



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

VETO # 265

August 17, 2018

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 6622-A, entitled:

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

NOT APPROVED

This bill would amend the General Municipal Law, Public Authorities Law, and State Finance Law to limit design professionals' duty of indemnification and defense for public works projects. It would have the detrimental impact of voiding any contractual indemnification provisions in a public works project that require design professionals to defend and indemnify other parties for damages beyond those caused by the negligence, recklessness, or willful misconduct of the design professional.

Restricting design professionals' duty of indemnification by statute would unnecessarily restrict State and localities' bargaining power in a given contract and would have the potential to increase taxpayer costs. Further, by limiting design professionals' duty of defense and indemnification to their own negligence, recklessness, or willful misconduct, the legislation would confuse longstanding law and practice concerning when a duty of defense is triggered and how damages are apportioned, exposing public entities and projects to a significant increase in litigation and increasing public costs. For these reasons, I am constrained to veto the bill.

However, I recognize the significant cost outlays and risk that design professionals undertake in large public works contracts, and the role that overly broad indemnification clauses may play in driving up these costs. Therefore, I am directing the State's construction contracting agencies and authorities to review the indemnification clauses in contracts with design professional firms, to determine if they are representative of the industry standard, and reflective of scope of liability insurance coverage design professional firms are able to obtain. I further encourage municipalities, counties, and local authorities to do the same.

The bill is disapproved.

A handwritten signature in black ink, appearing to read "Andrew Cuomo". The signature is stylized and fluid, with a large initial "A" and "C".