

1799--A

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I N S E N A T E

February 6, 2009

Introduced by Sens. HASSELL-THOMPSON, ADAMS, DIAZ, HUNTLEY, KRUEGER, MONSERRATE, MONTGOMERY, ONORATO, OPPENHEIMER, PARKER, PERKINS, SAMPSON, SCHNEIDERMAN, SERRANO, STEWART-COUSINS, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, substituted by Assembly Bill No. 4810, substitution reconsidered and vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the executive law, in relation to establishing state agency goal submission procedure

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Section 310 of the executive law is amended by adding a new
2 subdivision 18 to read as follows:
3 18. "GOAL" SHALL MEAN THE AIM OF ENSURING THAT CERTIFIED MINORITY AND
4 WOMEN-OWNED BUSINESS ENTERPRISES BE GIVEN THE OPPORTUNITY FOR MEANINGFUL
5 PARTICIPATION IN EMPLOYMENT ON AND IN THE PERFORMANCE OF STATE
6 CONTRACTS.
7 S 2. The executive law is amended by adding two new sections 315-a and
8 315-b to read as follows:
9 S 315-A. STATE AGENCY GOAL SUBMISSION PROCEDURE. ALL STATE AGENCIES
10 SHALL SUBMIT A GOAL PLAN PURSUANT TO THE FOLLOWING:
11 1. THE AGENCY GOAL PLAN SHALL BE SUBMITTED ANNUALLY IN SUCH FORM AS
12 MAY BE REQUIRED BY THE DIRECTOR, ON OCTOBER FIRST OF EACH YEAR. AGENCIES
13 WITH A BUDGET OF ONE HUNDRED MILLION DOLLARS OR MORE SHALL CONDUCT A
14 PUBLIC MEETING OR A PUBLIC HEARING ON THE PROPOSED GOAL PLAN PRIOR TO
15 THE SUBMISSION OF THE GOAL PLAN.
16 2. THE DIRECTOR SHALL NOTIFY THE STATE AGENCY IN WRITING AS TO WHETHER
17 ITS AGENCY GOAL PLAN IS ACCEPTED OR REJECTED BASED UPON A DETERMINATION
18 AS TO WHETHER THE PURPOSES OF THIS ARTICLE HAVE BEEN MET. IF THE DIREC-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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TOR REJECTS AN AGENCY GOAL PLAN, THE NOTICE OF REJECTION SHALL STATE THE REASONS FOR THE REJECTION AND ANY MODIFICATIONS TO THE AGENCY GOAL PLAN WHICH WOULD RENDER THE PLAN ACCEPTABLE.

3. A STATE AGENCY SHALL SUBMIT ITS AGENCY GOAL PLAN WITHIN THIRTY DAYS OF RECEIPT OF A NOTICE OF REJECTION INCORPORATING RECOMMENDED MODIFICATIONS OR STATING REASONS WHY MODIFICATIONS RECOMMENDED BY THE DIRECTOR CANNOT BE INCORPORATED IN THE STATE AGENCY'S ANNUAL GOAL PLAN.

4. THE STATE AGENCY'S GOAL PLAN MAY BE, FROM TIME TO TIME, AMENDED BY THE STATE AGENCY IN ACCORDANCE WITH THE AVAILABILITY OF FUNDS TO THE STATE AGENCY IN A PARTICULAR FISCAL YEAR AND, UPON AMENDMENT, THE AGENCY GOAL PLAN SHALL BE RESUBMITTED TO THE DIRECTOR FOR APPROVAL IN ACCORDANCE WITH SUBDIVISIONS TWO AND THREE OF THIS SECTION.

5. ANY STATE AGENCY WITH A GOAL PLAN FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE SUBMITTED WITH A GOAL OF LESS THAN FIVE PERCENT MUST ISSUE AN EXPLANATORY MEMORANDUM DESCRIBING THE RATIONALE FOR SUCH GOAL.

6. ANY STATE AGENCY SUBMITTING A GOAL PLAN WITH A GOAL LESS THAN THE PREVIOUS YEAR'S GOAL SHALL CONVOKE A PUBLIC HEARING NOT LESS THAN FORTY-FIVE DAYS SUBSEQUENT TO THE SUBMISSION OF SUCH GOAL PLAN TO EXPLAIN WHY THE GOAL PLAN IS LESS THAN THE PREVIOUS YEAR. THE MINUTES AND FINDINGS OF SUCH HEARING SHALL BE FORWARDED TO THE DIVISION WITHIN THIRTY DAYS.

