

8555

2009-2010 Regular Sessions

I N A S S E M B L Y

May 27, 2009

Introduced by M. of A. ESPAILLAT, DESTITO, CUSICK, McENENY -- read once  
and referred to the Committee on Governmental Operations

AN ACT to amend the executive law and the state finance law, in relation  
to enacting the New York State Service-Disabled Veteran-Owned Business  
Enterprise Opportunity Act

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

1 Section 1. Legislative intent. The legislature hereby recognizes the  
2 need to provide support for our state's service-disabled veterans, who  
3 have made extraordinary sacrifices on behalf of our state and the  
4 nation, by providing economic opportunities for service-disabled veter-  
5 an-owned business enterprises in the state procurement process.

6 S 2. This act may be cited as the "New York State Service-Disabled  
7 Veteran-Owned Business Enterprise Opportunity Act".

8 S 3. The executive law is amended by adding a new article 17-A to read  
9 as follows:

10 ARTICLE 17-A

11 NEW YORK STATE SERVICE-DISABLED VETERAN-OWNED  
12 BUSINESS ENTERPRISE OPPORTUNITY ACT

13 SECTION 368. DEFINITIONS.

14 369. STATEWIDE CERTIFICATION PROGRAM.

15 369-A. DUTIES OF THE DIVISION FOR SMALL-BUSINESS.

16 369-B. DUTIES OF THE DIVISION OF VETERANS' AFFAIRS.

17 S 368. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL  
18 HAVE THE FOLLOWING MEANINGS:

19 1. "OFFICE" SHALL MEAN THE OFFICE OF GENERAL SERVICES;

20 2. "COMMISSIONER" SHALL MEAN THE COMMISSIONER OF GENERAL SERVICES;

21 3. "DIVISION FOR SMALL-BUSINESS" SHALL MEAN THE DIVISION FOR SMALL-BU-  
22 SINESS WITHIN THE DEPARTMENT OF ECONOMIC DEVELOPMENT;

23 4. "VETERAN" SHALL MEAN A PERSON, MALE OR FEMALE, RESIDENT OF THIS  
24 STATE, WHO HAS SERVED IN THE ACTIVE MILITARY, NAVAL, OR AIR SERVICE OF

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

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1 THE UNITED STATES DURING A WAR IN WHICH THE UNITED STATES ENGAGED AND  
2 WHO HAS BEEN RELEASED FROM SUCH SERVICE OTHERWISE THAN BY DISHONORABLE  
3 DISCHARGE, OR WHO HAS BEEN FURLOUGHED TO THE RESERVE;

4 5. "SERVICE-DISABLED VETERAN" SHALL MEAN A VETERAN WHO RECEIVED A  
5 COMPENSATION RATING OF TEN PERCENT OR GREATER FROM THE UNITED STATES  
6 DEPARTMENT OF VETERANS AFFAIRS OR THE UNITED STATES DEPARTMENT OF  
7 DEFENSE BECAUSE OF A SERVICE-CONNECTED DISABILITY;

8 6. "CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISE"  
9 SHALL MEAN A BUSINESS ENTERPRISE THAT HAS BEEN CERTIFIED BY THE OFFICE  
10 OF GENERAL SERVICES TO BE A SERVICE-DISABLED VETERAN-OWNED BUSINESS  
11 ENTERPRISE AS DEFINED IN SUBDIVISION SEVEN OF THIS SECTION;

12 7. "SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISE" SHALL MEAN A  
13 BUSINESS ENTERPRISE, INCLUDING A SOLE PROPRIETORSHIP, PARTNERSHIP OR  
14 CORPORATION:

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

17 (B) THAT IS AN ENTERPRISE IN WHICH THE OWNERSHIP INTEREST OF SUCH  
18 SERVICE-DISABLED VETERANS IS REAL, SUBSTANTIAL AND CONTINUING;

19 (C) THAT EMPLOYS ONE HUNDRED OR FEWER PERMANENT FULL-TIME EMPLOYEES;

20 (D) THAT IS ORGANIZED TO ENGAGE IN COMMERCIAL TRANSACTIONS;

21 (E) THAT IS DOMICILED IN THIS STATE; AND

22 (F) WHERE THE MANAGEMENT AND CONTROL OF THE DAILY BUSINESS OPERATIONS  
23 ARE BY ONE OR MORE SERVICE-DISABLED VETERANS OR, FOR A SERVICE-DISABLED  
24 VETERAN WITH A PERMANENT AND TOTAL DISABILITY, BY THE SPOUSE OR PERMA-  
25 NENT CAREGIVER OF THE VETERAN. THE SERVICE-DISABLED VETERANS WHO EXER-  
26 CISE MANAGEMENT AND CONTROL ARE NOT REQUIRED TO BE THE SAME SERVICE-DIS-  
27 ABLED VETERANS AS THE OWNERS OF THE BUSINESS; AND

28 8. "MANAGEMENT AND CONTROL" SHALL MEAN EFFECTIVE AND DEMONSTRABLE  
29 MANAGEMENT OF THE BUSINESS ENTITY.

