

2023 ADVOCACY DAY TALKING POINTS

INDEMNIFICATION REFORM

(S.6059 KENNEDY)

WHAT THE BILL DOES

This bill prohibits contract clauses requiring a licensed design professional to indemnify a public client for actions outside the professional's own negligence.

WHAT THE BILL DOESN'T DO

It does not cover claims caused by the negligence, recklessness, or willful misconduct of a design professional.

THE ASK

We are asking the NYS Legislature and the Governor to **SUPPORT** the passage of Indemnification Reform (S.6059 Kennedy).

- Architects and other licensed design professionals are being pressured to sign contracts for public work with indemnification clauses that are uninsurable and beyond their standard of care.
- These clauses require design professionals to indemnify the acts of the public entity or its employees and other consultants or contractors.
- Some clauses require the design professional to indemnify public clients for alleged acts.
- Professional liability insurance policies only cover claims related to the negligent acts of the insured and do not cover assumed liability based on allegations of negligence or the negligence of others.
- If a design professional opts to disclaim an indemnity contract clause, more often than not, the public client will move on to the next firm willing to expose themselves to this undue risk.
- These clauses are not in the best interest of the public, as they create an obligation which is not backed by insurance.