 reconvened at 10:54 a.m.)

20 CHAIRMAN CLARK: Let's bring this meeting  
21 back to order. The last will be a panel of individuals  
22 to provide the Committee with testimony today and  
23 they will be Art Schwarz, Esquire, with the National  
24 Society of Professional Engineers, Mr. John Over who  
25 is with the PEEADS Group and Maureen Guttman, the

1 Chair, Legislative Committee of the American  
2 Institute of Architects. Well, I think what we will  
3 do is we'll take the testimony and we'll open up the  
4 panel for questions.

5 MR. OVER: Good morning. I'm John Over and  
6 I will start off. My name is John Over and I'm a  
7 Licensed Professional Engineer and a Licensed  
8 Professional Land Surveyor in the State of  
9 Pennsylvania. I'm Vice President with the PEEADS  
10 Group and I have been with the PEEADS Group for 27  
11 years. The PEEADS Group is an engineering-architect-  
12 ural firm that has been providing design services  
13 in Central and Western Pennsylvania since 1955.  
14 I'm here speaking on behalf of the Pennsylvania  
15 Society of Professional Engineers and the National  
16 Society of Professional Engineers. Art Schwarz,  
17 counsel with the National Society is here as my  
18 bodyguard and hopefully he'll have some testimony  
19 today in response to some of the questions that were  
20 raised earlier by your panel and also some concerns  
21 that were raised by Attorney Nypaver.

22 We are here in support of House Bill 2070.  
23 We feel that it's a needed piece of legislation that  
24 will enable design professionals to provide services  
25 on an emergency basis without the fear or the added

1 weight of the ax standing over our heads of being  
2 sued for acts that we may perform. We have handed  
3 out, we have provided a position paper provided by  
4 the National Society for Professional Engineers and  
5 it's entitled the Engineers Good Samaritan Laws.  
6 I'd like to read NSPE's position on the Good  
7 Samaritan Laws. NSPE supports the adoption of Good  
8 Samaritan Laws that provide immunity from liability  
9 for any personal injury, wrongful death, property  
10 damage, or other loss caused by a professional  
11 engineer's acts, errors, or omissions in a  
12 performance of volunteering engineering services.  
13 Such laws eliminate the liability deterrent that may  
14 inhibit engineers from providing voluntary services,  
15 and in doing so, promotes the voluntary participation  
16 by professional engineers in emergency relief efforts.  
17 In addition, Engineers Good Samaritan Laws allow  
18 states and localities to factor in voluntary engineer-  
19 ing assistance when planning for **dísasters..**

20 A couple of comments that I would like to  
21 make in addition to that statement. The first  
22 comment is that of the personal experience; we all  
23 recall the disaster floods that occurred in January  
24 of 1996 in Central Pennsylvania. Although our firm  
25 or myself personally did not provide any voluntary



1 engineering services, we were involved in the later  
2 cleanup and also design of repairs to highway and  
3 structures not only for the Pennsylvania Department  
4 of Transportation but also for various local  
5 municipalities and I'm speaking in reference to the  
6 90-day extension in the Bill. Because of the extent  
7 of the disaster that affected Central Pennsylvania,  
8 it in some cases was up to two years before local  
9 municipalities were given money to effect repairs to  
10 their local highways and bridges because of the very  
11 magnitude of the response needed and also of the red  
12 tape involved through the Pennsylvania Emergency  
13 Management Agency and also FEMA. So, in theory, if  
14 an engineer provided a temporary solution on a  
15 voluntary basis for a local bridge, it had to be  
16 hanging out there for up to two years before the  
17 necessary repairs were made permanent and, therefore,  
18 I think that we should either eliminate the 90-day  
19 provision entirely or extend it for some period of  
20 time that would cover any slowness or lateness in  
21 effecting the needed permanent repairs.

22 I'd also like to add that even though  
23 there may be laws on the books that some people may  
24 determine or think and are saying the same thing, we  
25 all know that just being named a defendant in a

1 lawsuit and initiating the process costs us money,  
2 costs us time and if there is any legislation or  
3 anything that the Committee can do or the State can  
4 do to reinforce the fact that there is no culpability,  
5 that's good for everybody.

