

7366

2013-2014 Regular Sessions

I N A S S E M B L Y

May 14, 2013

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

AN ACT to amend the public authorities law, the state finance law and
the general municipal law, in relation to requiring indemnification
language in contracts to which the state is a party

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

1 Section 1. The public authorities law is amended by adding a new
2 section 2879-d to read as follows:
3 S 2879-D. INDEMNIFICATION LANGUAGE IN CONTRACTS. 1. ALL CONTRACTS
4 SUBJECT TO THIS ARTICLE SHALL INCLUDE THE FOLLOWING LANGUAGE:
5 "TO THE FULLEST EXTENT PERMITTED BY LAW, THE PROFESSIONAL FIRM AGREES
6 TO INDEMNIFY AND HOLD THE STATE AND LOCAL AUTHORITY, ITS OFFICERS,
7 DIRECTORS, AND EMPLOYEES HARMLESS FROM ALL THIRD PARTY CLAIMS, LIABIL-
8 ITIES, DAMAGES, AND COSTS (INCLUDING ALL REASONABLE ATTORNEY'S FEES AND
9 COSTS OF DEFENSE) TO WHICH THE STATE AND LOCAL AUTHORITY, ITS OFFICERS,
10 DIRECTORS, AND EMPLOYEES MAY BE SUBJECT TO, ARISING OUT OF THE DEATH OR
11 BODILY INJURY TO ANY PERSON OR THE DESTRUCTION OR DAMAGE TO ANY PROPERTY
12 TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS, ERRORS OR OMISSIONS, OR
13 WILLFUL MISCONDUCT OF THE PROFESSIONAL FIRM'S PERFORMANCE OR PROFES-
14 SIONAL SERVICES PROVIDED UNDER THIS AGREEMENT AND THOSE OF ITS SUB-CON-
15 SULTANTS OR ANYONE FOR WHOM THE PROFESSIONAL FIRM IS LEGALLY LIABLE."
16 2. AS USED IN THIS SECTION:
17 A. "MUNICIPAL CORPORATION" MEANS A COUNTY, TOWN, CITY, AND VILLAGE.
18 B. "STATE DEPARTMENT" MEANS THOSE STATE GOVERNMENT DEPARTMENTS, DIVI-
19 SIONS, OR COMMISSIONS EMPOWERED BY THE STATE TO ENTER INTO CONTRACTUAL
20 AGREEMENTS ON BEHALF OF THE STATE OF NEW YORK.
21 C. "STATE AUTHORITY" MEANS A PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPO-
22 RATION CREATED BY OR EXISTING UNDER THIS CHAPTER OR ANY OTHER LAW OF
23 THE STATE OF NEW YORK, WITH ONE OR MORE OF ITS MEMBERS APPOINTED BY THE
24 GOVERNOR OR WHO SERVE AS MEMBERS BY VIRTUE OF HOLDING A CIVIL OFFICE OF

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

LBD10563-01-3

1 THE STATE, OTHER THAN AN INTERSTATE OR INTERNATIONAL AUTHORITY OR PUBLIC
2 BENEFIT CORPORATION, INCLUDING SUBSIDIARIES OF SUCH PUBLIC AUTHORITY OR
3 PUBLIC BENEFIT CORPORATION.

4 D. "LOCAL AUTHORITY" MEANS (1) A PUBLIC AUTHORITY OR PUBLIC BENEFIT
5 CORPORATION CREATED BY OR EXISTING UNDER THIS CHAPTER OR ANY OTHER LAW
6 OF THE STATE OF NEW YORK WHOSE MEMBERS DO NOT HOLD A CIVIL OFFICE OF THE
7 STATE, ARE NOT APPOINTED BY THE GOVERNOR, OR ARE APPOINTED BY THE
8 GOVERNOR SPECIFICALLY UPON THE RECOMMENDATION OF THE LOCAL GOVERNMENT OR
9 GOVERNMENTS; (2) A NOT-FOR-PROFIT CORPORATION AFFILIATED WITH, SPONSORED
10 BY, OR CREATED BY A COUNTY, CITY, TOWN, OR VILLAGE GOVERNMENT; (3) A
11 LOCAL INDUSTRIAL DEVELOPMENTAL AGENCY OR AUTHORITY OR OTHER LOCAL PUBLIC
12 BENEFIT CORPORATION; (4) AN AFFILIATE OF SUCH LOCAL AUTHORITY; OR (5) A
13 LAND BANK CORPORATION CREATED PURSUANT TO ARTICLE SIXTEEN OF THE
14 NOT-FOR-PROFIT CORPORATION LAW.

