# 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:**

Section 1. The general municipal law is amended by adding a new section 103-h to read as follows:

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

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

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

**2. Any provision, clause, covenant, or agreement contained in, collateral to, or affecting a contract executed on or after January first, two thousand twenty-four between a municipal corporation, as defined in section sixty-six of the general construction law, and a design professional for professional design services related to the design, construction, repair, or maintenance of any public building, structure, highway, bridge, viaduct, water or sewer system, or other public facility that requires a design professional to defend or indemnify such municipal corporation, its agents, contractors, subcontractors or suppliers shall be deemed void and against public policy and wholly unenforceable, except as to claims that are caused by or the result of the negligence, recklessness, or willful misconduct of the design 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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shall be limited and enforceable only to the degree or percentage or fault attributable to such design professional.

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

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

a. The term "design professional" shall mean:

(1) An individual licensed pursuant to articles one hundred forty-five, one hundred forty-seven, and one hundred forty-eight of the education law, or

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

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

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

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

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

6. a. As used in this subdivision:

(1) The term "design professional" shall mean: (i) an individual licensed pursuant to articles one hundred forty-five, one hundred forty-seven, and one hundred forty-eight of the education law; or (ii) any corporation, limited liability company, partnership or other business entity legally authorized to practice any of the professions regulated by articles one hundred forty-five, one hundred forty-seven, and one hundred forty-eight of the education law.

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

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

§ 4. This act shall take effect immediately.