

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 2106 (Patel)
Version: June 15, 2026
Hearing Date: June 23, 2026
Fiscal: No
Urgency: No
AM

SUBJECT

Malpractice actions: architects, engineers, or surveyors

DIGEST

This bill expands the existing certificate of merit requirements for a cause of action alleging negligence against an architect, professional engineer, or land surveyor to also apply to landscape architects, geologists, and geophysicists. The bill also requires that the person the attorney consults with to get an opinion of whether there was negligence on behalf of a design professional must be licensed in this state.

EXECUTIVE SUMMARY

Existing law requires a party alleging professional malpractice against an architect, professional engineer, or land surveyor (design professional) to file with the court a certificate of merit. (Code Civ. Proc. § 411.35.) This certificate is intended to prevent frivolous lawsuits and conserve judicial resources. The attorney bringing the action must consult with another design professional who is not a party to the action and in the same discipline as the defendant to determine if there is a reasonable and meritorious claim for negligence. Under existing law, the design professional consulted with by the attorney can be licensed in this state or any other state. This bill would limit the design professional that can be consulted with to only those licensed in this state. Additionally, the bill expands its provisions to also include landscape architects, geologists, and geophysicists.

This bill is sponsored by the American Council of Engineering Companies of California and supported by industry advocacy organizations and professional design businesses. No timely opposition was received by the Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Architects Practice Act for the licensure and regulation of architects in this state. (Bus. & Prof. Code §§ 5500 et seq.)
- 2) Provides for the licensure and regulation of landscape architects in this state. (Bus. & Prof. Code §§ 5615 et seq.)
- 3) Establishes the Professional Engineers Act for the licensure and regulation of professional engineers in this state. (Bus. & Prof. Code §§ 6700 et seq.)
- 4) Establishes the Professional Land Surveyors' Act for the licensure and regulation of land surveyors in this state. (Bus. & Prof. Code §§ 8700 et seq.)
- 5) Establishes the Geologist and Geophysicist Act for the licensure and regulation of geologists and geophysicists in this state. (Bus. & Prof. Code §§ 7800 et seq.)
- 6) Requires an attorney for a plaintiff or cross-complainant in an action that arises from the professional negligence of an architect, professional engineer, or land surveyor to file and serve a certificate of merit on a defendant or cross-defendant, on or before the date of service of the complaint or cross-complaint. (Code Civ. Proc. § 411.35(a).)
- 7) Requires the certificate in 6) to declare one of the following:
 - a) The attorney has reviewed the facts of the case, and:
 - i) the attorney has consulted with and received an opinion from at least one architect, professional engineer, or land surveyor who is licensed and practices in any state, or who teaches at an accredited college or university and is licensed to practice in any state, in the same discipline as the defendant or cross-defendant and who the attorney reasonably believes is knowledgeable in the relevant issues involved in the particular action;
 - ii) the attorney has concluded on the basis of this review and consultation that there is reasonable and meritorious cause for the filing of this action;
 - iii) the person consulted is not a party to the litigation; and
 - iv) the person consulted will provide their opinion that the named defendant or cross-defendant was negligent or was not negligent in the performance of the applicable professional services.
 - b) The attorney was unable to obtain the consultation because a statute of limitations would impair the action and the certificate could not be obtained before the impairment of the action. The attorney must file the certificate from a), above, within 60 days after filing the complaint.
 - c) The attorney was unable to obtain the consultation because the attorney had made three separate good faith attempts with three separate architects,

professional engineers, or land surveyors to obtain this consultation and none of those contacted would agree to the consultation. (Code Civ. Proc. § 411.35(b).)