15 E. "PROFESSIONAL FIRM" MEANS ANY INDIVIDUAL OR SOLE PROPRIETORSHIP,
16 PARTNERSHIP, CORPORATION, ASSOCIATION, OR OTHER LEGAL ENTITY PERMITTED
17 BY LAW TO PRACTICE THE PROFESSIONS OF ARCHITECTURE, ENGINEERING OR
18 SURVEYING.

19 S 2. Section 136-a of the state finance law is amended by adding a new
20 subdivision 6 to read as follows:

21 6. INDEMNIFICATION LANGUAGE IN CONTRACTS. A. ALL CONTRACTS SUBJECT TO
22 THIS ARTICLE SHALL INCLUDE THE FOLLOWING LANGUAGE:

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

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

40 B. AS USED IN THIS SECTION:

41 (1) "MUNICIPAL CORPORATION" MEANS A COUNTY, TOWN, CITY, AND VILLAGE.

42 (2) "STATE DEPARTMENT" MEANS THOSE STATE GOVERNMENT DEPARTMENTS, DIVI-
43 SIONS, OR COMMISSIONS EMPOWERED BY THE STATE TO ENTER INTO CONTRACTUAL
44 AGREEMENTS ON BEHALF OF THE STATE OF NEW YORK.

45 (3) "STATE AUTHORITY" MEANS A PUBLIC AUTHORITY OR PUBLIC BENEFIT
46 CORPORATION CREATED BY OR EXISTING UNDER THIS CHAPTER OR ANY OTHER LAW
47 OF THE STATE OF NEW YORK, WITH ONE OR MORE OF ITS MEMBERS APPOINTED BY
48 THE GOVERNOR OR WHO SERVE AS MEMBERS BY VIRTUE OF HOLDING A CIVIL OFFICE
49 OF THE STATE, OTHER THAN AN INTERSTATE OR INTERNATIONAL AUTHORITY OR
50 PUBLIC BENEFIT CORPORATION, INCLUDING SUBSIDIARIES OF SUCH PUBLIC
51 AUTHORITY OR PUBLIC BENEFIT CORPORATION.

52 (4) "LOCAL AUTHORITY" MEANS (A) A PUBLIC AUTHORITY OR PUBLIC BENEFIT
53 CORPORATION CREATED BY OR EXISTING UNDER THIS CHAPTER OR ANY OTHER LAW
54 OF THE STATE OF NEW YORK WHOSE MEMBERS DO NOT HOLD A CIVIL OFFICE OF THE
55 STATE, ARE NOT APPOINTED BY THE GOVERNOR, OR ARE APPOINTED BY THE GOVER-
56 NOR SPECIFICALLY UPON THE RECOMMENDATION OF THE LOCAL GOVERNMENT OR

1 GOVERNMENTS; (B) A NOT-FOR-PROFIT CORPORATION AFFILIATED WITH, SPONSORED
2 BY, OR CREATED BY A COUNTY, CITY, TOWN, OR VILLAGE GOVERNMENT; (C) A
3 LOCAL INDUSTRIAL DEVELOPMENTAL AGENCY OR AUTHORITY OR OTHER LOCAL PUBLIC
4 BENEFIT CORPORATION; (D) AN AFFILIATE OF SUCH LOCAL AUTHORITY; OR (E) A
5 LAND BANK CORPORATION CREATED PURSUANT TO ARTICLE SIXTEEN OF THE
6 NOT-FOR-PROFIT CORPORATION LAW.