6 At this time, I'd like to turn it over to  
7 Art Schwarz.

8 MR. SCHWARZ: Thank you very much. It's  
9 a pleasure to be here and I appreciate the opportunity  
10 to speak to this legislation. I serve as the  
11 Deputy Executive Director and General Counsel with  
12 the National Society of Professional Engineers in  
13 Alexandria, Virginia and it's an organization of  
14 about 60,000 members nationwide, engineers in  
15 government, industry, education, construction and  
16 private practice. NSPE, along with a number of other  
17 State engineering societies, about 10 years ago began  
18 the effort to develop model legislation on Good  
19 Samaritan laws. As John mentioned, we found it was  
20 important to develop legislation to provide some degree  
21 of protection for design professionals: architects,  
22 engineers, geologists, and surveyors, landscape  
23 architects, who are called upon in instances of  
24 emergencies to provide professional services. Since  
25 that time, NSPE, the American Institute of Architects,

1 the American Consulting Engineers Council and the  
2 American Society of Civil Engineers have all endorsed  
3 this legislation and have prepared model legislation  
4 addressing this issue as well as other issues relating  
5 to liability, which I'm going to get into in just a  
6 couple of minutes, because of great concern over  
7 liability that affects design professionals nationwide.  
8 Every state has a statute of repose which provides  
9 a degree of protection for design professionals.  
10 Eighteen states have enacted Good Samaritan statutes  
11 protecting design professionals as we are discussing  
12 today. There are other types of legislation to  
13 address this liability issue, this ongoing liability  
14 issue, such as Social Workers Compensation Acts and  
15 Certificate of Merit statutes.

16 The legislation that is currently on the  
17 books, I know there has been some questions about why  
18 the current law that is in effect, the Volunteer  
19 Protection Act which is, I guess, probably the best  
20 way to describe it, is not adequate. Most states do  
21 have Volunteer Protection Acts and maybe the best way  
22 to describe it is it's in essence an all purpose  
23 Volunteer Protection Act. It's intended to protect  
24 individuals who volunteer to serve, for example, as  
25 a little league coach or working for the Boy Scouts or

1 the Girl Scouts or other organizations, other public  
2 service organizations. What we are talking about  
3 here is somewhat different. We are talking about  
4 a professional who is being called upon to render a  
5 professional service, a professional who is often  
6 under the threat of litigation, who carries profess-  
7 ional liability insurance in many cases with very  
8 high premiums and very high deductibles. So, there  
9 is a great deal of risk associated with the rendering  
10 of professional services. So, I think in essence  
11 this law that is on the books right now doesn't really  
12 address the kinds of issues that architects and  
13 engineers face in their everyday practice.

14 The other aspect of the current law,  
15 8332.4, it refers to organizations, nonprofit  
16 organizations, under Section 501(c)(3) and Section  
17 501(c)(4) of the Internal Revenue Code. Somewhat  
18 arcane however important, three of the organizations  
19 that have endorsed this legislation are not 501(c)(3)  
20 or (4) organizations. They are 501(c)(6) organi-  
21 zations as is the Pennsylvania Society of Professional  
22 Engineers, I believe the American Institute of  
23 Architects of Pennsylvania and the Consulting  
24 Engineers Council as well as probably a number of  
25 other organizations that would be subject to the

1 current law. So, it's inadequate in that sense.

2 There is also -- the language is a  
3 standard. I know a lot has been discussed about the  
4 standard that is contained in this legislation and  
5 whether it needs to be altered. I think one has to  
6 understand that standard in the context of liability  
7 that architects and engineers and other professionals  
8 face. They are exposed to a huge number of frivolous  
9 lawsuits around the country. A good example of a case  
10 that was recently brought to my attention in  
11 California, a professional engineer, geotechnical  
12 engineer, who was driving a truck and observed a mud  
13 slide or a rock slide on the side of the road and he  
14 got out of his truck, took out his camera and was  
15 going to take a photograph and one of the homeowners  
16 came over and struck up a conversation with this  
17 gentleman. His name was Bill Jones. And the engineer  
18 happened to offer ~~his perspective~~ on the rock slide  
19 and they parted in a friendly way. He drove off in  
20 his truck which had the name of his company, his  
21 address and his phone number on it and several months  
22 later, this engineer was actually named in a lawsuit  
23 involving that homeowner. Apparently, the homeowner  
24 brought a lawsuit against this individual. Now, the  
25 case was ultimately resolved. He got out of it after

