

7489

I N S E N A T E

May 25, 2012

Introduced by Sen. BALL -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

AN ACT to amend the executive law, in relation to participation by service-connected disabled veterans and veterans with respect to state contracts

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

1 Section 1. The executive law is amended by adding a new article 17-A
2 to read as follows:

3 ARTICLE 17-A

4 PARTICIPATION BY SERVICE-CONNECTED DISABLED VETERANS AND
5 VETERANS WITH RESPECT TO STATE CONTRACTS

6 SECTION 369. DEFINITIONS.

7 369-A. OPPORTUNITIES FOR CERTIFIED SERVICE-CONNECTED DISABLED
8 VETERAN-OWNED BUSINESS ENTERPRISES.

9 369-B. OPPORTUNITIES FOR CERTIFIED VETERAN-OWNED BUSINESS ENTER-
10 PRISES.

11 369-C. SEVERABILITY.

12 S 369. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL
13 HAVE THE FOLLOWING MEANINGS:

14 1. "AGENCY" OR "AGENCIES" SHALL HAVE THE SAME MEANING AS DEFINED IN
15 SUBDIVISION NINE OF SECTION ONE HUNDRED SIXTY OF THE STATE FINANCE LAW.

16 2. "PERIOD OF WAR" MEANS THE SPANISH AMERICAN WAR; THE MEXICAN BORDER
17 PERIOD; WORLD WAR I; WORLD WAR II; THE HOSTILITIES KNOWN AS THE KOREAN
18 WAR, WHICH COMMENCED JUNE TWENTY-SEVENTH, NINETEEN HUNDRED FIFTY AND
19 TERMINATED ON JANUARY THIRTY-FIRST, NINETEEN HUNDRED FIFTY-FIVE; THE
20 HOSTILITIES KNOWN AS THE VIETNAM WAR, WHICH COMMENCED ON FEBRUARY TWEN-
21 TY-EIGHTH, NINETEEN HUNDRED SIXTY-ONE AND TERMINATED ON MAY SEVENTH,
22 NINETEEN HUNDRED SEVENTY-FIVE; AND THE HOSTILITIES KNOWN AS THE PERSIAN
23 GULF CONFLICT, WHICH COMMENCED AUGUST SECOND, NINETEEN HUNDRED NINETY TO
24 THE END OF SUCH CONFLICT INCLUDING MILITARY SERVICE IN OPERATION ENDUR-
25 ING FREEDOM, OPERATION IRAQI FREEDOM OR OPERATION NEW DAWN AND WAS THE

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

LBD15990-01-2

1 RECIPIENT OF THE GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL OR THE IRAQ
2 CAMPAIGN MEDAL OR THE AFGHANISTAN CAMPAIGN MEDAL.

3 3. "SERVICE-CONNECTED DISABLED VETERAN" MEANS A VETERAN WHO RECEIVED A
4 COMPENSATION RATING FROM THE UNITED STATES DEPARTMENT OF VETERANS'
5 AFFAIRS OR FROM THE UNITED STATES DEPARTMENT OF DEFENSE BECAUSE OF A
6 SERVICE-CONNECTED DISABILITY INCURRED IN THE LINE OF DUTY IN THE ACTIVE
7 MILITARY, NAVAL OR AIR SERVICE.

8 4. "CERTIFIED SERVICE-CONNECTED DISABLED VETERAN-OWNED BUSINESS ENTER-
9 PRISE" SHALL MEAN A BUSINESS ENTERPRISE, INCLUDING A SOLE PROPRIETOR-
10 SHIP, PARTNERSHIP, OR CORPORATION THAT IS:

11 (A) AT LEAST FIFTY-ONE PERCENT OWNED BY ONE OR MORE SERVICE-CONNECTED
12 DISABLED VETERANS;

13 (B) AN ENTERPRISE IN WHICH SUCH SERVICE-CONNECTED DISABLED VETERAN
14 OWNERSHIP IS REAL, SUBSTANTIAL, AND CONTINUING;