7 (5) "PROFESSIONAL FIRM" MEANS ANY INDIVIDUAL OR SOLE PROPRIETORSHIP,
8 PARTNERSHIP, CORPORATION, ASSOCIATION, OR OTHER LEGAL ENTITY PERMITTED
9 BY LAW TO PRACTICE THE PROFESSIONS OF ARCHITECTURE, ENGINEERING OR
10 SURVEYING.

11 S 3. The general municipal law is amended by adding a new section
12 103-h to read as follows:

13 S 103-H. INDEMNIFICATION LANGUAGE IN CONTRACTS. 1. ALL CONTRACTS
14 SUBJECT TO THIS ARTICLE SHALL INCLUDE THE FOLLOWING LANGUAGE:

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

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

33 2. AS USED IN THIS SECTION:

34 A. "MUNICIPAL CORPORATION" MEANS A COUNTY, TOWN, CITY, AND VILLAGE.

35 B. "STATE DEPARTMENT" MEANS THOSE STATE GOVERNMENT DEPARTMENTS, DIVI-
36 SIONS, OR COMMISSIONS EMPOWERED BY THE STATE TO ENTER INTO CONTRACTUAL
37 AGREEMENTS ON BEHALF OF THE STATE OF NEW YORK.

38 C. "STATE AUTHORITY" MEANS A PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPO-
39 RATION CREATED BY OR EXISTING UNDER THIS CHAPTER OR ANY OTHER LAW OF THE
40 STATE OF NEW YORK, WITH ONE OR MORE OF ITS MEMBERS APPOINTED BY THE
41 GOVERNOR OR WHO SERVE AS MEMBERS BY VIRTUE OF HOLDING A CIVIL OFFICE OF
42 THE STATE, OTHER THAN AN INTERSTATE OR INTERNATIONAL AUTHORITY OR PUBLIC
43 BENEFIT CORPORATION, INCLUDING SUBSIDIARIES OF SUCH PUBLIC AUTHORITY OR
44 PUBLIC BENEFIT CORPORATION.

45 D. "LOCAL AUTHORITY" MEANS (1) A PUBLIC AUTHORITY OR PUBLIC BENEFIT
46 CORPORATION CREATED BY OR EXISTING UNDER THIS CHAPTER OR ANY OTHER LAW
47 OF THE STATE OF NEW YORK WHOSE MEMBERS DO NOT HOLD A CIVIL OFFICE OF THE
48 STATE, ARE NOT APPOINTED BY THE GOVERNOR, OR ARE APPOINTED BY THE GOVER-
49 NOR SPECIFICALLY UPON THE RECOMMENDATION OF THE LOCAL GOVERNMENT OR
50 GOVERNMENTS; (2) A NOT-FOR-PROFIT CORPORATION AFFILIATED WITH, SPONSORED
51 BY, OR CREATED BY A COUNTY, CITY, TOWN, OR VILLAGE GOVERNMENT; (3) A
52 LOCAL INDUSTRIAL DEVELOPMENTAL AGENCY OR AUTHORITY OR OTHER LOCAL PUBLIC
53 BENEFIT CORPORATION; (4) AN AFFILIATE OF SUCH LOCAL AUTHORITY; OR (5) A
54 LAND BANK CORPORATION CREATED PURSUANT TO ARTICLE SIXTEEN OF THE
55 NOT-FOR-PROFIT CORPORATION LAW.

1 E. "PROFESSIONAL FIRM" MEANS ANY INDIVIDUAL OR SOLE PROPRIETORSHIP,
2 PARTNERSHIP, CORPORATION, ASSOCIATION, OR OTHER LEGAL ENTITY PERMITTED
3 BY LAW TO PRACTICE THE PROFESSIONS OF ARCHITECTURE, ENGINEERING OR
4 SURVEYING.

5 S 4. This act shall take effect immediately.