1 having had to hire an attorney and spend a consider-  
2 able amount of his time and his money on this kind of  
3 situation but that's just one example. There is also  
4 another case out west where an engineering firm which  
5 was involved in a curtain wall design was held to  
6 a **fiduciary** liability standard. Now, the standard  
7 that applies in virtually every state is professional  
8 negligence, but in this case a jury held this  
9 engineer to a **fiduciary** liability standard which is  
10 unheard of in the profession that such a standard  
11 would apply to a professional. The case was ultimate-  
12 ly settled as I understand. I'm not sure how it was  
13 settled but that's my understanding of it. So, it  
14 seems to me that as John has pointed out and others  
15 have pointed out, there is a real need for a degree  
16 of protection so that design professionals don't have  
17 the threat of liability hanging over their heads  
18 when they want to or are being asked to and want to  
19 perform a public service and acts, if you will, in a  
20 quasi governmental function where I believe the  
21 concept of some type of immunity is, and it is a  
22 limited immunity we are talking about, **is** not unheard  
23 of. So, I think when one looks at the professions,  
24 whether it's engineering or architecture or the  
25 others, and one looks at the high insurance premiums

1 that they pay, the high deductibles that they are  
2 exposed to, I think it's important it be intended to  
3 provide an environment where they feel comfortable  
4 and free to render their services in those kinds of  
5 emergencies, that there is an environment that they  
6 can work in. Thank you.

7 MS. GUTTMAN: My name is Maureen Guttman.  
8 I am with my own practice in Pittsburgh. I am a  
9 Licensed Architect in Pennsylvania and I am repre-  
10 senting AI of Pennsylvania. We are a component of  
11 the American Institute of Architects. In Pennsylvania  
12 we represent 2500 architects and intern architects  
13 and the mission of our state organization is to  
14 represent architects in government affairs and make  
15 sure we are advocating public policies that are  
16 promoting good design.

17 I am not sure I really want to read what  
18 I have written here but I do want to talk about some  
19 examples where architects have been called in to assist  
20 in disasters in states where they do have Good  
21 Samaritan legislation. California, following the  
22 earthquake in 1994, had over a hundred architects  
23 deputized as local building officials and they were  
24 able to cover ground that the local jurisdictions  
25 weren't able to do in terms of assessing houses and

1 schools and hospitals and in North Carolina following  
2 the floods last fall, they had close to a hundred  
3 people volunteering to do similar assessments. I  
4 guess when we talk about design professionals being  
5 liable for this work, I think that following a  
6 disaster and given whatever the ~~timeframe~~ is, the  
7 bulk of the services that are being rendered are  
8 assessment services to determine the structural  
9 integrity or the soundness of systems in a building  
10 and that is really very important and while I'm sure  
11 that the liability was such, assessment as high as it  
12 would be if you were designing something new, it  
13 still exists.

14 One of the things that struck me in doing  
15 research on this was in North Carolina one of the  
16 architects who had volunteered and was assessing  
17 homes felt that it was very important because obvious-  
18 ly the people were not going to get financial relief  
19 until official assessments had been made as to the  
20 integrity of their homes and very few local building  
21 officials obviously couldn't cover the thousands and  
22 thousands of buildings that had been affected and  
23 the fellow said that he really felt needed and he  
24 felt ~~what~~ an important service that he had provided  
25 and the people were grateful that he had condemned



1 their homes because something needed to be said for  
2 the record and for the purposes of insurance coverage.

3 So, I think what we are talking about is  
4 a limited amount of volunteer service to assist and  
5 support the abilities of local officials who would  
6 be doing this work otherwise. I'm not sure there  
7 would be very much actual design work being performed  
8 that this legislation would cover. I think we are  
9 mostly talking about remediation of disaster stricken  
10 structures that need to be determined as to whether  
11 or not they are safe for human occupancy. In the  
12 normal course of our practices as architects and  
13 engineers, that's what we do. When there is not a  
14 disaster, we are often called to look at structures  
15 and say is this sound, is this going to be reusable,  
16 is this building something that feasibly could be  
17 reused for a different function or the example of  
18 the bridge. If there is a bridge that looks like it  
19 is in ~~imminent~~ imminent danger of collapsing, I think that in  
20 the normal course of things, that we would be able  
21 to assess whether or not that is a problem but I  
22 don't think that that example of something that  
23 hasn't happened yet would necessarily fall into this  
24 legislation.

