

# STATE OF NEW YORK

6622--A

2017-2018 Regular Sessions

## IN SENATE

June 7, 2017

Introduced by Sens. RANZENHOFER, AKSHAR, BONACIC, GALLIVAN, JACOBS, ROBACH, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Local Government in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general municipal law, the public authorities law and the state finance law, in relation to liability of design professionals

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 § 103-h. Design professional liability. 1. For purposes of this  
4 section, the term "design professional" shall mean:

5 a. An individual licensed pursuant to articles one hundred forty-five,  
6 one hundred forty-seven, and one hundred forty-eight of the education  
7 law; or

8 b. Any corporation, limited liability company, partnership or other  
9 business entity legally authorized to practice any of the professions  
10 regulated by articles one hundred forty-five, one hundred forty-seven,  
11 and one hundred forty-eight of the education law.

12 2. Any provision, clause, covenant, or agreement contained in, collat-  
13 eral to, or affecting a contract executed on or after January first, two  
14 thousand nineteen between a municipal corporation, as defined in section  
15 sixty-six of the general construction law, and a design professional for  
16 professional design services related to the design, construction,  
17 repair, or maintenance of any public building, structure, highway,  
18 bridge, viaduct, water or sewer system, or other public facility that  
19 requires a design professional to defend or indemnify such municipal  
20 corporation, its agents, contractors, subcontractors or suppliers shall

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

LBD11957-03-8

1 be deemed void and against public policy and wholly unenforceable,  
2 except as to claims that are caused by or the result of the negligence,  
3 recklessness, or willful misconduct of the design professional. Any  
4 contractual obligation permitted under this section shall be limited and  
5 enforceable only to the degree or percentage or fault attributable to  
6 such design professional.

7 § 2. The public authorities law is amended by adding a new section  
8 2879-d to read as follows:

9 § 2879-d. Design professional liability. 1. As used in this section:

10 a. The term "design professional" shall mean:

11 (1) An individual licensed pursuant to articles one hundred forty-  
12 five, one hundred forty-seven, and one hundred forty-eight of the educa-  
13 tion law, or

14 (2) Any corporation, limited liability company, partnership or other  
15 business entity legally authorized to practice any of the professions  
16 regulated by articles one hundred forty-five, one hundred forty-seven,  
17 and one hundred forty-eight of the education law.

18 b. The term "state authority" shall mean a public authority or public  
19 benefit corporation created by or existing under this chapter or any  
20 other law of the state of New York, with one or more of its members  
21 appointed by the governor or who serve as members by virtue of holding a  
22 civil office of the state, other than an interstate or international  
23 authority or public benefit corporation, including subsidiaries of such  
24 public authority or public benefit corporation.

25 c. The term "local authority" shall mean: (1) a public authority or  
26 public benefit corporation created by or existing under this chapter or  
27 any other law of the state of New York whose members do not hold a civil  
28 office of the state, are not appointed by the governor or are appointed  
29 by the governor specifically upon the recommendation of the local  
30 government or governments; (2) a not-for-profit corporation affiliated  
31 with, sponsored by, or created by a county, city, town or village  
32 government; (3) a local industrial developmental agency or authority or  
33 other local public benefit corporation; (4) an affiliate of such local  
34 authority; or (5) a land bank corporation created pursuant to article  
35 sixteen of the not-for-profit corporation law.

36 2. Any provision, clause, covenant, or agreement contained in, collat-  
37 eral to, or affecting a contract executed on or after January first, two  
38 thousand nineteen between a state authority or local authority and a  
39 design professional for professional design services related to the  
40 design, construction, repair, or maintenance of any public building,  
41 structure, highway, bridge, viaduct, water or sewer system, or other  
42 public facility that requires a design professional to defend or indem-  
43 nify such state authority or local authority, its agents, contractors,  
44 subcontractors or suppliers shall be deemed void and against public  
45 policy and wholly unenforceable, except as to claims that are caused by  
46 or the result of the negligence, recklessness, or willful misconduct of  
47 the design professional. Any contractual obligation permitted under this  
48 section shall be limited and enforceable only to the degree or percent-  
49 age or fault attributable to such design professional.

50 § 3. Section 136-a of the state finance law is amended by adding a new  
51 subdivision 6 to read as follows:

52 6. a. As used in this subdivision:

53 (1) The term "design professional" shall mean: (i) an individual  
54 licensed pursuant to articles one hundred forty-five, one hundred  
55 forty-seven, and one hundred forty-eight of the education law; or (ii)  
56 any corporation, limited liability company, partnership or other busi-

1 ness entity legally authorized to practice any of the professions regu-  
2 lated by articles one hundred forty-five, one hundred forty-seven, and  
3 one hundred forty-eight of the education law.

4 (2) The term "state agency" shall mean (i) any state department, (ii)  
5 any division, board, commission or bureau of any state department, (iii)  
6 the state university of New York and the city university of New York,  
7 including all their constituent units, or (iv) a board, a majority of  
8 whose members are appointed by the governor or who serve by virtue of  
9 being state officers or employees as defined in subparagraph (i), (ii)  
10 or (iii) of paragraph (i) of subdivision one of section seventy-three of  
11 the public officers law.

12 b. Any provision, clause, covenant, or agreement contained in, collat-  
13 eral to, or affecting a contract executed on or after January first, two  
14 thousand nineteen between a state agency and a design professional for  
15 professional design services related to the design, construction,  
16 repair, or maintenance of any public building, structure, highway,  
17 bridge, viaduct, water or sewer system, or other public facility that  
18 requires a design professional to defend or indemnify such state agency,  
19 its agents, contractors, subcontractors or suppliers shall be deemed  
20 void and against public policy and wholly unenforceable, except as to  
21 claims that are caused by or the result of the negligence, recklessness,  
22 or willful misconduct of the design professional. Any contractual obli-  
23 gation permitted under this section shall be limited and enforceable  
24 only to the degree or percentage or fault attributable to such design  
25 professional.

26 § 4. This act shall take effect immediately.