S T A T E O F N E W Y O R K

480

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. KAVANAGH, JAFFEE -- read once and referred to the Committee on Transportation

AN ACT to amend the highway law, in relation to liability of the state with respect to maintenance and repair of state arterial highways

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

Section 1. Subdivision 8-a of section 349-c of the highway law, as added by chapter 568 of the laws of 1986, is amended to read as follows:

8-a. (a) Except as provided hereafter the state shall indemnify and hold harmless [such city] ANY CITY NAMED IN THIS ARTICLE, INCLUDING THE CITY OF NEW YORK, for any and all liability for damages for personal injury, injury to property or wrongful death for losses arising from or occasioned by the manner of performance of the functions under any agreement with a city for the maintenance and repair of state arterial highways pursuant to this section.

(b) In no event shall the state be obligated to defend or indemnify such city, in any action, proceeding, claim or demand arising out of the actual operation of a vehicle or other equipment while engaged in the operation of repair and maintenance under any such agreement, nor any action, proceeding, claim or demand arising out of services of lighting, cleaning, sweeping and sprinkling any such public street, main route or thoroughfare or portions thereof nor any work on or in connection with subsurface installations and structures that are owned and operated by any city, including sanitary sewers, gas mains, water lines, and conduits, and appurtenances thereto.

(c) [The city] ANY CITY NAMED IN THIS ARTICLE, INCLUDING THE CITY OF NEW YORK, shall be entitled to representation by the attorney general in any claim described in paragraph (a) of this subdivision, provided, however, that the city shall be entitled to itself defend any such action, proceeding, claim or demand whenever the attorney general deter-

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

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mines, based upon his investigation and review of the facts and circumstances of the case that representation by the attorney general would be inappropriate, or whenever a court of competent jurisdiction determines that a conflict of interest exists and that the city is entitled to be separately represented. Whenever the municipality is entitled to defend the action itself, the state shall reimburse the municipality for any and all costs and expenses, including, but not limited to, counsel fees and disbursements.

(d) The state shall indemnify and save harmless such city, INCLUDING THE CITY OF NEW YORK, in the amount of any judgment obtained against such city in any state or federal court in any claim described in paragraph (a) of this subdivision, or in the amount of any settlement of such claim, or shall pay such judgment or settlement; provided, however, that the act or omission from which such judgment or settlement arose occurred while the city was acting within the scope of its functions for maintenance and repair of state arterial highways; provided, further, that no stipulation of settlement of any such action, proceeding, claim or demand shall be made or executed without approval of the attorney general and of the commissioner of transportation or his designee. Payment of any claim made pursuant to settlement shall not exceed the sum of fifty thousand dollars. Nothing herein shall authorize the state to indemnify or save harmless with respect to punitive or exemplary damages.

(e) The duty to defend or indemnify and save harmless prescribed by this subdivision shall be conditioned upon (i) delivery to the attorney general or an assistant attorney general at an office of the department of law in Albany or New York city and by delivery to the commissioner of transportation or his designee of a copy of any claim, summons, complaint, process, notice, demand or other pleading within ten days after such city is served with such document and (ii) the full cooperation of the city in the defense of such action, proceeding, claim or demand and in the defense of any action, proceeding, claim or demand against the state based upon the same act or omission, and in the prosecution of any appeal.

(f) The benefits of this subdivision shall inure only to such city, INCLUDING THE CITY OF NEW YORK, and shall not enlarge or diminish the rights of any other party nor shall any provision of this subdivision be construed to effect, alter, or repeal any provision of the workers' compensation law.

(g) This subdivision shall not in any way affect the obligation of any claimant to give notice to the state under section ten of the court of claims act or any other provision of law.

(h) The provisions of this subdivision shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any insurance agreement.

(i) Except as otherwise specifically provided in this subdivision, the provisions of this subdivision shall not be construed in any way to impair, alter, limit, modify, abrogate, or restrict any immunity available to or conferred upon any unit, entity, officer, or employee of the state or city of any other level of government, or any right to defense and indemnification provided for any governmental officer or employee by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.

S 2. This act shall take effect immediately and shall apply to all actions or proceedings commenced on or after such date.