15 (C) AN ENTERPRISE IN WHICH SUCH SERVICE-CONNECTED DISABLED VETERAN
16 OWNERSHIP HAS AND EXERCISES THE AUTHORITY TO CONTROL INDEPENDENTLY THE
17 DAY-TO-DAY BUSINESS DECISIONS OF THE ENTERPRISE;

18 (D) AN ENTERPRISE AUTHORIZED TO DO BUSINESS IN THIS STATE AND IS INDE-
19 PENDENTLY OWNED AND OPERATED;

20 (E) AN ENTERPRISE OWNED BY AN INDIVIDUAL OR INDIVIDUALS, WHOSE OWNER-
21 SHIP, CONTROL AND OPERATION ARE RELIED UPON FOR CERTIFICATION, WITH A
22 PERSONAL NET WORTH THAT DOES NOT EXCEED THREE MILLION FIVE HUNDRED THOU-
23 SAND DOLLARS, AS ADJUSTED ANNUALLY ON THE FIRST OF JANUARY FOR INFLATION
24 ACCORDING TO THE CONSUMER PRICE INDEX OF THE PREVIOUS YEAR;

25 (F) AN ENTERPRISE THAT IS A SMALL BUSINESS PURSUANT TO SUBDIVISION
26 FIVE OF THIS SECTION; AND

27 (G) IS CERTIFIED PURSUANT TO SUBDIVISION THREE OF SECTION THREE
28 HUNDRED SIXTY-NINE-A OF THIS ARTICLE.

29 5. "SMALL BUSINESS" SHALL HAVE THE SAME MEANING AS DEFINED IN SECTION
30 ONE HUNDRED THIRTY-ONE OF THE ECONOMIC DEVELOPMENT LAW.

31 6. "VETERAN" SHALL MEAN A PERSON WHO SERVED IN THE ACTIVE MILITARY,
32 NAVAL, OR AIR SERVICE DURING A PERIOD OF WAR, OR WAS A RECIPIENT OF THE
33 ARMED FORCES EXPEDITIONARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS
34 EXPEDITIONARY MEDAL, OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, AND
35 WAS DISCHARGED OR RELEASED THEREFROM UNDER OTHER THAN DISHONORABLE
36 DISCHARGE.

37 7. "CERTIFIED VETERAN-OWNED BUSINESS ENTERPRISES" SHALL MEAN A BUSI-
38 NESS ENTERPRISE, INCLUDING A SOLE PROPRIETORSHIP, PARTNERSHIP, OR CORPO-
39 RATION THAT IS:

40 (A) AT LEAST FIFTY-ONE PERCENT OWNED BY ONE OR MORE VETERAN;

41 (B) AN ENTERPRISE IN WHICH SUCH VETERAN OWNERSHIP IS REAL, SUBSTAN-
42 TIAL, AND CONTINUING;

43 (C) AN ENTERPRISE IN WHICH SUCH VETERAN OWNERSHIP HAS AND EXERCISES
44 THE AUTHORITY TO CONTROL INDEPENDENTLY THE DAY-TO-DAY BUSINESS DECISIONS
45 OF THE ENTERPRISE;

46 (D) AN ENTERPRISE AUTHORIZED TO DO BUSINESS IN THIS STATE AND INDE-
47 PENDENTLY OWNED AND OPERATED;

48 (E) AN ENTERPRISE OWNED BY AN INDIVIDUAL OR INDIVIDUALS, WHOSE OWNER-
49 SHIP, CONTROL AND OPERATION WERE RELIED UPON FOR CERTIFICATION, WITH A
50 PERSONAL NET WORTH THAT DOES NOT EXCEED THREE MILLION FIVE HUNDRED THOU-
51 SAND DOLLARS, AS ADJUSTED ANNUALLY ON THE FIRST OF JANUARY FOR INFLATION
52 ACCORDING TO THE CONSUMER PRICE INDEX OF THE PREVIOUS YEAR;

53 (F) AN ENTERPRISE THAT IS A SMALL BUSINESS PURSUANT TO SUBDIVISION
54 FIVE OF THIS SECTION; AND

55 (G) IS CERTIFIED PURSUANT TO SUBDIVISION THREE OF SECTION THREE
56 HUNDRED SIXTY-NINE-B OF THIS ARTICLE.

