

# STATE OF NEW YORK

8293

2017-2018 Regular Sessions

## IN ASSEMBLY

June 6, 2017

Introduced by M. of A. MORELLE -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the general municipal law, the public authorities law and the state finance law, in relation to liability of design professionals

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 § 103-h. Design professional liability. 1. For purposes of the  
4 section, the term "design professional" shall mean:

5 a. An individual licensed pursuant to articles one hundred forty-five,  
6 one hundred forty-seven, and one hundred forty-eight of the education  
7 law; or

8 b. Any corporation, limited liability company, partnership or other  
9 business entity legally authorized to practice any of the professions  
10 regulated by articles one hundred forty-five, one hundred forty-seven,  
11 and one hundred forty-eight of the education law.

12 2. Any defense or indemnification obligation included in a provision,  
13 clause, covenant, or agreement contained in, collateral to, or affecting  
14 a contract with a design professional involving a public work that  
15 requires a design professional to defend or indemnify a political subdivi-  
16 vision, its agents, contractors, subcontractors or suppliers shall be  
17 deemed void and against public policy and wholly unenforceable except to  
18 the extent that such damages were caused by or the result of the negli-  
19 gence, recklessness, or willful misconduct of the design professional.  
20 This section shall not be waived or modified by contractual agreement,  
21 act, or omission of the parties.

22 § 2. The public authorities law is amended by adding a new section  
23 2879-d to read as follows:

24 § 2879-d. Design professional liability. 1. As used in this section:

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

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1 a. The term "design professional" shall mean:

2 (1) An individual licensed pursuant to articles one hundred forty-  
3 five, one hundred forty-seven, and one hundred forty-eight of the educa-  
4 tion law, or

5 (2) Any corporation, limited liability company, partnership or other  
6 business entity legally authorized to practice any of the professions  
7 regulated by articles one hundred forty-five, one hundred forty-seven,  
8 and one hundred forty-eight of the education law.

9 b. The term "state authority" shall mean a public authority or public  
10 benefit corporation created by or existing under this chapter or any  
11 other law of the state of New York, with one or more of its members  
12 appointed by the governor or who serve as members by virtue of holding a  
13 civil office of the state, other than an interstate or international  
14 authority or public benefit corporation, including subsidiaries of such  
15 public authority or public benefit corporation.

16 c. The term "local authority" shall mean: (1) a public authority or  
17 public benefit corporation created by or existing under this chapter or  
18 any other law of the state of New York whose members do not hold a civil  
19 office of the state, are not appointed by the governor or are appointed  
20 by the governor specifically upon the recommendation of the local  
21 government or governments; (2) a not-for-profit corporation affiliated  
22 with, sponsored by, or created by a county, city, town or village  
23 government; (3) a local industrial developmental agency or authority or  
24 other local public benefit corporation; (4) an affiliate of such local  
25 authority; or (5) a land bank corporation created pursuant to article  
26 sixteen of the not-for-profit corporation law.

27 2. Any defense or indemnification obligation included in a provision,  
28 clause, covenant, or agreement contained in, collateral to, or affecting  
29 a contract for design professional services involving a public work that  
30 requires a design professional to defend or indemnify a state authority  
31 or local authority, its agents, contractors, subcontractors or suppliers  
32 shall be deemed void and against public policy and wholly unenforceable  
33 except to the extent that such damages were caused by or the result of  
34 the negligence, recklessness, or willful misconduct of the design  
35 professional. This section shall not be waived or modified by contractu-  
36 al agreement, act, or omission of the parties.

37 § 3. Section 136-a of the state finance law is amended by adding a new  
38 subdivision 6 to read as follows:

39 6. a. As used in this subdivision:

40 (1) The term "design professional" shall mean: (i) an individual  
41 licensed pursuant to articles one hundred forty-five, one hundred  
42 forty-seven, and one hundred forty-eight of the education law; or (ii)  
43 any corporation, limited liability company, partnership or other busi-  
44 ness entity legally authorized to practice any of the professions regu-  
45 lated by articles one hundred forty-five, one hundred forty-seven, and  
46 one hundred forty-eight of the education law.

47 (2) The term "state agency" shall mean (i) any state department, (ii)  
48 any division, board, commission or bureau of any state department, (iii)  
49 the state university of New York and the city university of New York,  
50 including all their constituent units, or (iv) a board, a majority of  
51 whose members are appointed by the governor or who serve by virtue of  
52 being state officers or employees as defined in subparagraph (i), (ii)  
53 or (iii) of paragraph (i) of subdivision one of section seventy-three of  
54 the public officers law.

55 b. Any defense or indemnification obligation included in a provision,  
56 clause, covenant, or agreement contained in, collateral to, or affecting

1 a contract for design professional services involving a public work that  
2 requires a design professional to defend or indemnify such state agency,  
3 its agents, contractors, subcontractors or suppliers shall be deemed  
4 void and against public policy and wholly unenforceable except to the  
5 extent that such damages were caused by or the result of the negligence,  
6 recklessness, or willful misconduct of the design professional. This  
7 section shall not be waived or modified by contractual agreement, act,  
8 or omission of the parties.

9 § 4. This act shall take effect immediately.