



April 4, 2025

SUPPORT

PUBLIC SECTOR INDEMNIFICATION REFORM FOR THE DESIGN PROFESSIONS

S 4591 Senator Cooney / A 7379 Assembly Member Vanel

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 association representing the interests of its members, and more generally the interests of all professional engineers (totaling more than 30,000 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 respecting public sector projects (state and local) and is **strongly supported** by NYSSPE. 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 professional engineers (along with design consulting firms generally) for the cost of future contingent events such as personal injury, property damage and attendant attorneys' fees including in circumstances where the design professional played no roll in causing the losses claimed by an injured party.

Broad form defense and indemnification provisions subject design professionals to liability arising out of circumstances that are well beyond the design professional's scope of work and for matters over which the design professional has no control. Design professionals in many instances are unable to secure insurance to cover the scope of claims these provisions can generate. In many instances highly qualified engineering firms simply refuse to participate in Requests for Qualifications (RFQs) when confronted with adhesion contracts of this nature. As a result both public owners and taxpayers are deprived of the opportunity to benefit from their participation.

This bill addresses indemnification 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. .

Accordingly, NYSSPE urges favorable consideration of this legislation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark C. Kriss", is centered on a light gray rectangular background.

Mark C. Kriss, Esq.
Legislative and Legal Counsel