1 S 369-A. OPPORTUNITIES FOR CERTIFIED SERVICE-CONNECTED DISABLED VETER-
2 AN-OWNED BUSINESS ENTERPRISES.

3 1. CONTRACT PREFERENCES. EACH AGENCY SHALL PROVIDE THE OPPORTUNITY FOR
4 CERTIFIED SERVICE-CONNECTED DISABLED VETERAN-OWNED BUSINESS ENTERPRISES
5 TO MAXIMIZE THEIR PARTICIPATION IN THE PERFORMANCE OF STATE CONTRACTS. A
6 BID BY A SERVICE-CONNECTED DISABLED VETERAN-OWNED BUSINESS ENTERPRISE
7 SHALL BE TREATED AS THE LOWEST BID IN A COMPETITIVE PROCESS FOR A
8 COMMODITY IF IT COST NO MORE THAN FIFTEEN PERCENT HIGHER THAN THE LOWEST
9 BID AND FOR SERVICES, IF THE COST COMPONENT IS NO MORE THAN FIFTEEN
10 PERCENT HIGHER THAN THE COST COMPONENT OF THE HIGHEST SCORING BID, THESE
11 COMPONENTS SHALL BE TREATED AS EQUAL FOR PURPOSES OF COMPETITIVE SCOR-
12 ING.

13 2. DUTIES OF AGENCIES. IN ORDER TO IMPLEMENT THE PROVISIONS AND POLICY
14 ESTABLISHED IN SUBDIVISION ONE OF THIS SECTION, AGENCIES SHALL:

15 (A) DEVELOP A STRATEGY TO IMPLEMENT THE PROVISIONS AND POLICY ESTAB-
16 LISHED IN SUBDIVISION ONE OF THIS SECTION; AND SHALL PUBLICLY PUBLISH
17 SUCH STRATEGY;

18 (B) MAKE THE AGENCY'S STRATEGY PUBLICLY AVAILABLE, POST SUCH STRATEGY
19 UPON THE WEBSITE OF SUCH AGENCY, AND REPORT ANNUALLY TO THE GOVERNOR,
20 THE TEMPORARY PRESIDENT OF THE SENATE, AND THE SPEAKER OF THE ASSEMBLY,
21 ON THE IMPLEMENTATION OF THE AGENCY'S STRATEGY;

22 (C) DESIGNATE A SENIOR-LEVEL OFFICIAL WITHIN SUCH AGENCY WHO SHALL BE
23 RESPONSIBLE FOR DEVELOPING AND IMPLEMENTING THE AGENCY'S STRATEGY; AND

24 (D) INCLUDE IN THE AGENCY'S STRATEGY PLANS FOR:

25 (I) ENCOURAGING AND FACILITATING PARTICIPATION BY CERTIFIED
26 SERVICE-CONNECTED DISABLED VETERAN-OWNED BUSINESS ENTERPRISES IN COMPE-
27 TITIONS FOR AWARD OF AGENCY CONTRACTS;

28 (II) ENCOURAGING AGENCY CONTRACTORS TO SUBCONTRACT WITH CERTIFIED
29 SERVICE-CONNECTED DISABLED VETERAN-OWNED BUSINESS ENTERPRISES AND
30 ACTIVELY MONITORING AND EVALUATING AGENCY CONTRACTOR'S EFFORTS TO DO SO;

31 (III) TRAINING AGENCY PERSONNEL ON APPLICABLE LAW AND POLICIES RELAT-
32 ING TO PARTICIPATION OF CERTIFIED SERVICE-CONNECTED DISABLED
33 VETERAN-OWNED BUSINESS ENTERPRISES IN STATE CONTRACTING; AND

34 (IV) DISSEMINATING INFORMATION TO CERTIFIED SERVICE-CONNECTED DISABLED
35 VETERAN-OWNED BUSINESS ENTERPRISES THAT WOULD ASSIST THESE BUSINESSES IN
36 PARTICIPATING IN AWARDS OF AGENCY CONTRACTS.

