

Alaska sets standard for fairness in A-E Contracts

On February 26, 2008, Alaska's Governor Sarah Palin signed into law a new landmark standard for Architect/Engineer indemnification liability in public construction-related professional services contracts. Previously known as HB-151, Alaska Statute AS36.90.300 requires that all public related professional services contracts in Alaska must include uniform indemnification hold-harmless provisions on a comparative fault basis. The bill aims for fairness and accountability in contracts between public agencies and design consultants. The Alaska Statute goes well beyond A-E liability reform passed in California in 2006, because it prescribes uniform contract indemnification language for public agencies at all levels of government including public corporations, and makes each party financially responsible for their own liabilities.

"This levels the playing field. It is an issue that can cripple relationships between private companies and the state, and that's bad business. It is even worse public policy." said bill sponsor Rep. Craig Johnson. "This bill makes sense in a variety of ways. It ensures fair business practices between the public and private sectors, provides accountability for all involved in contracts, and prevents any one side from being absolved of their own negligence."

"Certain public agencies in the State of Alaska have been getting away with putting language in contracts that allows them to shirk responsibility for their own negligence," Johnson said. "With the requirements in the bill, which is modeled on tried-and-true Department of Transportation & Public Facilities contract language, we close this loop hole and remove the opportunity a public agency has to 'pass the buck' on to design consultants for their own negligence."

HB151 was the primary focus of the Alaska Professional Design Council A-E Contracts Committee, chaired by professional mechanical engineer Boyd Morgenthaler, P.E. Over a three year period the committee recruited a wide range of supporters including several dozen of Alaska's most prominent architecture and engineering businesses, local and national level insurance company representatives, and many of Alaska's Professional Societies including the Alaska Society of Professional Engineers PEPP Division and the American Council of Engineering Companies (ACEC) of Alaska. The bill passed with unanimous support from both bodies of the Alaska Legislature.