30 S 369. STATEWIDE CERTIFICATION PROGRAM. 1. THE COMMISSIONER OR HIS OR  
31 HER DESIGNEE, IN CONSULTATION WITH THE DIVISION FOR SMALL-BUSINESS,  
32 SHALL PROMULGATE RULES AND REGULATIONS PROVIDING FOR THE ESTABLISHMENT  
33 OF A STATEWIDE CERTIFICATION PROGRAM FOR SERVICE-DISABLED VETERAN-OWNED  
34 BUSINESSES, INCLUDING RULES AND REGULATIONS GOVERNING THE APPROVAL,  
35 DENIAL OR REVOCATION OF ANY SUCH CERTIFICATION. SUCH A CERTIFICATION  
36 PROGRAM SHALL BE REVIEWED TRIENNIALLY AND UPDATED AS NECESSARY.

37 2. THE OFFICE SHALL BE RESPONSIBLE FOR VERIFYING BUSINESSES AS BEING  
38 OWNED, OPERATED, AND CONTROLLED BY SERVICE-DISABLED VETERANS AS DEFINED  
39 IN THIS ARTICLE, AND FOR GRANTING, DENYING, AND REVOKING CERTIFICATION  
40 FOR SUCH BUSINESSES UNDER THE PROCEDURES ESTABLISHED AND RULES AND REGU-  
41 LATIONS PROMULGATED UNDER THIS SECTION.

42 2-A. THE COMMISSIONER SHALL ESTABLISH A PROCEDURE ENABLING THE DIVI-  
43 SION TO ACCEPT FEDERAL CERTIFICATION VERIFICATION FOR SERVICE-DISABLED  
44 VETERAN-OWNED BUSINESS ENTERPRISE APPLICANTS IN LIEU OF REQUIRING THE  
45 APPLICANT TO COMPLETE THE STATE CERTIFICATION PROCESS. THE COMMISSIONER  
46 SHALL PROMULGATE RULES AND REGULATIONS TO SET FORTH CRITERIA FOR THE  
47 ACCEPTANCE OF FEDERAL CERTIFICATION.

48 3. THE APPLICATION FOR CERTIFICATION AS A SERVICE-DISABLED  
49 VETERAN-OWNED BUSINESS ENTERPRISE MUST, AT A MINIMUM, INCLUDE:

50 (A) THE NAME OF THE BUSINESS ENTERPRISE APPLYING FOR CERTIFICATION AND  
51 THE NAME OF THE SERVICE-DISABLED VETERAN SUBMITTING THE APPLICATION ON  
52 BEHALF OF THE BUSINESS ENTERPRISE;

53 (B) THE NAMES OF ALL OWNERS OF THE BUSINESS ENTERPRISE, INCLUDING  
54 OWNERS WHO ARE SERVICE-DISABLED VETERANS AND OWNERS WHO ARE NOT  
55 SERVICE-DISABLED VETERANS, AND THE PERCENTAGE OF OWNERSHIP INTEREST HELD  
56 BY EACH OWNER;

1 (C) THE NAMES OF ALL PERSONS INVOLVED IN BOTH THE MANAGEMENT AND DAILY  
2 OPERATIONS OF THE BUSINESS ENTERPRISE, INCLUDING THE SPOUSE OR PERMANENT  
3 CAREGIVER OF A VETERAN WITH A PERMANENT AND TOTAL DISABILITY;

4 (D) THE SERVICE-CONNECTED DISABILITY RATING OF ALL PERSONS LISTED  
5 UNDER PARAGRAPHS (A), (B), AND (C) OF THIS SUBDIVISION, AS APPLICABLE,  
6 WITH SUPPORTING DOCUMENTATION FROM THE UNITED STATES DEPARTMENT OF  
7 VETERANS AFFAIRS OR THE UNITED STATES DEPARTMENT OF DEFENSE;

8 (E) THE NUMBER OF PERMANENT FULL-TIME EMPLOYEES; AND

9 (F) THE LOCATION OF THE BUSINESS ENTERPRISE HEADQUARTERS.