37 3. CERTIFICATION. (A) THE DEPUTY COMMISSIONER RESPONSIBLE FOR HEADING
38 THE DIVISION FOR SMALL BUSINESS WITHIN THE DEPARTMENT OF ECONOMIC DEVEL-
39 OPMENT, AS ESTABLISHED PURSUANT TO SECTION ONE HUNDRED THIRTY-TWO OF THE
40 ECONOMIC DEVELOPMENT LAW SHALL PROMULGATE RULES AND REGULATIONS PROVID-
41 ING FOR THE ESTABLISHMENT OF A STATEWIDE CERTIFICATION PROGRAM INCLUDING
42 RULES AND REGULATIONS GOVERNING THE APPROVAL, DENIAL, OR REVOCATION OF
43 ANY SUCH CERTIFICATION. SUCH RULES AND REGULATIONS SHALL INCLUDE, BUT
44 NOT BE LIMITED TO, SUCH MATTERS AS MAY BE REQUIRED TO ENSURE THAT THE
45 ESTABLISHED PROCEDURES THEREUNDER SHALL AT LEAST BE IN COMPLIANCE WITH
46 THE CODE OF FAIR PROCEDURE SET FORTH IN SECTION SEVENTY-THREE OF THE
47 CIVIL RIGHTS LAW.

48 (B) THE DIVISION FOR SMALL BUSINESS SHALL BE RESPONSIBLE FOR VERIFYING
49 BUSINESSES AS BEING OWNED, OPERATED, AND CONTROLLED BY A SERVICE-CON-
50 NECTED DISABLED VETERAN AND FOR CERTIFYING SUCH VERIFIED BUSINESSES.
51 STATUS AS A SERVICE-CONNECTED DISABLED VETERAN SHALL BE DOCUMENTED BY A
52 COPY OF THE VETERAN'S CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE
53 DUTY ALSO KNOWN AS A DD-214 FORM OR AN HONORABLE SERVICE CERTIFICATE
54 REPORT OF CAUSALITY FROM THE DEPARTMENT OF DEFENSE, A LETTER OF CERTIF-
55 ICATION BY THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS OR THE
56 UNITED STATES DEPARTMENT OF DEFENSE AND ANY ADDITIONAL INFORMATION THAT

1 MAY BE REQUIRED BY THE DIVISION FOR SMALL BUSINESS. THE DEPUTY COMMIS-
2 SIONER OF THE DIVISION FOR SMALL BUSINESS SHALL PREPARE A DIRECTORY OF
3 CERTIFIED SERVICE-CONNECTED DISABLED VETERAN-OWNED BUSINESS ENTERPRISES
4 FOR USE BY AGENCIES IN CARRYING OUT THE PROVISIONS OF THIS SECTION. SUCH
5 DIRECTORY SHALL BE PUBLICLY POSTED ON THE EMPIRE STATE DEVELOPMENT
6 CORPORATION WEBSITE. THE DEPUTY COMMISSIONER OF THE DIVISION FOR SMALL
7 BUSINESS SHALL PERIODICALLY UPDATE THE DIRECTORY.

