On July 10, 2012, Missouri Governor Jay Nixon signed into law first-in-the-nation legal protection for peer reviews by design professionals. This two-pronged bill provides protection for outside firms who review the design of a “peer” prior to project completion, and for the teaching of in-house “lessons learned” of completed projects in order to identify best practices and reduce errors and omissions in future designs. Most states have legislation granting a peer review privilege to healthcare providers, but Missouri is the first state to enact such a law for design professionals.

Until now, Missouri design professionals who would otherwise have been willing to serve as peer reviewers for other firms’ projects might have been reluctant to do so for fear of being dragged into claims or lawsuits involving those projects. For the relatively small fee a peer reviewer is paid, it was simply not worth the risk. And many design firms have been reluctant to conduct postproject lessons-learned sessions because lawyers might later zero in on the “things we could have done better” as evidence of incompetence. Bill Quatman, General Counsel for Burns & McDonnell Engineering Co. and chief author of the bill said, “Every project has its flaws, but with this new law, design professionals can (a) catch them on the front end, via outside peer review, and (b) learn from them on the back end, via lessons learned.”

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“In the end,” Quatman said, “the new law should improve public safety and result in fewer design errors and omissions.”

The peer review process protected by the new law is defined as “a process through which design professionals evaluate, maintain or monitor the quality and utilization of architectural, landscape architectural, land surveying or engineering services, prepare internal lessons learned or exercise any combination of such responsibilities.” Peer reviewers must hold the same license(s) that would be required to prepare the design documents being reviewed.

The new statute, R.S.Mo. 537.033, encourages peer review in two ways. First, it provides that an outside peer reviewer will be immune from civil liability so long as he or she acts in good faith. To qualify for immunity, the design must be peer reviewed before substantial completion of the project and the reviewer must not be an employee, coworker, or partner of the design professional whose design is being peer reviewed.

Second, under the new law, an in-house “lessons learned” review of a completed project is privileged, and nobody can force the participants to disclose information about the process. The law defines “lessons learned” as follows:

“[I]nternal meetings, classes, publication in any medium, presentations, lectures, or other means of teaching and communicating after substantial completion of the project … for the purpose of learning best practices and reducing errors and omissions in design documents and procedures.”

To qualify as a protected “lessons learned” proceeding, the review must take place after substantial completion of the project, and the presenters and participants must all be employees, partners or coworkers of the design professional who prepared the project’s design—the proceedings cannot include any other third parties.

Note that only “lessons learned” have protection from discovery—outside peer reviews do not. The new law does not allow design professionals to “immunize” information that would otherwise be discoverable just by bringing it up in a lessons-learned proceeding. The new law does not affect the authority of the Missouri board for architects, professional land surveyors and landscape architects to obtain information related to matters within their jurisdiction. “A broader version of the bill was passed in 2011,” said Quatman, “but vetoed by the Governor under pressure from the plaintiffs’ bar.” As a result, the state legislature gave Missouri design professionals 10 years to prove the law is worthwhile, after which the law will “sunset” on January 1, 2023, unless it is reauthorized by the legislature. “Even if it is not renewed, the law will continue to apply to peer reviews and lessons learned proceedings prior to the statute’s expiration date,” Quatman added.

This new law has real potential to promote timely identification of design errors, help design professionals learn from past projects and improve the quality of design in general. It is anticipated that several other states will follow the “Show-Me” State’s example.