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

35 5. ALL CERTIFICATIONS SHALL BE VALID FOR A PERIOD OF THREE YEARS. THE  
36 OFFICE SHALL MAINTAIN AND PERIODICALLY UPDATE AN ELECTRONIC DIRECTORY OF  
37 CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES FOR USE BY  
38 THE STATE, CONTRACTING AGENCIES, POLITICAL SUBDIVISIONS OF THE STATE,  
39 AND THE PUBLIC.

40 6. A CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISE MUST  
41 NOTIFY THE OFFICE WITHIN THIRTY BUSINESS DAYS AFTER ANY EVENT THAT MAY  
42 SIGNIFICANTLY AFFECT THE CERTIFICATION OF THE BUSINESS ENTERPRISE,  
43 INCLUDING, BUT NOT LIMITED TO, A CHANGE IN OWNERSHIP OR CHANGE IN  
44 MANAGEMENT AND DAILY BUSINESS ENTERPRISE OPERATIONS.

45 7. (A) THE CERTIFICATION OF A SERVICE-DISABLED VETERAN-OWNED BUSINESS  
46 ENTERPRISE SHALL BE REVOKED IF THE OFFICE DETERMINES THAT THE BUSINESS  
47 ENTERPRISE VIOLATED SUBDIVISION SIX OF THIS SECTION. AN OWNER OF A  
48 CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISE WHOSE  
49 CERTIFICATION IS REVOKED IS NOT PERMITTED TO REAPPLY FOR CERTIFICATION  
50 UNDER THIS SECTION AS AN OWNER OF ANY BUSINESS FOR TWELVE MONTHS AFTER  
51 SUCH REVOCATION.

52 (B) A SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISE WHOSE CERTIF-  
53 ICATION HAS BEEN REVOKED UNDER THE PROVISION OF PARAGRAPH (A) OF THIS  
54 SUBDIVISION MAY CONTINUE TO BID ON STATE CONTRACTS BUT IS NOT ELIGIBLE  
55 FOR ANY OPPORTUNITIES AVAILABLE UNDER SECTION ONE HUNDRED THIRTY-NINE-L

1 OF THE STATE FINANCE LAW UNTIL SUCH TIME AS SUCH CERTIFICATION MAY BE  
2 REINSTATED.

3 (C) A SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISE WHOSE CERTIF-  
4 ICATION HAS BEEN REVOKED MAY REAPPLY FOR CERTIFICATION AFTER TWELVE  
5 MONTHS BY COMPLYING WITH THOSE REQUIREMENTS APPLICABLE TO INITIAL  
6 CERTIFICATIONS.

7 8. THE OFFICE SHALL, WITH THE ASSISTANCE OF THE DIVISION FOR SMALL-BU-  
8 SINESS, REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE  
9 AND THE SPEAKER OF THE ASSEMBLY ON OR BEFORE APRIL FIRST OF EACH YEAR,  
10 BEGINNING IN TWO THOUSAND ELEVEN, ON THE PARTICIPATION OF SERVICE-DISA-  
11 BLED VETERAN-OWNED BUSINESS ENTERPRISE IN STATE PROCUREMENT. SUCH  
12 REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING DATA FOR THE  
13 IMMEDIATELY PRECEDING TWELVE-MONTH PERIOD:

14 (A) THE NUMBER OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES  
15 WHO SUBMITTED A BID FOR A STATE PROCUREMENT CONTRACT;

16 (B) THE NUMBER OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES  
17 WHO ENTERED INTO PROCUREMENT CONTRACTS WITH THIS STATE AND THE TOTAL  
18 VALUE OF THOSE PROCUREMENT CONTRACTS;

19 (C) THE LOCATION OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTER-  
20 PRISES WHO ENTERED INTO PROCUREMENT CONTRACTS WITH THIS STATE BY REGION;  
21 AND

22 (D) A LISTING OF CONTRACTS BY SERVICES THAT WERE PROVIDED BY SERVICE-  
23 DISABLED VETERAN-OWNED BUSINESSES THAT ENTERED INTO PROCUREMENT  
24 CONTRACTS WITH THIS STATE.