8 (C) FOLLOWING APPLICATION FOR CERTIFICATION PURSUANT TO THIS SECTION,
9 THE DEPUTY COMMISSIONER OF THE DIVISION FOR SMALL BUSINESS SHALL PROVIDE
10 THE APPLICANT WITH WRITTEN NOTICE OF THE STATUS OF THE APPLICATION,
11 INCLUDING NOTICE OF ANY OUTSTANDING DEFICIENCIES, WITHIN THIRTY DAYS.
12 WITHIN SIXTY DAYS OF SUBMISSION OF A FINAL COMPLETED APPLICATION, THE
13 DEPUTY COMMISSIONER OF THE DIVISION FOR SMALL BUSINESS SHALL PROVIDE THE
14 APPLICANT WITH WRITTEN NOTICE OF A DETERMINATION BY THE DEPUTY COMMIS-
15 SIONER OF THE DIVISION FOR SMALL BUSINESS APPROVING OR DENYING SUCH
16 CERTIFICATION AND, IN THE EVENT OF A DENIAL, A STATEMENT SETTING FORTH
17 THE REASONS FOR SUCH DENIAL. UPON A DETERMINATION DENYING OR REVOKING
18 CERTIFICATION, THE BUSINESS ENTERPRISE FOR WHICH CERTIFICATION HAS BEEN
19 SO DENIED OR REVOKED SHALL, UPON WRITTEN REQUEST MADE WITHIN THIRTY DAYS
20 FROM RECEIPT OF NOTICE OF SUCH DETERMINATION, BE ENTITLED TO A HEARING
21 BEFORE AN INDEPENDENT HEARING OFFICER DESIGNATED FOR SUCH PURPOSE BY THE
22 DEPUTY COMMISSIONER OF THE DIVISION FOR SMALL BUSINESS. IN THE EVENT
23 THAT A REQUEST FOR A HEARING IS NOT MADE WITHIN SUCH THIRTY DAY PERIOD,
24 SUCH DETERMINATION SHALL BE DEEMED TO BE FINAL. THE INDEPENDENT HEARING
25 OFFICER SHALL CONDUCT A HEARING AND UPON THE CONCLUSION OF SUCH HEARING,
26 ISSUE A WRITTEN RECOMMENDATION TO THE DEPUTY COMMISSIONER OF THE DIVI-
27 SION FOR SMALL BUSINESS TO AFFIRM, REVERSE, OR MODIFY SUCH DETERMINATION
28 OF THE DEPUTY COMMISSIONER OF THE DIVISION FOR SMALL BUSINESS. SUCH
29 WRITTEN RECOMMENDATION SHALL BE ISSUED TO THE PARTIES. THE DEPUTY
30 COMMISSIONER OF THE DIVISION FOR SMALL BUSINESS, WITHIN THIRTY DAYS, BY
31 ORDER, MUST ACCEPT, REJECT OR MODIFY SUCH RECOMMENDATION OF THE HEARING
32 OFFICER AND SET FORTH IN WRITING THE REASON THEREFOR. THE DEPUTY COMMIS-
33 SIONER OF THE DIVISION FOR SMALL BUSINESS SHALL SERVE A COPY OF SUCH
34 ORDER AND REASONS THEREFOR UPON THE BUSINESS ENTERPRISE BY PERSONAL
35 SERVICE OR BY CERTIFIED MAIL RETURN RECEIPT REQUESTED. THE ORDER OF THE
36 DEPUTY COMMISSIONER OF THE DIVISION FOR SMALL BUSINESS SHALL BE SUBJECT
37 TO REVIEW PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW
38 AND RULES.

39 (D) ALL CERTIFICATIONS SHALL BE VALID FOR A PERIOD OF THREE YEARS.

40 4. DUTIES OF DEPUTY COMMISSIONER OF THE DIVISION FOR SMALL BUSINESS.
41 THE DEPUTY COMMISSIONER OF THE DIVISION FOR SMALL BUSINESS SHALL:

42 (A) DESIGNATE AN APPROPRIATE ENTITY WITHIN THE DIVISION FOR SMALL
43 BUSINESS THAT SHALL, IN CONSULTATION WITH THE DIVISION OF VETERANS
44 AFFAIRS, PROVIDE TO CERTIFIED SERVICE-CONNECTED DISABLED VETERAN-OWNED
45 BUSINESS ENTERPRISES INFORMATION AND ASSISTANCE CONCERNING PARTICIPATION
46 IN STATE CONTRACTING;

47 (B) ADVISE AND ASSIST AGENCIES IN THEIR IMPLEMENTATION OF SUBDIVISION
48 ONE OF THIS SECTION; AND

49 (C) MAKE AVAILABLE TO CERTIFIED SERVICE-CONNECTED DISABLED
50 VETERAN-OWNED BUSINESS ENTERPRISES TRAINING IN STATE CONTRACTING LAW,
51 PROCEDURES, AND PRACTICES THAT WOULD ASSIST SUCH BUSINESSES IN PARTIC-
52 IPATING IN STATE CONTRACTING AND MAKE THIS TRAINING AVAILABLE ONLINE
53 THROUGH A CONTINUOUS LEARNING PROGRAM.