25 So, I think the scope of services for which

1 any of us design professionals would be called upon  
2 to offer is very very limited and whether that would  
3 affect the time period or not, I guess, would really  
4 be more based on the magnitude of the disaster. I  
5 mean, if it was a flood that affected several counties  
6 and you had thousands and thousands of homes as they  
7 had in North Carolina, you may need 90 days to be  
8 able to get through and do all of the assessments  
9 that needed to be done.

10 So, basically, what I am here to ask is  
11 that should you pass this legislation, that you  
12 absolutely include architects with engineers. We do  
13 the same types of things and in other states we are  
14 called upon to do these things. Our national  
15 association trains people, provides assistance in  
16 funding for volunteers to cover expenses and in  
17 Pennsylvania we are very willing to assist in the  
18 same manner hoping that we never have to actually  
19 do this but --

20 CHAIRMAN CLARK: Thank you very much.

21 Mr. Schwarz, if you have listened to us today, we  
22 have carved out a number of Good Samaritan laws, one  
23 for retired doctors and if we do one now for engineers  
24 and architects, what would be your thoughts of taking  
25 2070 and putting that in our current Commonwealth

1 Good Samaritan Laws rather than take each profession  
2 and write a different piece of legislation for each  
3 one? That was the section that Mr. --

4 MR. SCHWARZ: Right. Are you saying  
5 include professional engineers, land surveyors,  
6 architects, landscape architects in one?

7 CHAIRMAN CLARK: What you're saying is that  
8 what we have on the books known as the Commonwealth  
9 Good Samaritan Law doesn't suit your particular  
10 set of individuals and that your legislation fits  
11 them better.

12 MR. SCHWARZ: I was talking about 8332.4.

13 CHAIRMAN CLARK: Yes, yes.

14 MR. SCHWARZ: Okay, right.

15 CHAIRMAN CLARK: Now, so we make one set  
16 of rules for you, okay? We already have one set of  
17 rules for retired doctors. We have one set of rules  
18 for the rest of the Good Samaritans and we are going  
19 to have another set of rules for CPAs and another  
20 set of rules for health care professionals. Wouldn't  
21 it be better to put everybody under 2070 or kick 2070  
22 into the Good Samaritan Law that we have now so that  
23 everyone is equal and we don't have to come back for  
24 each professional group; so we don't have a green  
25 Purdon's Book with Good Samaritan Laws in it?

1 MR. SCHWARZ: Right, I understand. I think  
2 it's important. I think 2070 as written is, you  
3 know, with the exception, I think, of some of the  
4 points that have been made of the time period. I  
5 think as written, I think that would be the better  
6 approach.

7 CHAIRMAN CLARK: Okay. Do you see this  
8 as standard or to bring this back in to our general  
9 Good Samaritan Laws?

10 MR. SCHWARZ: Right.

11 CHAIRMAN CLARK: And try to make one tougher  
12 or better Good Samaritan Law that would provide better  
13 coverage for Good Samaritans?

14 MR. SCHWARZ: I think we would certainly  
15 support that.

16 CHAIRMAN CLARK: There is another thing I  
17 don't want to do, which is you fellows are concerned  
18 about frivolous lawsuits, right?

19 MR. SCHWARZ: Right.

20 CHAIRMAN CLARK: And we don't want to give  
21 you special protection because then you won't stay  
22 in our fight to end frivolous lawsuits in  
23 Pennsylvania because you will say, well, we got taken  
24 care of. So, we are going to go sit over in the  
25 corner and let all of the other businessmen and

1 professionals fight frivolous lawsuits.

2 MR. SCHWARZ: Well, based upon the way the  
3 courts around the country have addressed legislation  
4 in that area, I think this is not a fight that is  
5 going to be won in one day or one session.