25 S 369-A. DUTIES OF THE DIVISION FOR SMALL-BUSINESS. THE DIVISION  
26 SHALL: 1. ASSIST THE OFFICE IN ESTABLISHING A CERTIFICATION PROCEDURE,  
27 WHICH SHALL BE REVIEWED TRIENNIALLY AND UPDATED AS NECESSARY; AND,

28 2. ASSIST THE OFFICE WITH THE ANNUAL REPORT TO THE GOVERNOR AND LEGIS-  
29 LATURE, AS REQUIRED UNDER SUBDIVISION EIGHT OF SECTION THREE HUNDRED  
30 SIXTY-NINE OF THIS ARTICLE.

31 S 369-B. DUTIES OF THE DIVISION OF VETERANS' AFFAIRS. THE DIVISION  
32 SHALL:

33 1. IDENTIFY ELIGIBLE SERVICE-DISABLED VETERAN BUSINESS ENTERPRISES BY  
34 ANY ELECTRONIC MEANS, INCLUDING ELECTRONIC MAIL OR INTERNET WEBSITE, OR  
35 BY ANY OTHER REASONABLE MEANS AND SHARE SUCH INFORMATION WITH THE OFFICE  
36 AND THE DEPARTMENT FOR SMALL-BUSINESS; AND,

37 2. ENCOURAGE AND ASSIST ELIGIBLE SERVICE-DISABLED VETERAN-OWNED BUSI-  
38 NESS ENTERPRISES TO APPLY FOR CERTIFICATION UNDER THIS ARTICLE.

39 S 4. The state finance law is amended by adding a new section 139-1 to  
40 read as follows:

41 S 139-L. SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISE OPPORTU-  
42 NITIES. NOTWITHSTANDING ANY CONTRARY PROVISION OF LAW, WHEN PURCHASING  
43 GOODS, SERVICES OR CONSTRUCTION FOR PUBLIC USE, ANY STATE AGENCY,  
44 DEPARTMENT, OR AUTHORITY WHICH HAS LET MORE THAN TWO MILLION DOLLARS IN  
45 COMMODITIES SERVICE AND CONSTRUCTION CONTRACTS IN THE PRIOR FISCAL YEAR  
46 SHALL AWARD CONTRACTS FOR SUCH PURCHASES TO A CERTIFIED SERVICE-DISABLED  
47 VETERAN-OWNED BUSINESS ENTERPRISE, AS DEFINED IN ARTICLE SEVENTEEN-A OF  
48 THE EXECUTIVE LAW, WHO SUBMITS A BID OR PROPOSAL AND IS A RESPONSIVE AND  
49 RESPONSIBLE BIDDER, EVEN IF SUCH PARTICIPANT IS NOT THE LOWEST BIDDER  
50 FOR SUCH CONTRACT, PROVIDED, HOWEVER THAT SUCH AWARD MAY ONLY BE MADE TO  
51 THE LOWEST SUCH BID THAT IS REASONABLY COMPETITIVE, AND PROVIDED ALSO  
52 THAT THERE IS NO LOWER BID OR PROPOSAL BY A CERTIFIED MINORITY OR  
53 WOMEN-OWNED BUSINESS ENTERPRISE AS DEFINED IN ARTICLE FIFTEEN-A OF THE  
54 EXECUTIVE LAW. FOR THE PURPOSE OF THIS SUBDIVISION, "REASONABLY COMPET-  
55 ITIVE" SHALL MEAN THAT SUCH BID FROM A CERTIFIED SERVICE-DISABLED VETER-  
56 AN-OWNED BUSINESS ENTERPRISE DOES NOT EXCEED THE LOWEST BID BY MORE THAN

1 THREE PERCENT. IF TWO OR MORE QUALIFIED SERVICE-DISABLED VETERAN-OWNED  
2 BUSINESS ENTERPRISES ARE THE LOWEST BIDDERS ON A CONTRACT, ALL OTHER  
3 THINGS BEING EQUAL, THE QUALIFIED SERVICE-DISABLED VETERAN WITH THE  
4 LOWEST BID SHALL BE AWARDED THE CONTRACT UNDER THIS ACT.

5 S 5. This act shall take effect on the first of April next succeeding  
6 the date on which it shall have become law; provided, however, that  
7 effective immediately, the addition, amendment and/or repeal of any rule  
8 or regulation necessary for the implementation of this act on its effec-  
9 tive date are authorized and directed to be made and completed on or  
10 before such effective date.