54 S 369-B. OPPORTUNITIES FOR CERTIFIED VETERAN-OWNED BUSINESS ENTER-
55 PRISES. 1. CONTRACT PREFERENCES. EACH AGENCY SHALL PROVIDE THE OPPORTU-
56 NITY FOR CERTIFIED VETERAN-OWNED BUSINESS ENTERPRISES TO MAXIMIZE THEIR

1 PARTICIPATION IN THE PERFORMANCE OF STATE CONTRACTS. A BID BY A VETER-
2 AN-OWNED BUSINESS ENTERPRISE SHALL BE TREATED AS THE LOWEST BID IN A
3 COMPETITIVE PROCESS FOR A COMMODITY IF IT COST NO MORE THAN TEN PERCENT
4 HIGHER THAN THE LOWEST BID AND FOR SERVICES, IF THE COST COMPONENT IS NO
5 MORE THAN TEN PERCENT HIGHER THAN THE COST COMPONENT OF THE HIGHEST
6 SCORING BID, THESE COMPONENTS SHALL BE TREATED AS EQUAL FOR PURPOSES OF
7 COMPETITIVE SCORING.

8 2. DUTIES OF AGENCIES. IN ORDER TO IMPLEMENT THE PROVISIONS AND POLICY
9 ESTABLISHED IN SUBDIVISION ONE OF THIS SECTION, AGENCIES SHALL:

10 (A) DEVELOP A STRATEGY TO IMPLEMENT THE PROVISIONS AND POLICY ESTAB-
11 LISHED IN SUBDIVISION ONE OF THIS SECTION; AND SHALL PUBLICLY PUBLISH
12 SUCH STRATEGY;

13 (B) MAKE THE AGENCY'S STRATEGY PUBLICLY AVAILABLE, HAVE SUCH STRATEGY
14 POSTED UPON THE WEBSITE OF SUCH AGENCY, AND REPORT ANNUALLY TO THE
15 GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, AND THE SPEAKER OF THE
16 ASSEMBLY ON THE IMPLEMENTATION OF THE AGENCY'S STRATEGY;

17 (C) DESIGNATE A SENIOR-LEVEL OFFICIAL WITHIN SUCH AGENCY WHO SHALL BE
18 RESPONSIBLE FOR DEVELOPING AND IMPLEMENTING THE AGENCY'S STRATEGY; AND

19 (D) INCLUDE IN THE AGENCY'S STRATEGY PLANS FOR:

20 (I) ENCOURAGING AND FACILITATING PARTICIPATION BY CERTIFIED
21 VETERAN-OWNED BUSINESS ENTERPRISES IN COMPETITIONS FOR AWARD OF AGENCY
22 CONTRACTS;

23 (II) ENCOURAGING AGENCY CONTRACTORS TO SUBCONTRACT WITH CERTIFIED
24 VETERAN-OWNED BUSINESS ENTERPRISES AND ACTIVELY MONITORING AND EVALUAT-
25 ING AGENCY CONTRACTOR'S EFFORTS TO DO SO;

26 (III) TRAINING AGENCY PERSONNEL ON APPLICABLE LAW AND POLICIES RELAT-
27 ING TO PARTICIPATION OF CERTIFIED VETERAN-OWNED BUSINESS ENTERPRISES IN
28 STATE CONTRACTING; AND

29 (IV) DISSEMINATING INFORMATION TO CERTIFIED VETERAN-OWNED BUSINESS
30 ENTERPRISES THAT WOULD ASSIST THESE BUSINESSES IN PARTICIPATING IN
31 AWARDS OF AGENCY CONTRACTS.