6 CHAIRMAN CLARK: The more groups and  
7 organizations we can get behind that, maybe we can  
8 make some progress.

9 MR. SCHWARZ: I think we are very supportive  
10 of that.

11 MR. OVER: Whether you fight the frivolous  
12 lawsuit from the Good Samaritan standpoint or however,  
13 I think I can speak for the design communities and  
14 say that whether we provide our services in a  
15 volunteer manner or we get reimbursed for those  
16 services, we are all concerned about frivolous law-  
17 suits. We are all concerned about the direction that  
18 juries are going and the legal system is going.  
19 Whether we can smell or whether we have a cold and  
20 we can't smell a bad situation, you know, as a  
21 businessman I would dare say that outside of salaries  
22 that would pay our employees that one of the major  
23 expenses is insurance, liability insurance, property  
24 and casualty insurance, general liability insurance,  
25 workmen's compensation, you know, on and on and on.

1 You know, it seems that that's all we do.

2 MR. SCHWARZ: Just to add to that, if I  
3 may, both organizations, the American Insitute of  
4 Architects, the National Society of Engineers, the  
5 American Consulting Engineers Council and other  
6 groups have national risk management committees that  
7 address the professional liability issues and we are  
8 seeing professional liability insurance premiums  
9 begin to climb up again after a period of plateauing,  
10 if you will, and we are beginning to see claims  
11 frequency and severity in terms of litigation actions  
12 against architects and engineers growing as well. In  
13 the context of discussion here this morning, I think  
14 with all due respect, I think the Committee needs to  
15 be mindful of that climate and if the intent is to  
16 continue to maintain an environment or climate for  
17 design professionals to continue to provide those  
18 services in that context, I think they need to be  
19 very careful as they draft this legislation.

20 CHAIRMAN CLARK: And the other thing, the  
21 90 days that is in the Bill, that covers services  
22 rendered within 90 days of the end of the emergency.  
23 Their potential liability lasts much longer than that.  
24 Well, it would be controlled by the statute of  
25 limitations. So, to clear up any confusion there,

1 it's the service and there is no end of liability  
2 after that.

3 REPRESENTATIVE GEIST: John was right in  
4 saying how many times have you seen a Bailey  
5 Bridge put up that is only supposed to be there for  
6 a short time and two years later people are still  
7 driving across that Bailey Bridge.

8 CHAIRMAN CLARK: I didn't want you under  
9 the impression that your liability ends in 90 days.  
10 Representative Dermody?

11 REPRESENTATIVE DERMODY: Just a brief  
12 question. As we have already discussed, we have a  
13 Good Samaritan Law, a general one, that is in effect  
14 right now and let's say we wanted to carve one out  
15 for the design professionals so there is no question  
16 that you are covered by it. The standard of care, I'm  
17 just wondering, the general one has a standard of  
18 care for conduct. You'd be liable if your conduct  
19 falls substantially below the standards generally  
20 practiced. Is that a problem having that standard  
21 of care or is there a reason why you'd have to have  
22 wanton, willful and intentional? Could you live  
23 with this substantially below standards generally  
24 accepted in a practice?

25 MR. OVER: Well, I think when you talk about

1 wanton and willful misconduct, it seems to me that  
2 that is a little easier to benchmark than a statement  
3 that says substantially below standards of care.

4 REPRESENTATIVE DERMODY: I agree with that  
5 but it's not -- intentional, I mean, you still have  
6 to be held to some standard of care.

7 MR. OVER: Yes, right. We have no problem  
8 with not being covered by negligent acts or, you  
9 know --

10 REPRESENTATIVE DERMODY: It would have to  
11 be more than ordinary negligence. I was just curious.

12 MR. OVER: Yes, I know. I don't know the  
13 position of the architects.

14 MS. GUTTMAN: Right.

15 MR. OVER: See, there again, when you put  
16 -- unfortunately, you can't legislate everything and  
17 you can't foresee all of the circumstances.

18 REPRESENTATIVE DERMODY: Particularly in  
19 an emergency.

20 MR. OVER: Right. And unfortunately, more  
21 and more of the courts have been left up to determine  
22 what is the standard of care, what is willful  
23 negligence, all of those kinds of terms and, I guess,  
24 you can't legislate that.

25 REPRESENTATIVE DERMODY: Okay. Thank you,



1 Mr. Chairman.

2 CHAIRMAN CLARK: Are there any additional  
3 questions? Representative Daley.

4 REPRESENTATIVE DALEY: Thank you, We are  
5 also trying to go with in the legislature small  
6 disasters. We have made several attempts that the  
7 administration include them in a legislative package  
8 which was recently passed by the legislature. We  
9 may attempt to address those in this legislation.  
10 I'm particularly concerned about the small practice  
11 professionals, liability insurance that, as you know,  
12 as you have as an attorney, that we had, and any  
13 time we have a claim, as frivolous as it may be,  
14 you notify your carrier immediately and that is a  
15 mark on you and that next year when they make their  
16 determination as to how much you are going to be  
17 paying, it's taken into account even if it was settled  
18 or dropped.

