

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  
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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.