

S. 6609

A. 8768

S E N A T E - A S S E M B L Y

February 12, 2014

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IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means

AN ACT to amend the executive law, in relation to expanding opportunities for service-disabled veteran-owned business enterprises

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

1     Section 1. Legislative findings. New York state (the "state") is home  
2 to more than 900,000 veterans, seventy-two percent of whom have served  
3 during periods of conflict. Additionally, the state is home to approxi-  
4 mately 30,000 active duty military personnel as well as 30,000 national  
5 guard and reserve personnel. In honor of their service to and sacrifice  
6 for our nation, New York state declares that it is the public policy of  
7 the state to promote and encourage the continuing economic development  
8 of service-disabled veteran-owned businesses. In the furtherance of  
9 this policy, the state aims to assist service-disabled veterans in play-  
10 ing a greater role in the economy of the state and to provide additional  
11 assistance and support to disabled veterans to better equip them to form  
12 and expand small businesses, thereby enabling them to realize the Ameri-  
13 can dream they fought to protect. To achieve this objective, the legis-  
14 lature finds that it is in the best interest of the economic development  
15 of the state to enact the "Service-Disabled Veteran-Owned Business Act".

16     S 1-a. Short title. This act shall be known and may be cited as the  
17 "Service-Disabled Veteran-Owned Business Act".

18     S 2. The executive law is amended by adding a new article 17-B to read  
19 as follows:

20                     ARTICLE 17-B

21             PARTICIPATION BY SERVICE-DISABLED VETERANS WITH RESPECT TO  
22                     STATE CONTRACTS

23     SECTION 369-H. DEFINITIONS.

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

LBD12074-01-4

369-I. DIVISION OF SERVICE-DISABLED VETERANS' BUSINESS DEVELOPMENT.

369-J. OPPORTUNITIES FOR CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES.

369-K. SEVERABILITY.

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

1. "CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISE" SHALL MEAN A BUSINESS ENTERPRISE, INCLUDING A SOLE PROPRIETORSHIP, PARTNERSHIP, OR CORPORATION THAT IS:

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

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

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

(D) AN ENTERPRISE AUTHORIZED TO DO BUSINESS IN THIS STATE AND IS INDEPENDENTLY-OWNED AND OPERATED;

(E) AN ENTERPRISE THAT IS A SMALL BUSINESS PURSUANT TO SUBDIVISION TWENTY OF SECTION THREE HUNDRED TEN OF THIS CHAPTER; AND

(F) CERTIFIED BY THE OFFICE OF GENERAL SERVICES.

2. "COMMISSIONER" SHALL MEAN THE COMMISSIONER OF THE OFFICE OF GENERAL SERVICES.

3. "DIRECTOR" SHALL MEAN THE DIRECTOR OF THE DIVISION OF SERVICE-DISABLED VETERANS' BUSINESS DEVELOPMENT.

4. "DIVISION" SHALL MEAN THE DIVISION OF SERVICE-DISABLED VETERANS' BUSINESS DEVELOPMENT IN THE OFFICE OF GENERAL SERVICES.

5. "SERVICE DISABLED VETERAN" SHALL MEAN (A) IN THE CASE OF THE MILITARY, NAVAL, AIR FORCE, MARINES, COAST GUARD, ARMY NATIONAL GUARD OR AIR NATIONAL GUARD OF THE ARMED FORCES OF THE UNITED STATES AND/OR RESERVES THEREOF, A VETERAN WHO RECEIVED A COMPENSATION RATING OF TEN PERCENT OR GREATER FROM THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS OR FROM THE UNITED STATES DEPARTMENT OF DEFENSE BECAUSE OF A SERVICE-CONNECTED DISABILITY INCURRED IN THE LINE OF DUTY, AND (B) IN THE CASE OF THE NEW YORK GUARD OR THE NEW YORK NAVAL MILITIA AND/OR RESERVES THEREOF, A VETERAN WHO CERTIFIES, PURSUANT TO THE RULES AND REGULATIONS PROMULGATED BY THE DIRECTOR, TO HAVING INCURRED AN INJURY EQUIVALENT TO A COMPENSATION RATING OF TEN PERCENT OR GREATER FROM THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS OR FROM THE UNITED STATES DEPARTMENT OF DEFENSE BECAUSE OF A SERVICE-CONNECTED DISABILITY INCURRED IN THE LINE OF DUTY.

6. "STATE AGENCY" SHALL HAVE THE SAME MEANING AS DEFINED IN SUBDIVISION ELEVEN OF SECTION THREE HUNDRED TEN OF THIS CHAPTER.