19 MR. SCHWARZ: Right. It's an underwriting  
20 criteria.

21 REPRESENTATIVE DALEY: That's a great  
22 concern.

23 MR. SCHWARZ: There are some carriers, as  
24 I understand, that at least, and I think particularly  
25 in the design professional communities, that have what

1 they call pre-claims assistance where they have  
2 someone -- you can call where a situation doesn't  
3 rise to the level of a claim and you can discuss this  
4 issue and get some guidance from them and we are told  
5 that that is not something that they will use as part  
6 of your underwriting criteria when they evaluate  
7 you as you apply for the following year. Now, whether  
8 that is a fact or not --

9 CHAIRMAN CLARK: I have a bridge out here  
10 for sale too.

11 REPRESENTATIVE DALEY: That's it. Thank  
12 you.

13 CHAIRMAN CLARK: Thank you all very much  
14 for your testimony.

15 (The following was submitted for inclusion  
16 in the record:)

17 ENGINEERS' GOOD SAMARITAN LAWS

18 Support Good Samaritan laws that provide  
19 immunity from liability to licensed  
20 professionals who voluntarily provide  
21 engineering services in emergency situations.

22 BACKGROUND

23 During natural disasters or other catastrophic  
24 events, the demand for emergency services  
25 often exceeds the capacity of government

1 agencies. State and local governments rely  
2 on the private sector to assist in responding  
3 to the relief and recovery needs of communities.  
4 The expertise and skills of professional  
5 engineers are particularly needed in times  
6 of such crises. States and localities  
7 need assurances that professional engineers  
8 will assist in providing essential engineering  
9 services.

10 Professional engineers are willing to  
11 voluntarily assist in emergency situations.  
12 However, they face substantial liability  
13 exposure when doing so. Without sufficient  
14 immunity from liability, professional  
15 engineers may be hesitant to volunteer.

16 Some states have responded to this concern,  
17 but only after an emergency situation  
18 occurred. For example, when Hurricane Hugo  
19 struck South Carolina in 1989, engineers  
20 were made temporary employees of the state  
21 so that they could assist in relief efforts  
22 without fear of liability exposure. In  
23 Florida, the state Department of Community  
24 Affairs granted engineers "agent of the state"  
25 status in order to afford the volunteer

1 engineers liability protection when they  
2 responded to Hurricane Andrew in 1992.  
3 However, this practice is legally untested  
4 and vague, and may still leave the volunteers  
5 exposed to liability.

6 Other state legislatures have addressed  
7 engineers' liability concerns in advance of  
8 an emergency by adopting Good Samaritan  
9 statutes that provide immunity from liability  
10 to professional engineers who provide  
11 voluntary engineering services in connection  
12 with a declared emergency. Good Samaritan  
13 protection is not unique to engineers. All  
14 states, for example, providing such immunity  
15 to individuals who voluntarily assist the  
16 injured in emergency situations.

17  
18 NSPE POSITION

19 NSPE supports the adoption of Good  
20 Samaritan laws that provide immunity from  
21 liability for any personal injury, wrongful  
22 death, property damage, or other loss  
23 caused by a professional engineer's acts,  
24 errors, or omissions in the performance of  
25 voluntary engineering services. Such laws

1 laws eliminate the liability deterrent  
2 that may inhibit engineers from providing  
3 voluntary services, and in doing so, promotes  
4 the voluntary participation by professional  
5 engineers in emergency relief efforts.

6 In addition, Engineers' Good Samaritan laws  
7 allow states and localities to factor in  
8 voluntary engineering assistance when  
9 planning for disasters.

10  
11 NSPE ACTION

12 In January 1992, the NSPE Board of  
13 Directors adopted a professional policy that  
14 urges the enactment of Good Samaritan laws,  
15 The Professional policy also includes a  
16 Model Engineers' Good Samaritan Act which  
17 is intended to assist state licensure  
18 authorities, state legislators and the  
19 engineering profession in drafting Good  
20 Samaritan legislation.

