

5981

2015-2016 Regular Sessions

I N   A S S E M B L Y

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Introduced by M. of A. SCHIMMINGER, LUPARDO, BENEDETTO, JAFFEE, STIRPE,  
LIFTON, RAIA, McDONALD, GARBARINO, CURRAN -- Multi-Sponsored by -- M.  
of A. CROUCH -- read once and referred to the Committee on Corpora-  
tions, Authorities and Commissions

AN ACT to amend the general municipal law, the public authorities law  
and the state finance law, in relation to contracts with professional  
design firms

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, 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     S 103-H. INDEMNIFICATION LANGUAGE IN CONTRACTS.     1. DEFINITIONS. AS  
4     USED IN THIS SECTION:  
5     A. THE TERM "MUNICIPAL CORPORATION" SHALL MEAN A COUNTY, TOWN, CITY  
6     AND VILLAGE.  
7     B. THE TERM "PROFESSIONAL FIRM" SHALL BE DEFINED AS ANY INDIVIDUAL OR  
8     SOLE PROPRIETORSHIP, PARTNERSHIP, CORPORATION, ASSOCIATION, OR OTHER  
9     LEGAL ENTITY PERMITTED BY LAW TO PRACTICE THE PROFESSIONS OF ARCHITEC-  
10    TURE, ENGINEERING OR SURVEYING.  
11    2. ALL CONTRACTS SUBJECT TO THIS ARTICLE SHALL INCLUDE THE FOLLOWING  
12    LANGUAGE:  
13    "TO THE FULLEST EXTENT PERMITTED BY LAW, THE PROFESSIONAL FIRM AGREES  
14    TO INDEMNIFY AND HOLD THE MUNICIPAL CORPORATION, ITS OFFICERS, DIRECTORS  
15    AND EMPLOYEES HARMLESS FROM ALL THIRD PARTY CLAIMS, LIABILITIES, DAMAGES  
16    AND COSTS (INCLUDING ALL REASONABLE ATTORNEY'S FEES AND COST OF DEFENSE)  
17    TO WHICH THE MUNICIPAL CORPORATION, ITS OFFICERS, DIRECTORS AND EMPLOY-  
18    EES MAY BE SUBJECT TO, ARISING OUT OF THE DEATH OR BODILY INJURY TO ANY  
19    PERSON OR THE DESTRUCTION OR DAMAGE TO ANY PROPERTY TO THE EXTENT CAUSED  
20    BY THE NEGLIGENT ACTS, ERRORS OR OMISSIONS, OR WILLFUL MISCONDUCT OF THE  
21    PROFESSIONAL FIRM'S PERFORMANCE OF PROFESSIONAL SERVICES PROVIDED UNDER

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

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1 THIS AGREEMENT AND THOSE OF ITS SUB-CONSULTANTS OR ANYONE FOR WHOM THE  
2 PROFESSIONAL FIRM IS LEGALLY LIABLE."

3 "TO THE FULLEST EXTENT PERMITTED BY LAW, THE MUNICIPAL CORPORATION  
4 AGREES TO INDEMNIFY AND HOLD THE PROFESSIONAL FIRM HARMLESS FROM ALL  
5 THIRD PARTY CLAIMS, LIABILITIES, DAMAGES AND COSTS (INCLUDING ALL  
6 REASONABLE ATTORNEY'S FEES AND COST OF DEFENSE) TO THE EXTENT CAUSED BY  
7 THE NEGLIGENT ACTS, ERRORS OR OMISSIONS OF THE MUNICIPAL CORPORATION,  
8 ITS CONTRACTORS, CONSULTANTS OR ANYONE FOR WHOM THE MUNICIPAL CORPO-  
9 RATION IS LEGALLY LIABLE."