- 8) Requires only one certificate to be filed, even if multiple defendants have been named in the complaint or may be named at a later time. (Code Civ. Proc. § 411.35(c).)
- 9) Allows an attorney who submits a certificate to refuse to disclose the identity of the architect, professional engineer, or land surveyor consulted and the contents of the consultation. This privilege is also held by the architect, professional engineer, or land surveyor consulted. If, however, the attorney makes a claim that they were unable to obtain the required consultation with the architect, professional engineer, or land surveyor, the court may require the attorney to divulge the names of architects, professional engineers, or land surveyors refusing the consultation. (Code Civ. Proc. § 411.35(e).)
- 10) Provides that a violation of these provisions may constitute unprofessional conduct against the attorney, except that failure to file a certificate within 60 days pursuant to 7)b) is not grounds for discipline. (Code Civ. Proc. § 411.35(f).)
- 11) Makes the failure to file a certificate in accordance with these provisions grounds for a demurrer or a motion to strike. (Code Civ. Proc. § 411.35(g).)

This bill:

- 1) Expands these provisions to also apply to licensed landscaped architects, registered professional geologists, and registered professional geophysicists.
- 2) Specifies that the certificate described in 6), above, is to be filed separate and distinct from the complaint or cross-complaint.
- 3) Limits the licensed practitioners that can be consulted with under 7)a)i), above, to those who are licensed in this state.
- 4) Specifies that the changes made by the bill apply to actions filed on and after January 1, 2027.
- 5) Makes various clarifying and nonsubstantive changes.

COMMENTS

1. Stated need for the bill

The author writes:

Current law allows out of state licensees to serve a Certificate of Merit. AB 2106 ensures that California licensees - professionals that understand California's laws and regulations - are the ones determining if there has been a breach in standard of care.

2. This bill requires the design professional consulted with for the certificate of merit to be licensed in this state, and expands the certificate of merit provisions to include landscape architects, geologists, and geophysicists

The American Council of Engineering Companies of California, the sponsor of the bill, notes that the "use of out-of-state or anonymous consultant[s] - who may lack familiarity with California's standards - has undermined the credibility of the process and contributed to increased litigation and pressure to settle, regardless of the merits of a case." They argue that requiring the consulted with design professional to be licensed in this state will ensure "that evaluations are conducted by individuals who understand California's regulatory environment and applicable standard of care."

The bill also expands the provisions of Section 411.35 of the Code of Civil Procedure to apply to more design professionals, specifically licensed landscape architects, registered professional geologists, and registered professional geophysicists.

3. Statements in support

A coalition of supporters, including the sponsor of the bill, write in support stating:

California's Certificate of Merit law was established to ensure that claims against licensed design professionals - such as engineers, architects, and land surveyors - are reviewed by a qualified expert before proceeding, since these cases typically require an understanding of highly specialized and technical design requirements. While well-intentioned, gaps in the current statute have undermined its effectiveness. Under existing law, the subject matter expert consulted in these cases is not required to be licensed in California and may remain anonymous. This has led to situations where lawsuits are initiated based on opinions from out-of-state or unidentified individuals who may lack familiarity with California's unique regulatory environment, including seismic standards, building codes, and environmental requirements.

As a result, design professionals are increasingly subject to claims that do not reflect California's standard of practice. When these claims are filed without a properly licensed subject matter expert who is clearly identified, design professionals will and do defend themselves vigorously. For both sides, this means spending substantial time and resources litigating issues that could be resolved early if the validity of the Certificate of Merit review were clearly established at the beginning of the case.

SUPPORT

American Council of Engineering Companies of California (sponsor)
American Institute of Architects California
American Property Casualty Insurance Association
American Society of Civil Engineers - Region 9
California & Nevada Civil Engineers and Land Surveyors Association
California Building Industry Association
Civil Justice Association of California
Parikh Consultants, Inc.
Structural Engineers Association of California
Verdantas
WMH Corporation

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: AB 1444 (Jerome Horton, 2005) would have expanded the certificate of merit provisions to also apply to a real estate broker or salesperson. AB 1444 died in this Committee.

PRIOR VOTES

Assembly Floor (Ayes 73, Noes 0)
Assembly Judiciary Committee (Ayes 12, Noes 0)