21 NSPE's Model Engineers' Good Samaritan  
22 Act provides that a professional engineering  
23 services in response to a natural disaster  
24 or other catastrophic event will not be  
25 liable for any personal injury, wrongful

1 death, property damage, or other loss  
2 caused by a PE's acts, errors, or omissions  
3 in the performance of such services.  
4 Immunity from liability would not be applied  
5 in cases of wanton, willful, or intentional  
6 misconduct. The immunity applies to services  
7 that are provided during the emergency or  
8 within 90 days following the end of the  
9 period for an emergency, disaster, or  
10 catastrophic event, unless extended by an  
11 executive order issued by the Governor  
12 under the Governor's emergency executive  
13 powers.

14 The Act covers all engineering services  
15 for any structure, building, piping or  
16 other engineered system, either publicly  
17 or privately owned. The Act covers any  
18 declared national, state, or local emergency  
19 caused by a major earthquake, hurricane,  
20 tornado, fire, explosion, collapse, or  
21 other similar disaster.

#### 22 STATUS

23  
24 At least eighteen states have some type  
25 of Good Samaritan law covering engineers.

1 Colorado, Florida, Georgia, Kentucky,  
2 Louisiana, Maryland, New Mexico, North  
3 Carolina, North Dakota, Oregon, Virginia,  
4 and Washington have enacted comprehensive  
5 Good Samaritan laws. California and Utah  
6 laws provide immunity from liability for  
7 engineers who perform structural inspections  
8 in earthquake emergencies. Tennessee law  
9 provides immunity from liability for engineers  
10 who perform structural or building systems  
11 inspections in earthquake emergencies.  
12 Kansas law provides immunity from liability  
13 for engineers who provide structural inspection  
14 services in floods, tornadoes, or other  
15 natural disaster emergencies. Connecticut  
16 and Missouri have established emergency  
17 volunteer registry programs, whereby  
18 engineers who have enrolled with the states'  
19 emergency management agencies are granted  
20 immunity from liability.

21 Efforts to enact Good Samaritan legis-  
22 lation in Minnesota during the 1998 session  
23 were unsuccessful.

#### 24 NSPE REFERENCES

25 Professional Policy 148 - Model Engineers'  
Good Samaritan Act - 1/95

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STAFF CONTACT

Linda Lindsay - 703/684-2873  
llindsay@nspe.org

Arthur Schwartz - 703/684-2845  
aschwartz@nspe.org

\* \* \* \* \*

TESTIMONY OF AIA PENNSYLVANIA ON HOUSE BILL 2070  
Thursday, May 25, 000  
Altoona, Pennsylvania

Good morning, Chairman Clark, Representative Geist and members of the Judiciary Committee thank you for allowing me to testify today on HB 2070 which would create the Engineers and Land Surveyors Good Samaritan Act. I am Maureen Guttman, chairman of Government Affairs for AIA PA, which is the state component of the American Institute of Architects.

AIA PA serves a statewide membership of nearly 2500 architects and intern architects. Our mission is to represent the interests of architects in state government affairs, and to advocate public policies that emphasize good community design and responsible stewardship of the built and natural environments.



1 I am here specifically to ask for your  
2 support for an amendment to the bill that  
3 would include Architects and other design  
4 professionals under the scope of the  
5 legislation. As you know, the bill as  
6 presently drafted currently applies only to  
7 Engineers and Land Surveyors.

8 Architects, like engineers, are obligated  
9 under their licensure board rules of  
10 professional conduct to protect public health,  
11 safety, and welfare. In times of natural  
12 disasters or other catastrophic events,  
13 architectural and engineering expertise and  
14 skills are needed to determine the integrity  
15 of structures, buildings, piping and other  
16 systems. In many cases, licensed architects  
17 are called upon to voluntarily assist their  
18 communities, states, and the nation in  
19 times of crisis.

20 In January 1994, the state of California  
21 benefited from the services over 100 architect  
22 volunteers following the Northridge earth-  
23 quake. Traveling from destinations all  
24 over the state, these architects each  
25 committed at least three days as deputized

1 building inspectors in Los Angeles. The  
2 volunteer force was called upon by the  
3 Office of Emergency Services when a post-  
4 disaster relief assessment revealed a  
5 greater need for inspections than could be  
6 met by local jurisdictions' complement of  
7 building officials.