32 3. CERTIFICATION. (A) THE DEPUTY COMMISSIONER RESPONSIBLE FOR HEADING
33 THE DIVISION FOR SMALL BUSINESS WITHIN THE DEPARTMENT OF ECONOMIC DEVEL-
34 OPMENT, AS ESTABLISHED PURSUANT TO SECTION ONE HUNDRED THIRTY-TWO OF THE
35 ECONOMIC DEVELOPMENT LAW SHALL PROMULGATE RULES AND REGULATIONS PROVID-
36 ING FOR THE ESTABLISHMENT OF A STATEWIDE CERTIFICATION PROGRAM INCLUDING
37 RULES AND REGULATIONS GOVERNING THE APPROVAL, DENIAL, OR REVOCATION OF
38 ANY SUCH CERTIFICATION. SUCH RULES AND REGULATIONS SHALL INCLUDE, BUT
39 NOT BE LIMITED TO, SUCH MATTERS AS MAY BE REQUIRED TO ENSURE THAT THE
40 ESTABLISHED PROCEDURES THEREUNDER SHALL AT LEAST BE IN COMPLIANCE WITH
41 THE CODE OF FAIR PROCEDURE SET FORTH IN SECTION SEVENTY-THREE OF THE
42 CIVIL RIGHTS LAW.

43 (B) THE DIVISION FOR SMALL BUSINESS SHALL BE RESPONSIBLE FOR VERIFYING
44 BUSINESSES AS BEING OWNED, OPERATED, AND CONTROLLED BY A VETERAN AND FOR
45 CERTIFYING SUCH VERIFIED BUSINESSES. STATUS AS A VETERAN SHALL BE DOCU-
46 MENTED BY A COPY OF THE VETERAN'S CERTIFICATE OF RELEASE OR DISCHARGE
47 FROM ACTIVE DUTY ALSO KNOWN AS A DD-214 FORM OR AN HONORABLE SERVICE
48 CERTIFICATE REPORT OF CAUSALITY FROM THE DEPARTMENT OF DEFENSE, A LETTER
49 OF CERTIFICATION BY THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS OR
50 THE UNITED STATES DEPARTMENT OF DEFENSE AND ANY ADDITIONAL INFORMATION
51 THAT MAY BE REQUIRED BY THE DIVISION FOR SMALL BUSINESS. THE DEPUTY
52 COMMISSIONER OF THE DIVISION FOR SMALL BUSINESS SHALL PREPARE A DIRECTO-
53 RY OF CERTIFIED VETERAN-OWNED BUSINESS ENTERPRISES FOR USE BY AGENCIES
54 IN CARRYING OUT THE PROVISIONS OF THIS SECTION. SUCH DIRECTORY SHALL BE
55 PUBLICLY POSTED ON THE EMPIRE STATE DEVELOPMENT CORPORATION WEBSITE. THE