10 3. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS REQUIRING A NOTICE OF  
11 CLAIM OR OTHER CONDITION PRECEDENT IN LITIGATION FOR ANY PARTY NOT  
12 OTHERWISE ENTITLED TO RECEIVE ONE, NOR SHALL IT REQUIRE ANY ACTION TO BE  
13 BROUGHT BY OR AGAINST ANY PARTY IN THE COURT OF CLAIMS UNLESS SUCH A  
14 REQUIREMENT PREVIOUSLY EXISTED AS TO THAT PARTY.

15 S 2. The public authorities law is amended by adding a new section  
16 2879-d to read as follows:

17 S 2879-D. INDEMNIFICATION LANGUAGE IN CONTRACTS. 1. DEFINITIONS. AS  
18 USED IN THIS SECTION:

19 A. THE TERM "STATE AUTHORITY" SHALL MEAN A PUBLIC AUTHORITY OR PUBLIC  
20 BENEFIT CORPORATION CREATED BY OR EXISTING UNDER THIS CHAPTER OR ANY  
21 OTHER LAW OF THE STATE OF NEW YORK, WITH ONE OR MORE OF ITS MEMBERS  
22 APPOINTED BY THE GOVERNOR OR WHO SERVE AS MEMBERS BY VIRTUE OF HOLDING A  
23 CIVIL OFFICE OF THE STATE, OTHER THAN AN INTERSTATE OR INTERNATIONAL  
24 AUTHORITY OR PUBLIC BENEFIT CORPORATION, INCLUDING SUBSIDIARIES OF SUCH  
25 PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION.

26 B. THE TERM "LOCAL AUTHORITY" SHALL MEAN: (A) A PUBLIC AUTHORITY OR  
27 PUBLIC BENEFIT CORPORATION CREATED BY OR EXISTING UNDER THIS CHAPTER OR  
28 ANY OTHER LAW OF THE STATE OF NEW YORK WHOSE MEMBERS DO NOT HOLD A CIVIL  
29 OFFICE OF THE STATE, ARE NOT APPOINTED BY THE GOVERNOR OR ARE APPOINTED  
30 BY THE GOVERNOR SPECIFICALLY UPON THE RECOMMENDATION OF THE LOCAL  
31 GOVERNMENT OR GOVERNMENTS; (B) A NOT-FOR-PROFIT CORPORATION AFFILIATED  
32 WITH, SPONSORED BY, OR CREATED BY A COUNTY, CITY, TOWN OR VILLAGE  
33 GOVERNMENT; (C) A LOCAL INDUSTRIAL DEVELOPMENTAL AGENCY OR AUTHORITY OR  
34 OTHER LOCAL PUBLIC BENEFIT CORPORATION; (D) AN AFFILIATE OF SUCH LOCAL  
35 AUTHORITY; OR (E) A LAND BANK CORPORATION CREATED PURSUANT TO ARTICLE  
36 SIXTEEN OF THE NOT-FOR-PROFIT CORPORATION LAW.

37 C. THE TERM "PROFESSIONAL FIRM" SHALL MEAN ANY INDIVIDUAL OR SOLE  
38 PROPRIETORSHIP, PARTNERSHIP, CORPORATION, ASSOCIATION, OR OTHER LEGAL  
39 ENTITY PERMITTED BY LAW TO PRACTICE THE PROFESSIONS OF ARCHITECTURE,  
40 ENGINEERING OR SURVEYING.

41 2. ALL CONTRACTS SUBJECT TO THIS ARTICLE SHALL INCLUDE THE FOLLOWING  
42 LANGUAGE:

