



## SUPPORT FAIR PUBLIC WORKS CONTRACTS

### ***PLEASE SUPPORT SHB 1559***

*(Sponsors: Reps. Haigh, Dammeier & Goodman)*

#### **Background**

Design professionals (architects, engineers, landscape architects & land surveyors) purchase errors & omissions insurance. This insurance provides protection for the firm and its clients against damages, liabilities, and costs as a result of the design professional's negligence.

Some public agencies include overly broad indemnification clauses that require the design professional to indemnify, pay for the defense of, and hold harmless the local public entities against damages, liabilities, and costs *not* caused by the design professional.

#### **Unanimous Support in the House**

In 2011 and 2012, SHB 1559 passed the House of Representatives 98-0.

#### **Changes Made to Address Public Agencies' Concerns**

Substitute House Bill 1559 bill has been completely rewritten to address the concerns raised by public agencies. As a result, the Washington Department of Transportation and the Department of Enterprise Services now *support* SHB 1559. Their support demonstrates the reasonableness of the proposal.

#### **Holds Design Professionals Accountable for Their Own Actions**

The premise of SHB 1559 is to hold design professionals accountable for their own actions. If they make a mistake, they can be required to indemnify and pay for the defense of the client agency. But, if the mistake is made by someone else, then that party is held accountable through their contracts with the agency. Each consultant and contractor is responsible for their actions; not the actions of others.

#### **Broad Indemnification Clauses are Uninsurable**

The overly broad indemnity clauses for actions that are beyond the control of the design professional are uninsurable and expose the design professional to personal liability for the negligence or fault of others.

An agency is much better off having contract provisions which can be covered by insurance. A properly insured contract guarantees protection for the architect and the client in the event of a lawsuit. Proper contract provisions also allow the agency to properly allocate risks.

Without insurance, the firm and the professional are held to pay the costs of the defense. For most firms, that means they are one lawsuit away from bankruptcy.

One firm was forced to spend over \$300,000 defending a client for a lawsuit in which the firm was not even listed as a defendant and there was no claim of wrongdoing by the firm. This was all for an \$8,000 contract.

#### KEY POINTS

- *Passed the House unanimously in 2011 & 2012, 98-0.*
- *WSDOT and DES now support the bill.*
- *Design professionals' insurance only covers their own negligence.*
- *Overly broad contract requirements are uninsurable and unfair to design professionals..*
- *Uninsurable contracts leave public agencies with a false sense of protection.*
- *SHB 1559 restores balance, limiting design professionals' liability to their own actions.*

**Stan Bowman**  
**Executive Director**  
bowman@aiawa.org

Phone: 360-943-6012  
Fax: 360-352-1870

twitter.com/aiawa  
aiawa.blogspot.com  
facebook.com/aiawa