

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 ARCHITECTURE,  
10 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 EMPLOYEES  
18 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.