S 315-B. STATE AGENCY COMPLIANCE REPORTING. 1. STATE AGENCIES SHALL SUBMIT A COMPLIANCE REPORT IN THE FORM AND MANNER REQUIRED BY THE DIRECTOR BY OCTOBER FIRST, TWO THOUSAND TEN, AND QUARTERLY THEREAFTER IN THE FORM AND MANNER REQUIRED BY THE DIRECTOR. THE COMPLIANCE REPORT MAY INCLUDE, BUT IS NOT LIMITED TO, THE FOLLOWING INFORMATION REGARDING STATE CONTRACTS AWARDED IN THE INTERVAL SINCE THE LAST COMPLIANCE REPORT:

(A) THE NUMBER OF STATE CONTRACTS AWARDED, THE MAXIMUM DOLLAR AMOUNT OBLIGATED PURSUANT TO THOSE CONTRACTS, AND TOTAL EXPENDITURES PURSUANT TO ALL SUCH CONTRACTS;

(B) THE NUMBER OF STATE CONTRACTS AWARDED TO CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES, THE MAXIMUM DOLLAR AMOUNT OBLIGATED PURSUANT TO ALL THOSE CONTRACTS, AND THE TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH CONTRACTS;

(C) THE NUMBER OF STATE CONTRACTS AWARDED WHICH INCLUDE A UTILIZATION PLAN FOR BUSINESS PARTICIPATION BY CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES, THE MAXIMUM AMOUNT OBLIGATED PURSUANT TO THOSE CONTRACTS, AND THE TOTAL EXPENDITURE MADE TO ALL SUCH CONTRACTS;

(D) THE NUMBER OF STATE CONTRACTS AWARDED UPON WHICH A WAIVER WAS GRANTED FROM GOALS REQUIRED BY THE CONTRACTS FOR BUSINESS PARTICIPATION BY CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND THE MAXIMUM AMOUNT OBLIGATED PURSUANT TO THOSE CONTRACTS;

(E) THE NUMBER OF STATE CONTRACTS AWARDED WHICH REQUIRED GOALS FOR EMPLOYMENT OF MINORITY GROUP MEMBERS AND WOMEN;

(F) THE NUMBER OF STATE CONTRACTS AWARDED FOR WHICH WAIVERS OF EMPLOYMENT GOALS REQUIRED BY THE CONTRACTS HAVE BEEN GRANTED;

(G) THE INFORMATION REQUIRED BY PARAGRAPHS (A) THROUGH (F) OF THIS SUBDIVISION OF THE REPORTING QUARTER;

(H) A JUSTIFICATION OF ANY WAIVERS GRANTED PURSUANT TO PARAGRAPHS (D) AND (F) OF THIS SUBDIVISION; AND

(I) A STATE AGENCY DETERMINATION OF WHETHER IT IS IN COMPLIANCE WITH ITS GOAL PLAN BASED ON INFORMATION PROVIDED IN THE COMPLIANCE REPORT OR, UPON A STATE AGENCY'S DETERMINATION THAT IT IS NOT IN COMPLIANCE WITH ITS GOAL PLAN, A DESCRIPTION OF ACTIONS WHICH WILL BE TAKEN TO COMPLY WITH THE STATE AGENCY GOAL PLAN.

1 2. IF THE COMPLIANCE REPORTS SUBMITTED BY STATE AGENCIES PURSUANT TO
2 THIS SECTION INDICATE THAT THE STATE AGENCY HAS BEEN OUT OF COMPLIANCE
3 FOR EIGHT CONSECUTIVE QUARTERS, THE DIRECTOR SHALL IMMEDIATELY CONDUCT
4 AN INVESTIGATION AS TO THE LACK OF COMPLIANCE. SUCH INVESTIGATION SHALL
5 INCLUDE, BUT NOT BE LIMITED TO, A PUBLIC HEARING CONVENED BY THE DIVI-
6 SION. THE FINDINGS OF SUCH INVESTIGATION SHALL BE FORWARDED TO THE
7 GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE
8 ASSEMBLY, THE CHAIR OF THE NEW YORK STATE BLACK, PUERTO RICAN, HISPANIC
9 AND ASIAN LEGISLATIVE CAUCUS, THE CHAIR OF THE LEGISLATIVE WOMEN'S
10 CAUCUS, THE CHAIR OF THE CONFERENCE OF BLACK SENATORS, AND THE CHAIR OF
11 THE NEW YORK STATE SENATE PUERTO RICAN/LATINO CAUCUS WITHIN THIRTY DAYS
12 OF THE CONCLUSION OF THE INVESTIGATION.

13 S 3. This act shall take effect on January 1, 2010; provided, however,
14 that the amendments to article 15-A of the executive law made by
15 sections one and two of this act shall not affect the expiration of such
16 article and shall be deemed to expire therewith.