

# ACEC

American Council of Engineering Companies  
Maryland

# 2017 | LEGISLATIVE BUSINESS AGENDA

## WHO ARE WE?

An organization of 90 engineering and professional service firms in the State of Maryland

## WHO DO WE REPRESENT?

Over 6,000 employees including:

Engineers	Scientists
Architects	Technical Specialists
Land Surveyors	Planners

## CONTACT INFORMATION

312 North Charles Street, Suite 200  
Baltimore, MD 21201  
www.acecmd.org  
P. 410.539.1592 | F. 410.685.5470  
acecmd@aol.com

**President**  
Stuart J. Robinson PE

**Chair, CEPAC**  
James W. Blake PE, LS

**Chair, Legislative Committee**  
Charles A. Phillips, RPLS

**Executive Director**  
Jim Otradovec



## INDEMNITY - DUTY TO DEFEND

### WHAT IS THE ISSUE?

With passage of SB 234 and HB 871 in 2016, engineering and design firms obtained some relief from onerous “Duty to Defend” clauses in A/E contracts. There are still additional modifications required to ensure the obligation to pay defense costs and/or resulting economic loss arising out of the negligence of others, including the indemnities, are not passed on to design firms.

### Legislative Action Required

Amend Section 5-401.2 of the Annotated of MD to delete the “sole negligence” requirement and to fairly assign negligence to the responsible party. Add “economic loss” to the damages resulting from the liability.

### WHY IS IT IMPORTANT?

- The Duty to Defend clause is an unfair allocation of risk.
- The Duty to Defend clause is uninsurable.
- This requirement contractually draws engineering firms into litigation when they have no negligence.
- Small businesses could be bankrupted from resulting expenses without any fault.
- Engineering firms could be indemnifying someone for their own negligence.