

5038

2013-2014 Regular Sessions

I N S E N A T E

May 7, 2013

Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the general municipal law, the public authorities law and the state finance law in relation to contracts with professional design firms

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The general municipal law is amended by adding a new
2 section 103-h to read as follows:

3 S 103-H. INDEMNIFICATION LANGUAGE IN CONTRACTS. 1. DEFINITIONS. AS
4 USED IN THIS SECTION:

5 A. THE TERM "MUNICIPAL CORPORATION," SHALL MEAN A COUNTY, TOWN, CITY
6 AND VILLAGE.

7 B. THE TERM "PROFESSIONAL FIRM" SHALL BE DEFINED AS ANY INDIVIDUAL OR
8 SOLE PROPRIETORSHIP, PARTNERSHIP, CORPORATION, ASSOCIATION, OR OTHER
9 LEGAL ENTITY PERMITTED BY LAW TO PRACTICE THE PROFESSIONS OF ARCHITEC-
10 TURE, ENGINEERING OR SURVEYING.

11 2. ALL CONTRACTS SUBJECT TO THIS ARTICLE SHALL INCLUDE THE FOLLOWING
12 LANGUAGE:

13 "TO THE FULLEST EXTENT PERMITTED BY LAW, THE PROFESSIONAL FIRM AGREES
14 TO INDEMNIFY AND HOLD THE MUNICIPAL CORPORATION, ITS OFFICERS, DIRECTORS
15 AND EMPLOYEES HARMLESS FROM ALL THIRD PARTY CLAIMS, LIABILITIES, DAMAGES
16 AND COSTS (INCLUDING ALL REASONABLE ATTORNEY'S FEES AND COST OF DEFENSE)
17 TO WHICH THE MUNICIPAL CORPORATION, ITS OFFICERS, DIRECTORS AND EMPLOY-
18 EES MAY BE SUBJECT TO, ARISING OUT OF THE DEATH OR BODILY INJURY TO ANY
19 PERSON OR THE DESTRUCTION OR DAMAGE TO ANY PROPERTY TO THE EXTENT CAUSED
20 BY THE NEGLIGENT ACTS, ERRORS OR OMISSIONS, OR WILLFUL MISCONDUCT OF THE
21 PROFESSIONAL FIRM'S PERFORMANCE OF PROFESSIONAL SERVICES PROVIDED UNDER
22 THIS AGREEMENT AND THOSE OF ITS SUB-CONSULTANTS OR ANYONE FOR WHOM THE
23 PROFESSIONAL FIRM IS LEGALLY LIABLE."

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD10794-01-3

1 "TO THE FULLEST EXTENT PERMITTED BY LAW, THE MUNICIPAL CORPORATION
2 AGREES TO INDEMNIFY AND HOLD THE PROFESSIONAL FIRM HARMLESS FROM ALL
3 THIRD PARTY CLAIMS, LIABILITIES, DAMAGES AND COSTS (INCLUDING ALL
4 REASONABLE ATTORNEY'S FEES AND COST OF DEFENSE) TO THE EXTENT CAUSED BY
5 THE NEGLIGENT ACTS, ERRORS OR OMISSIONS OF THE MUNICIPAL CORPORATION,
6 ITS CONTRACTORS, CONSULTANTS OR ANYONE FOR WHOM THE MUNICIPAL CORPO-
7 RATION IS LEGALLY LIABLE."

8 S 2. The public authorities law is amended by adding a new section
9 2879-d to read as follows:

10 S 2879-D. INDEMNIFICATION LANGUAGE IN CONTRACTS. 1. DEFINITIONS. AS
11 USED IN THIS SECTION:

12 A. THE TERM "STATE AUTHORITY" SHALL MEAN A PUBLIC AUTHORITY OR PUBLIC
13 BENEFIT CORPORATION CREATED BY OR EXISTING UNDER THIS CHAPTER OR ANY
14 OTHER LAW OF THE STATE OF NEW YORK, WITH ONE OR MORE OF ITS MEMBERS
15 APPOINTED BY THE GOVERNOR OR WHO SERVE AS MEMBERS BY VIRTUE OF HOLDING A
16 CIVIL OFFICE OF THE STATE, OTHER THAN AN INTERSTATE OR INTERNATIONAL
17 AUTHORITY OR PUBLIC BENEFIT CORPORATION, INCLUDING SUBSIDIARIES OF SUCH
18 PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION.