7. "VETERAN" SHALL MEAN A PERSON WHO SERVED IN THE UNITED STATES ARMY, NAVY, AIR FORCE, MARINES, COAST GUARD, AND/OR RESERVES THEREOF, AND/OR IN THE ARMY NATIONAL GUARD, AIR NATIONAL GUARD, NEW YORK GUARD AND/OR THE NEW YORK NAVAL MILITIA.

S 369-I. DIVISION OF SERVICE-DISABLED VETERANS' BUSINESS DEVELOPMENT.

1. THE HEAD OF THE DIVISION OF SERVICE-DISABLED VETERANS' BUSINESS DEVELOPMENT SHALL BE THE DIRECTOR WHO SHALL BE APPOINTED BY THE GOVERNOR AND HOLD OFFICE AT THE PLEASURE OF THE COMMISSIONER.

2. THE DIRECTOR MAY APPOINT SUCH DEPUTIES, ASSISTANTS, AND OTHER EMPLOYEES AS MAY BE NEEDED FOR THE PERFORMANCE OF THE DUTIES PRESCRIBED HEREIN SUBJECT TO THE PROVISIONS OF THE CIVIL SERVICE LAW AND THE RULES AND REGULATIONS OF THE CIVIL SERVICE COMMISSION. THE DIRECTOR MAY REQUEST AND SHALL RECEIVE FROM ANY DEPARTMENT, DIVISION, BOARD, BUREAU,

EXECUTIVE COMMISSION OR AGENCY OF THE STATE SUCH ASSISTANCE AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS ARTICLE.

3. THE DIRECTOR SHALL HAVE THE FOLLOWING POWERS AND DUTIES:

(A) DEVELOP, COLLECT, SUMMARIZE AND DISSEMINATE INFORMATION THAT WILL BE HELPFUL TO PERSONS AND ORGANIZATIONS THROUGHOUT THE STATE IN UNDERTAKING OR PROMOTING THE ESTABLISHMENT AND SUCCESSFUL OPERATION OF A SERVICE-DISABLED VETERAN-OWNED BUSINESS.

(B) DEVELOP AND MAKE AVAILABLE TO STATE AGENCIES A DIRECTORY OF CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES WHICH SHALL, WHEREVER PRACTICABLE, BE DIVIDED INTO CATEGORIES OF LABOR, SERVICES, SUPPLIES, EQUIPMENT, MATERIALS AND RECOGNIZED CONSTRUCTION TRADES AND WHICH SHALL INDICATE AREAS OR LOCATIONS OF THE STATE WHERE SUCH ENTERPRISES ARE AVAILABLE TO PERFORM SERVICES.

(C) ASSIST STATE AGENCIES IN THE DEVELOPMENT OF PROGRAMS TO FOSTER AND PROMOTE THE USE OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES ON STATE CONTRACTS.

(D) COORDINATE THE PLANS, PROGRAMS AND OPERATIONS OF THE STATE GOVERNMENT WHICH AFFECT OR MAY CONTRIBUTE TO THE ESTABLISHMENT, PRESERVATION AND DEVELOPMENT OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES.

(E) IN CONJUNCTION WITH THE COMMISSIONER, DEVELOP A COMPREHENSIVE STATEWIDE PLAN AND OPERATIONAL GUIDELINES TO PROMOTE SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES AND TO ASSIST THEM IN OBTAINING OPPORTUNITIES TO PARTICIPATE IN THE PROCUREMENT OF GOODS AND SERVICES BY THE STATE, INCLUDING IDENTIFICATION OF BARRIERS TO SERVICE-DISABLED VETERANS' BUSINESS DEVELOPMENT AND INVESTIGATION AND EVALUATION OF THEIR IMPACT ON ACHIEVING THE OBJECTIVES OF THIS ARTICLE.

4. THE COMMISSIONER SHALL:

(A) COORDINATE TRAINING OF ALL PROCUREMENT PERSONNEL OF STATE AGENCIES, EMPHASIZING INCREASED SENSITIVITY AND RESPONSIVENESS TO THE UNIQUE NEEDS AND REQUIREMENTS OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES.

(B) CONDUCT A COORDINATED REVIEW OF ALL EXISTING AND PROPOSED STATE TRAINING AND TECHNICAL ASSISTANCE ACTIVITIES IN DIRECT SUPPORT OF THE SERVICE-DISABLED VETERANS' BUSINESS DEVELOPMENT PROGRAM TO ASSURE CONSISTENCY WITH THE OBJECTIVES OF THIS ARTICLE.