1 DEPUTY COMMISSIONER OF THE DIVISION FOR SMALL BUSINESS SHALL PERIOD-
2 ICALLY UPDATE THE DIRECTORY.

3 (C) FOLLOWING APPLICATION FOR CERTIFICATION PURSUANT TO THIS SECTION,
4 THE DEPUTY COMMISSIONER OF THE DIVISION FOR SMALL BUSINESS SHALL PROVIDE
5 THE APPLICANT WITH WRITTEN NOTICE OF THE STATUS OF THE APPLICATION,
6 INCLUDING NOTICE OF ANY OUTSTANDING DEFICIENCIES, WITHIN THIRTY DAYS.
7 WITHIN SIXTY DAYS OF SUBMISSION OF A FINAL COMPLETED APPLICATION, THE
8 DEPUTY COMMISSIONER OF THE DIVISION FOR SMALL BUSINESS SHALL PROVIDE THE
9 APPLICANT WITH WRITTEN NOTICE OF A DETERMINATION BY THE DEPUTY COMMIS-
10 SIONER OF THE DIVISION FOR SMALL BUSINESS APPROVING OR DENYING SUCH
11 CERTIFICATION AND, IN THE EVENT OF A DENIAL, A STATEMENT SETTING FORTH
12 THE REASONS FOR SUCH DENIAL. UPON A DETERMINATION DENYING OR REVOKING
13 CERTIFICATION, THE BUSINESS ENTERPRISE FOR WHICH CERTIFICATION HAS BEEN
14 SO DENIED OR REVOKED SHALL, UPON WRITTEN REQUEST MADE WITHIN THIRTY DAYS
15 FROM RECEIPT OF NOTICE OF SUCH DETERMINATION, BE ENTITLED TO A HEARING
16 BEFORE AN INDEPENDENT HEARING OFFICER DESIGNATED FOR SUCH PURPOSE BY THE
17 DEPUTY COMMISSIONER OF THE DIVISION FOR SMALL BUSINESS. IN THE EVENT
18 THAT A REQUEST FOR A HEARING IS NOT MADE WITHIN SUCH THIRTY DAY PERIOD,
19 SUCH DETERMINATION SHALL BE DEEMED TO BE FINAL. THE INDEPENDENT HEARING
20 OFFICER SHALL CONDUCT A HEARING AND UPON THE CONCLUSION OF SUCH HEARING,
21 ISSUE A WRITTEN RECOMMENDATION TO THE DEPUTY COMMISSIONER OF THE DIVI-
22 SION FOR SMALL BUSINESS TO AFFIRM, REVERSE, OR MODIFY SUCH DETERMINATION
23 OF THE DEPUTY COMMISSIONER OF THE DIVISION FOR SMALL BUSINESS. SUCH
24 WRITTEN RECOMMENDATION SHALL BE ISSUED TO THE PARTIES. THE DEPUTY
25 COMMISSIONER OF THE DIVISION FOR SMALL BUSINESS, WITHIN THIRTY DAYS, BY
26 ORDER, MUST ACCEPT, REJECT OR MODIFY SUCH RECOMMENDATION OF THE HEARING
27 OFFICER AND SET FORTH IN WRITING THE REASONS THEREFOR. THE DEPUTY
28 COMMISSIONER OF THE DIVISION FOR SMALL BUSINESS SHALL SERVE A COPY OF
29 SUCH ORDER AND REASONS THEREFOR UPON THE BUSINESS ENTERPRISE BY PERSONAL
30 SERVICE OR BY CERTIFIED MAIL RETURN RECEIPT REQUESTED. THE ORDER OF THE
31 DEPUTY COMMISSIONER OF THE DIVISION FOR SMALL BUSINESS SHALL BE SUBJECT
32 TO REVIEW PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW
33 AND RULES.

34 (D) ALL CERTIFICATIONS SHALL BE VALID FOR A PERIOD OF THREE YEARS.

35 4. DUTIES OF DEPUTY COMMISSIONER OF THE DIVISION FOR SMALL BUSINESS.
36 THE DEPUTY COMMISSIONER OF THE DIVISION FOR SMALL BUSINESS SHALL:

37 (A) DESIGNATE AN APPROPRIATE ENTITY WITHIN THE DIVISION FOR SMALL
38 BUSINESS THAT SHALL, IN CONSULTATION WITH THE DIVISION OF VETERANS
39 AFFAIRS, PROVIDE TO VETERAN-OWNED BUSINESS ENTERPRISES INFORMATION AND
40 ASSISTANCE CONCERNING PARTICIPATION IN STATE CONTRACTING;

41 (B) ADVISE AND ASSIST AGENCIES IN THEIR IMPLEMENTATION OF SUBDIVISION
42 ONE OF THIS SECTION; AND

43 (C) MAKE AVAILABLE TO VETERAN-OWNED BUSINESS ENTERPRISES TRAINING IN
44 STATE CONTRACTING LAW, PROCEDURES, AND PRACTICES THAT WOULD ASSIST SUCH
45 BUSINESSES IN PARTICIPATING IN STATE CONTRACTING AND MAKE THIS TRAINING
46 AVAILABLE ONLINE THROUGH A CONTINUOUS LEARNING PROGRAM.

47 S 369-C. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR
48 PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURIS-
49 DICTION TO BE INVALID, THE JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALI-
50 DATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO
51 THE CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE DIRECT-
52 LY INVOLVED IN THE CONTROVERSY IN WHICH THE JUDGMENT SHALL HAVE BEEN
53 RENDERED.

54 S 2. This act shall take effect immediately.