



June 21, 2018

SUPPORT

Design Professional Indemnification

A 8293-A (Morelle) / S 6622-A (Ranzenhofer)

On behalf of the New York State Society of Professional Engineers (NYSSPE), in furtherance of public health, safety and welfare, we are writing in **SUPPORT** of the above referenced bill. NYSSPE is a professional trade association representing the interests of its members and more generally the interests of all professional engineers (totaling more than 25,000 licensees in New York State) practicing in all disciplines (civil, structural, mechanical, electrical, geological, environmental, etc.) and practicing in all practice settings (private sector consulting, industry, government, and education.)

This legislation addresses the issue of design professional contractual indemnification on public sector projects (state and local) and is strongly supported by NYSSPE. Indemnification provisions are terms of an agreement where one person (or entity) is charged with responsibility for damages and litigation costs which in the absence of the indemnification agreement would fall upon one or more other parties. The legislation addresses public sector contracts wherein municipalities, state agencies and other governmental entities have inordinate leverage over the terms of indemnification. Presently, governmental entities can and do unfairly shift the burden to design consulting firms for the cost of future contingent events such as property damage, personal injury and attendant attorneys' fees.

Broad form defense and indemnification provisions subject design professionals to liability for services that are well beyond the design professional's scope of work and for matters over which the design professional has no control. Design professionals are unable to secure insurance to cover the scope of claims these provisions can generate. Hence, the demands for defense and indemnification costs beyond the scope of the design professional's contractual scope of work may be illusory. Moreover, many of the most highly qualified firms simply refuse to participate in RFQs when confronted with adhesion contracts of this nature.

This bill addresses this inequity by voiding contractual provisions requiring defense and indemnification involving a public work to the extent that a design professional is required to defend and indemnify a municipality, state agency, and other governmental

entity or other parties for damages that are not the result of the negligence, recklessness, or willful misconduct of the design professional. Responsibility for losses related to the actions or failures of other parties that are unrelated to the design professional services rightfully rest with the at-fault party or parties. Design professions simply should not be compelled to provide indemnification for such conduct.

Finally, it is most instructive to contrast the treatment afforded the design and medical professions with regard to the liabilities engendered in connection with the rendering of professional services. In the case of medicine, and related professions such as dentistry, the state has offered a helping hand in the 2018-2019 Budget to the tune of 127 million dollars to assist with the cost of excess malpractice insurance. (Over the past twenty years the state has expended well in excess of 2 billion dollars in such assistance.)

As detailed herein rather than assisting professional engineers and other design professions with cost for liability coverage New York has permitted liability costs properly falling upon others to devolve upon the design profession. It is time to stop the bleeding.

Accordingly, NYSSPE urges prompt and favorable consideration of this legislation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark Kriss', is centered on the page. The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark C. Kriss
Legislative Counsel