19 B. THE TERM "LOCAL AUTHORITY" SHALL MEAN: (A) A PUBLIC AUTHORITY OR
20 PUBLIC BENEFIT CORPORATION CREATED BY OR EXISTING UNDER THIS CHAPTER OR
21 ANY OTHER LAW OF THE STATE OF NEW YORK WHOSE MEMBERS DO NOT HOLD A CIVIL
22 OFFICE OF THE STATE, ARE NOT APPOINTED BY THE GOVERNOR OR ARE APPOINTED
23 BY THE GOVERNOR SPECIFICALLY UPON THE RECOMMENDATION OF THE LOCAL
24 GOVERNMENT OR GOVERNMENTS; (B) A NOT-FOR-PROFIT CORPORATION AFFILIATED
25 WITH, SPONSORED BY, OR CREATED BY A COUNTY, CITY, TOWN OR VILLAGE
26 GOVERNMENT; (C) A LOCAL INDUSTRIAL DEVELOPMENTAL AGENCY OR AUTHORITY OR
27 OTHER LOCAL PUBLIC BENEFIT CORPORATION; (D) AN AFFILIATE OF SUCH LOCAL
28 AUTHORITY; OR (E) A LAND BANK CORPORATION CREATED PURSUANT TO ARTICLE
29 SIXTEEN OF THE NOT-FOR-PROFIT CORPORATION LAW.

30 C. THE TERM "PROFESSIONAL FIRM" SHALL MEAN ANY INDIVIDUAL OR SOLE
31 PROPRIETORSHIP, PARTNERSHIP, CORPORATION, ASSOCIATION, OR OTHER LEGAL
32 ENTITY PERMITTED BY LAW TO PRACTICE THE PROFESSIONS OF ARCHITECTURE,
33 ENGINEERING OR SURVEYING.

34 2. ALL CONTRACTS SUBJECT TO THIS ARTICLE SHALL INCLUDE THE FOLLOWING
35 LANGUAGE:

36 "TO THE FULLEST EXTENT PERMITTED BY LAW, THE PROFESSIONAL FIRM AGREES
37 TO INDEMNIFY AND HOLD THE STATE AND LOCAL AUTHORITY, ITS OFFICERS,
38 DIRECTORS AND EMPLOYEES HARMLESS FROM ALL THIRD PARTY CLAIMS, LIABIL-
39 ITIES, DAMAGES AND COSTS (INCLUDING ALL REASONABLE ATTORNEY'S FEES AND
40 COST OF DEFENSE) TO WHICH THE STATE AND LOCAL AUTHORITY, ITS OFFICERS,
41 DIRECTORS AND EMPLOYEES MAY BE SUBJECT TO, ARISING OUT OF THE DEATH OR
42 BODILY INJURY TO ANY PERSON OR THE DESTRUCTION OR DAMAGE TO ANY PROPERTY
43 TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS, ERRORS OR OMISSIONS, OR
44 WILLFUL MISCONDUCT OF THE PROFESSIONAL FIRM'S PERFORMANCE OF PROFES-
45 SIONAL SERVICES PROVIDED UNDER THIS AGREEMENT AND THOSE OF ITS SUB-CON-
46 SULTANTS OR ANYONE FOR WHOM THE PROFESSIONAL FIRM IS LEGALLY LIABLE."

