

5129

2015-2016 Regular Sessions

I N S E N A T E

May 4, 2015

Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

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 ASSEMBLY, 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
22 THIS AGREEMENT AND THOSE OF ITS SUB-CONSULTANTS OR ANYONE FOR WHOM THE
23 PROFESSIONAL FIRM IS LEGALLY LIABLE."

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

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

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

13 S 2. The public authorities law is amended by adding a new section
14 2879-d to read as follows:

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

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

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

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

39 2. ALL CONTRACTS SUBJECT TO THIS ARTICLE SHALL INCLUDE THE FOLLOWING
40 LANGUAGE:

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

52 "TO THE FULLEST EXTENT PERMITTED BY LAW, THE STATE AND LOCAL AUTHORITY
53 AGREES TO INDEMNIFY AND HOLD THE PROFESSIONAL FIRM HARMLESS FROM ALL
54 THIRD PARTY CLAIMS, LIABILITIES, DAMAGES AND COSTS (INCLUDING ALL
55 REASONABLE ATTORNEY'S FEES AND COST OF DEFENSE) TO THE EXTENT CAUSED BY
56 THE NEGLIGENT ACTS, ERRORS OR OMISSIONS OF THE STATE AND LOCAL AUTHORI-

1 TY, ITS CONTRACTORS, CONSULTANTS OR ANYONE FOR WHOM THE STATE AND LOCAL
2 AUTHORITY IS LEGALLY LIABLE."

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

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

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

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

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

18 (B) ALL CONTRACTS SUBJECT TO THIS ARTICLE SHALL INCLUDE THE FOLLOWING
19 LANGUAGE:

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

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

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

42 S 4. This act shall take effect immediately.