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

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. 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. 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 COSTS 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 OR PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT AND THOSE OF ITS SUB-CONSULTANTS OR ANYONE FOR WHOM THE PROFESSIONAL FIRM IS LEGALLY LIABLE."

2. AS USED IN THIS SECTION:

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

B. "STATE DEPARTMENT" MEANS THOSE STATE GOVERNMENT DEPARTMENTS, DIVISIONS, OR COMMISSIONS EMPOWERED BY THE STATE TO ENTER INTO CONTRACTUAL AGREEMENTS ON BEHALF OF THE STATE OF NEW YORK.

C. "STATE AUTHORITY" MEANS 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

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

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

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

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

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

6. INDEMNIFICATION LANGUAGE IN CONTRACTS. A. 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 DEPARTMENTS, ITS OFFICERS, DIRECTORS AND EMPLOYEES HARMLESS FROM ALL THIRD PARTY CLAIMS, LIABILITIES, DAMAGES AND COSTS (INCLUDING ALL REASONABLE ATTORNEY'S FEES AND COSTS OF DEFENSE) TO WHICH THE STATE DEPARTMENTS, 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 OR PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT AND THOSE OF ITS SUB-CONSULTANTS OR ANYONE FOR WHOM THE DESIGN CONSULTANT IS LEGALLY LIABLE."

"TO THE FULLEST EXTENT PERMITTED BY LAW, THE STATE DEPARTMENT 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 COSTS OF DEFENSE) TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS, ERRORS OR OMISSIONS OF THE STATE DEPARTMENT, ITS CONTRACTORS, CONSULTANTS, OR ANYONE FOR WHOM THE STATE DEPARTMENT IS LEGALLY LIABLE."

B. AS USED IN THIS SECTION:

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

(2) "STATE DEPARTMENT" MEANS THOSE STATE GOVERNMENT DEPARTMENTS, DIVISIONS, OR COMMISSIONS EMPOWERED BY THE STATE TO ENTER INTO CONTRACTUAL AGREEMENTS ON BEHALF OF THE STATE OF NEW YORK.

(3) "STATE AUTHORITY" MEANS 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.

(4) "LOCAL AUTHORITY" MEANS (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.

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

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

S 103-H. INDEMNIFICATION LANGUAGE IN CONTRACTS. 1. 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 MUNICIPAL CORPORATION, ITS OFFICERS, DIRECTORS, AND EMPLOYEES HARMLESS FROM ALL THIRD PARTY CLAIMS, LIABILITIES, DAMAGES AND COSTS (INCLUDING ALL REASONABLE ATTORNEY'S FEES AND COSTS OF DEFENSE) TO WHICH THE MUNICIPAL CORPORATIONS, 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 PROFESSIONALS FIRM'S PERFORMANCE OR PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT AND THOSE OF ITS SUB-CONSULTANTS OR ANYONE FOR WHOM THE MUNICIPAL CORPORATION 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 COSTS OF DEFENSE) TO THE EXTENT CAUSED BY NEGLIGENT ACTS, ERROR OR OMISSIONS OF THE MUNICIPAL CORPORATION, ITS CONTRACTORS, CONSULTANTS OR ANYONE FOR WHOM THE MUNICIPAL CORPORATION IS LEGALLY LIABLE."

2. AS USED IN THIS SECTION:

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

B. "STATE DEPARTMENT" MEANS THOSE STATE GOVERNMENT DEPARTMENTS, DIVISIONS, OR COMMISSIONS EMPOWERED BY THE STATE TO ENTER INTO CONTRACTUAL AGREEMENTS ON BEHALF OF THE STATE OF NEW YORK.

C. "STATE AUTHORITY" MEANS 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.

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

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

S 4. This act shall take effect immediately.