8 Starting the work with days after the quake,  
9 the volunteer architects helped local  
10 jurisdictions assure safe schools, business  
11 districts, and hospitals.

12 Similarly, following a recent tornado in  
13 Kansas, the state called for the assistance  
14 of volunteer architects to help evaluate  
15 the business district that was the site of  
16 major damage.

17 Last fall, Hurricane Floyd caused more than  
18 \$6 billion worth of damage in the state of  
19 North Carolina, took 47 lives, and damaged  
20 over 9,000 homes. AIA North Carolina worked  
21 with federal officials and local building  
22 inspectors to harness the volunteer services  
23 of over 70 professional architects to do  
24 damage assessment as the floodwaters receded.  
25 The value of this assistance cannot be

1 overstated. Only after an official  
2 estimate of damage is made of a structure  
3 were those property owners able to  
4 qualify for relief funding.

5 To quote one of the architects who assisted  
6 following this flood:

7 "There are four full-time inspectors in  
8 Pitt County, North Carolina with the job of  
9 inspecting 2,000 businesses and homes. It  
10 is a big job. There should be no misconception  
11 that our services are not needed. The citizens  
12 affected by the flood are grateful that we  
13 are there. They are finally seeing some  
14 action in their neighborhoods. I even  
15 received many "thank you's" for putting  
16 condemned stickers on their houses."

17 Obviously, architects, like engineers,  
18 potentially face substantial liability  
19 exposure with performing voluntary services.  
20 Many states (approx. 15), such as CA, KS,  
21 and NC just mentioned, have recognized this  
22 liability threat and have provided immunity  
23 to certain licensed professionals for their  
24 voluntary, uncompensated performance of  
25 services. Removing concerns about the

1 liability for work performed during these  
2 times will ensure that the Commonwealth has  
3 an additional arsenal of assistance standing  
4 by should it be needed.

5 Like the provisions in House Bill 2070,  
6 these 15 states limit the immunity to a  
7 specific number of days following the  
8 declaration of such an emergency. Further,  
9 these laws are clear that no immunity shall  
10 be granted for wanton, willful or intentional  
11 misconduct.

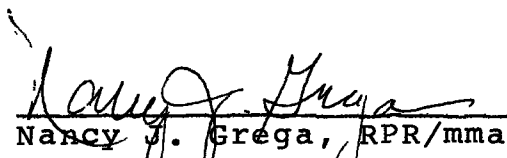
12 AIA members in Pennsylvania are pleased to  
13 serve our communities and the Commonwealth  
14 in whatever professional services we are  
15 called upon for. We are trained and licensed  
16 to understand all of the components that make  
17 up a place intended for human habitation...  
18 structural, mechanical, plumbing, and  
19 electrical systems. In the normal course of  
20 our practices, we are constantly assessing  
21 the integrity of existing structures relative  
22 to whether they are safe for occupancy.  
23 Our Hope is that the legislature will grant  
24 to us, through the passage of House Bill 2070  
25 with amendments, the same immunity provided

1 to licensed engineers and land surveyors  
 2 to perform the same duties under the bill.  
 3 And while we hope that these services will  
 4 never be necessary in the course of the  
 5 lives of Pennsylvanians, AIA Pennsylvania  
 6 is also interested in working with the  
 7 legislature and the Pennsylvania Emergency  
 8 Management Agency in developing a list by  
 9 county of architects who would be ready to  
 10 assist should the need arise.  
 11 Thank you for your consideration and I would  
 12 be happy to try and answer any questions.

\* \* \* \* \*

(The hearing terminated at 11:27 a.m.)

18 I hereby certify that the proceedings and  
 19 evidence taken by me in the above-entitled matter  
 20 are fully and accurately indicated in my notes and  
 21 that this is a true and correct transcript of same.

24   
 25 Nancy J. Grega, RPR/mma

RECEIVED \_\_\_\_\_

COST \_\_\_\_\_

NUMBER OF PAGES/TAPES \_\_\_\_\_

COPIES SENT TO:

PERSON/TITLE LOCATION DATE SENT

PERSON/TITLE	LOCATION	DATE SENT
Rep Blum		9/14/2000
Rep D. Clark		9/14/2000
Rep Kennedy		9/14/2000