

STATE OF NEW YORK

6059

2023-2024 Regular Sessions

IN SENATE

March 27, 2023

Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts

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 twenty-four between a municipal corporation, as defined in
15 section sixty-six of the general construction law, and a design profes-
16 sional for professional design services related to the design,
17 construction, repair, or maintenance of any public building, structure,
18 highway, bridge, viaduct, water or sewer system, or other public facili-
19 ty that requires a design professional to defend or indemnify such
20 municipal corporation, its agents, contractors, subcontractors or
21 suppliers shall be deemed void and against public policy and wholly
22 unenforceable, except as to claims that are caused by or the result of
23 the negligence, recklessness, or willful misconduct of the design
24 professional. Any contractual obligation permitted under this section

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

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1 shall be limited and enforceable only to the degree or percentage or
2 fault attributable to such design professional.

3 § 2. The public authorities law is amended by adding a new section
4 2879-d to read as follows:

5 § 2879-d. Design professional liability. 1. As used in this section:

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

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

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

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

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

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

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

48 6. a. As used in this subdivision:

49 (1) The term "design professional" shall mean: (i) an individual
50 licensed pursuant to articles one hundred forty-five, one hundred
51 forty-seven, and one hundred forty-eight of the education law; or (ii)
52 any corporation, limited liability company, partnership or other busi-
53 ness entity legally authorized to practice any of the professions regu-
54 lated by articles one hundred forty-five, one hundred forty-seven, and
55 one hundred forty-eight of the education law.

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

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

23 § 4. This act shall take effect immediately.