47 "TO THE FULLEST EXTENT PERMITTED BY LAW, THE STATE AND LOCAL AUTHORITY
48 AGREES TO INDEMNIFY AND HOLD THE PROFESSIONAL FIRM HARMLESS FROM ALL
49 THIRD PARTY CLAIMS, LIABILITIES, DAMAGES AND COSTS (INCLUDING ALL
50 REASONABLE ATTORNEY'S FEES AND COST OF DEFENSE) TO THE EXTENT CAUSED BY
51 THE NEGLIGENT ACTS, ERRORS OR OMISSIONS OF THE STATE AND LOCAL AUTHORI-
52 TY, ITS CONTRACTORS, CONSULTANTS OR ANYONE FOR WHOM THE STATE AND LOCAL
53 AUTHORITY IS LEGALLY LIABLE."

54 S 3. Section 136-a of the state finance law is amended by adding a new
55 subdivision 6 to read as follows:

56 6. (A) DEFINITIONS. AS USED IN THIS SUBDIVISION:

1 (I) THE TERM "STATE DEPARTMENT" SHALL MEAN THOSE STATE GOVERNMENT
2 DEPARTMENTS, DIVISIONS OR COMMISSIONS EMPOWERED BY THE STATE TO ENTER
3 INTO CONTRACTUAL AGREEMENTS ON BEHALF OF THE STATE OF NEW YORK.

4 (II) THE TERM "PROFESSIONAL FIRM" SHALL BE DEFINED AS ANY INDIVIDUAL
5 OR SOLE PROPRIETORSHIP, PARTNERSHIP, CORPORATION, ASSOCIATION, OR OTHER
6 LEGAL ENTITY PERMITTED BY LAW TO PRACTICE THE PROFESSIONS OF ARCHITEC-
7 TURE, ENGINEERING OR SURVEYING.

8 (B) ALL CONTRACTS SUBJECT TO THIS ARTICLE SHALL INCLUDE THE FOLLOWING
9 LANGUAGE:

10 "TO THE FULLEST EXTENT PERMITTED BY LAW, THE PROFESSIONAL FIRM AGREES
11 TO INDEMNIFY AND HOLD THE STATE DEPARTMENT, ITS OFFICERS, DIRECTORS AND
12 EMPLOYEES HARMLESS FROM ALL THIRD PARTY CLAIMS, LIABILITIES, DAMAGES AND
13 COSTS (INCLUDING ALL REASONABLE ATTORNEY'S FEES AND COST OF DEFENSE) TO
14 WHICH THE STATE DEPARTMENT, ITS OFFICERS, DIRECTORS AND EMPLOYEES MAY BE
15 SUBJECT TO, ARISING OUT OF THE DEATH OR BODILY INJURY TO ANY PERSON OR
16 THE DESTRUCTION OR DAMAGE TO ANY PROPERTY TO THE EXTENT CAUSED BY THE
17 NEGLIGENT ACTS, ERRORS OR OMISSIONS, OR WILLFUL MISCONDUCT OF THE
18 PROFESSIONAL FIRM'S PERFORMANCE OF PROFESSIONAL SERVICES PROVIDED UNDER
19 THIS AGREEMENT AND THOSE OF ITS SUB-CONSULTANTS OR ANY ONE FOR WHOM THE
20 DESIGN CONSULTANT IS LEGALLY LIABLE."

21 "TO THE FULLEST EXTENT PERMITTED BY LAW, THE STATE DEPARTMENT AGREES
22 TO INDEMNIFY AND HOLD THE PROFESSIONAL FIRM HARMLESS FROM ALL THIRD
23 PARTY CLAIMS, LIABILITIES, DAMAGES AND COSTS (INCLUDING ALL REASONABLE
24 ATTORNEY'S FEES AND COST OF DEFENSE) TO THE EXTENT CAUSED BY THE NEGLI-
25 GENT ACTS, ERRORS OR OMISSIONS OF THE STATE DEPARTMENT, ITS CONTRACTORS,
26 CONSULTANTS OR ANYONE FOR WHOM THE STATE DEPARTMENT IS LEGALLY LIABLE."

27 S 4. This act shall take effect immediately.