(C) EVALUATE AND ASSESS AVAILABILITY OF FIRMS FOR THE PURPOSE OF INCREASING PARTICIPATION OF SUCH FIRMS IN STATE CONTRACTING IN CONSULTATION WITH RELEVANT STATE ENTITIES INCLUDING, BUT NOT LIMITED TO, THE NEW YORK STATE DIVISION OF VETERANS' AFFAIRS.

(D) PROVIDE ADVICE AND TECHNICAL ASSISTANCE TO PROMOTE SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES' UNDERSTANDING OF STATE PROCUREMENT LAWS, PRACTICES AND PROCEDURES TO FACILITATE AND INCREASE THE PARTICIPATION OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES IN STATE PROCUREMENT.

(E) ESTABLISH REGULAR PERFORMANCE REPORTING SYSTEMS REGARDING IMPLEMENTATION OF THE PROGRAMS DESIGNED TO INCREASE SERVICE-DISABLED VETERAN-OWNED BUSINESS PARTICIPATION IN PROCUREMENT CONTRACTS BY STATE AGENCIES.

S 369-J. OPPORTUNITIES FOR CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES. 1. THE DIRECTOR SHALL PROMULGATE RULES AND REGULATIONS FOR THE FOLLOWING PURPOSES:

(A) PROVIDE MEASURES AND PROCEDURES TO ENSURE THAT CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES ARE AFFORDED THE OPPORTUNITY FOR MEANINGFUL PARTICIPATION IN THE PERFORMANCE OF STATE CONTRACTS AND TO ASSIST IN STATE AGENCIES' IDENTIFICATION OF THOSE STATE CONTRACTS FOR

1 WHICH CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES MAY  
2 BEST PERFORM;

3 (B) PROVIDE FOR MEASURES AND PROCEDURES THAT ASSIST STATE AGENCIES IN  
4 THE IDENTIFICATION OF STATE CONTRACTS WHERE SERVICE-DISABLED VETERAN  
5 CONTRACT GOALS ARE PRACTICAL, FEASIBLE AND APPROPRIATE FOR THE PURPOSE  
6 OF INCREASING THE UTILIZATION OF SERVICE-DISABLED VETERAN-OWNED BUSINESS  
7 ENTERPRISE PARTICIPATION ON STATE CONTRACTS;

8 (C) ACHIEVE A STATEWIDE GOAL FOR PARTICIPATION ON STATE CONTRACTS BY  
9 SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES OF FIVE PERCENT;

10 (D) PROVIDE FOR THE CERTIFICATION AND DECERTIFICATION OF SERVICE-DISA-  
11 BLED VETERAN-OWNED BUSINESS ENTERPRISES FOR ALL AGENCIES THROUGH A  
12 SINGLE PROCESS;

13 (E) PROVIDE FOR PROCEDURES RELATING TO SUBMISSION AND RECEIPT OF  
14 APPLICATIONS BY SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES;

15 (F) PROVIDE FOR THE MONITORING AND COMPLIANCE OF STATE CONTRACTS BY  
16 STATE AGENCIES WITH RESPECT TO THE PROVISIONS OF THIS ARTICLE;

17 (G) PROVIDE FOR THE REQUIREMENT THAT STATE AGENCIES SUBMIT REGULAR  
18 REPORTS, AS DETERMINED BY THE DIRECTOR, WITH RESPECT TO THEIR  
19 SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISE PROGRAM ACTIVITY,  
20 INCLUDING BUT NOT LIMITED TO, UTILIZATION REPORTING AND STATE CONTRACT  
21 MONITORING AND COMPLIANCE;

22 (H) NOTWITHSTANDING ANY PROVISION OF THE STATE FINANCE LAW OR THE  
23 PUBLIC AUTHORITIES LAW TO THE CONTRARY, PROVIDE FOR THE RESERVATION OR  
24 SET-ASIDE OF CERTAIN PROCUREMENTS BY STATE AGENCIES IN ORDER TO ACHIEVE  
25 THE OBJECTIVES OF THIS ARTICLE; AND

26 (I) PROVIDE FOR ANY OTHER PURPOSES TO EFFECTUATE THIS ARTICLE.

27 2. STATE AGENCIES SHALL ADMINISTER THE RULES AND REGULATIONS PROMUL-  
28 GATED BY THE DIRECTOR FOR THE IMPLEMENTATION OF THIS ARTICLE.

29 S 369-K. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR  
30 PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURIS-  
31 DICTION TO BE INVALID, THE JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALI-  
32 DATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO  
33 THE CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE DIRECT-  
34 LY INVOLVED IN THE CONTROVERSY IN WHICH THE JUDGMENT SHALL HAVE BEEN  
35 RENDERED.

36 S 3. This act shall take effect immediately.