43 "TO THE FULLEST EXTENT PERMITTED BY LAW, THE PROFESSIONAL FIRM AGREES  
44 TO INDEMNIFY AND HOLD THE STATE AND LOCAL AUTHORITY, ITS OFFICERS,  
45 DIRECTORS AND EMPLOYEES HARMLESS FROM ALL THIRD PARTY CLAIMS, LIABIL-  
46 ITIES, DAMAGES AND COSTS (INCLUDING ALL REASONABLE ATTORNEY'S FEES AND  
47 COST OF DEFENSE) TO WHICH THE STATE AND LOCAL AUTHORITY, ITS OFFICERS,  
48 DIRECTORS AND EMPLOYEES MAY BE SUBJECT TO, ARISING OUT OF THE DEATH OR  
49 BODILY INJURY TO ANY PERSON OR THE DESTRUCTION OR DAMAGE TO ANY PROPERTY  
50 TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS, ERRORS OR OMISSIONS, OR  
51 WILLFUL MISCONDUCT OF THE PROFESSIONAL FIRM'S PERFORMANCE OF PROFES-  
52 SIONAL SERVICES PROVIDED UNDER THIS AGREEMENT AND THOSE OF ITS SUB-CON-  
53 SULTANTS OR ANYONE FOR WHOM THE PROFESSIONAL FIRM IS LEGALLY LIABLE."

54 "TO THE FULLEST EXTENT PERMITTED BY LAW, THE STATE AND LOCAL AUTHORITY  
55 AGREES TO INDEMNIFY AND HOLD THE PROFESSIONAL FIRM HARMLESS FROM ALL  
56 THIRD PARTY CLAIMS, LIABILITIES, DAMAGES AND COSTS (INCLUDING ALL

1 REASONABLE ATTORNEY'S FEES AND COST OF DEFENSE) TO THE EXTENT CAUSED BY  
2 THE NEGLIGENT ACTS, ERRORS OR OMISSIONS OF THE STATE AND LOCAL AUTHORI-  
3 TY, ITS CONTRACTORS, CONSULTANTS OR ANYONE FOR WHOM THE STATE AND LOCAL  
4 AUTHORITY IS LEGALLY LIABLE."

5 3. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS REQUIRING A NOTICE OF  
6 CLAIM OR OTHER CONDITION PRECEDENT IN LITIGATION FOR ANY PARTY NOT  
7 OTHERWISE ENTITLED TO RECEIVE ONE, NOR SHALL IT REQUIRE ANY ACTION TO BE  
8 BROUGHT BY OR AGAINST ANY PARTY IN THE COURT OF CLAIMS UNLESS SUCH A  
9 REQUIREMENT PREVIOUSLY EXISTED AS TO THAT PARTY.

10 S 3. Section 136-a of the state finance law is amended by adding a new  
11 subdivision 6 to read as follows:

12 6. (A) DEFINITIONS. AS USED IN THIS SUBDIVISION:

13 (I) THE TERM "STATE DEPARTMENT" SHALL MEAN THOSE STATE GOVERNMENT  
14 DEPARTMENTS, DIVISIONS OR COMMISSIONS EMPOWERED BY THE STATE TO ENTER  
15 INTO CONTRACTUAL AGREEMENTS ON BEHALF OF THE STATE OF NEW YORK.

16 (II) THE TERM "PROFESSIONAL FIRM" SHALL BE DEFINED AS ANY INDIVIDUAL  
17 OR SOLE PROPRIETORSHIP, PARTNERSHIP, CORPORATION, ASSOCIATION, OR OTHER  
18 LEGAL ENTITY PERMITTED BY LAW TO PRACTICE THE PROFESSIONS OF ARCHITEC-  
19 TURE, ENGINEERING OR SURVEYING.

20 (B) ALL CONTRACTS SUBJECT TO THIS ARTICLE SHALL INCLUDE THE FOLLOWING  
21 LANGUAGE:

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

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

39 (C) NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED AS REQUIRING A  
40 NOTICE OF CLAIM OR OTHER CONDITION PRECEDENT IN LITIGATION FOR ANY PARTY  
41 NOT OTHERWISE ENTITLED TO RECEIVE ONE, NOR SHALL IT REQUIRE ANY ACTION  
42 TO BE BROUGHT BY OR AGAINST ANY PARTY IN THE COURT OF CLAIMS UNLESS SUCH  
43 A REQUIREMENT PREVIOUSLY EXISTED AS TO THAT PARTY.

44 S 4. This act shall take effect immediately.