

5038--A

2013-2014 Regular Sessions

I N   S E N A T E

May 7, 2013

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Introduced by Sens. MARTINS, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- recommitted to the Committee on Local Government in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 ARCHITECT-  
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

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

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BY THE NEGLIGENT ACTS, ERRORS OR OMISSIONS, OR WILLFUL MISCONDUCT OF THE PROFESSIONAL FIRM'S PERFORMANCE OF PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT AND THOSE OF ITS SUB-CONSULTANTS OR ANYONE FOR WHOM THE PROFESSIONAL FIRM IS LEGALLY LIABLE."

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

3. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS REQUIRING A NOTICE OF CLAIM OR OTHER CONDITION PRECEDENT IN LITIGATION FOR ANY PARTY NOT OTHERWISE ENTITLED TO RECEIVE ONE, NOR SHALL IT REQUIRE ANY ACTION TO BE BROUGHT BY OR AGAINST ANY PARTY IN THE COURT OF CLAIMS UNLESS SUCH A REQUIREMENT PREVIOUSLY EXISTED AS TO THAT PARTY.

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

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

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

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

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

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

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

1 "TO THE FULLEST EXTENT PERMITTED BY LAW, THE STATE AND LOCAL AUTHORITY  
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 STATE AND LOCAL AUTHORI-  
6 TY, ITS CONTRACTORS, CONSULTANTS OR ANYONE FOR WHOM THE STATE AND LOCAL  
7 AUTHORITY IS LEGALLY LIABLE."

8 3. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS REQUIRING A NOTICE OF  
9 CLAIM OR OTHER CONDITION PRECEDENT IN LITIGATION FOR ANY PARTY NOT  
10 OTHERWISE ENTITLED TO RECEIVE ONE, NOR SHALL IT REQUIRE ANY ACTION TO BE  
11 BROUGHT BY OR AGAINST ANY PARTY IN THE COURT OF CLAIMS UNLESS SUCH A  
12 REQUIREMENT PREVIOUSLY EXISTED AS TO THAT PARTY.

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

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

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

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

23 (B) ALL CONTRACTS SUBJECT TO THIS ARTICLE SHALL INCLUDE THE FOLLOWING  
24 LANGUAGE:

25 "TO THE FULLEST EXTENT PERMITTED BY LAW, THE PROFESSIONAL FIRM AGREES  
26 TO INDEMNIFY AND HOLD THE STATE DEPARTMENT, ITS OFFICERS, DIRECTORS AND  
27 EMPLOYEES HARMLESS FROM ALL THIRD PARTY CLAIMS, LIABILITIES, DAMAGES AND  
28 COSTS (INCLUDING ALL REASONABLE ATTORNEY'S FEES AND COST OF DEFENSE) TO  
29 WHICH THE STATE DEPARTMENT, ITS OFFICERS, DIRECTORS AND EMPLOYEES MAY BE  
30 SUBJECT TO, ARISING OUT OF THE DEATH OR BODILY INJURY TO ANY PERSON OR  
31 THE DESTRUCTION OR DAMAGE TO ANY PROPERTY TO THE EXTENT CAUSED BY THE  
32 NEGLIGENT ACTS, ERRORS OR OMISSIONS, OR WILLFUL MISCONDUCT OF THE  
33 PROFESSIONAL FIRM'S PERFORMANCE OF PROFESSIONAL SERVICES PROVIDED UNDER  
34 THIS AGREEMENT AND THOSE OF ITS SUB-CONSULTANTS OR ANY ONE FOR WHOM THE  
35 DESIGN CONSULTANT IS LEGALLY LIABLE."

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

42 (C) NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED AS REQUIRING A  
43 NOTICE OF CLAIM OR OTHER CONDITION PRECEDENT IN LITIGATION FOR ANY PARTY  
44 NOT OTHERWISE ENTITLED TO RECEIVE ONE, NOR SHALL IT REQUIRE ANY ACTION  
45 TO BE BROUGHT BY OR AGAINST ANY PARTY IN THE COURT OF CLAIMS UNLESS SUCH  
46 A REQUIREMENT PREVIOUSLY EXISTED AS TO THAT PARTY.

47 S 4. This act shall take effect immediately.