S T A T E O F N E W Y O R K

S. 6845 A. 9927

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

February 12, 2010

IN SENATE -- Introduced by Sen. THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- Introduced by M. of A. BRODSKY -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to prohibiting automatic waivers of non-compliance with subcontracting goals, requiring agency periodic reporting and strengthening division reporting; to repeal subdivision 3 of section 315 of the executive law relating to responsibilities of contracting agencies; and to repeal the opening paragraph of subdivision (h) of section 121 of chapter 261 of the laws of 1988, amending the state finance law and other laws relating to the New York state infrastructure trust fund, relating to minority and women-owned business enterprises

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

Section 1. Paragraph (a) of subdivision 4 of section 313 of the executive law, as amended by chapter 429 of the laws of 2009, is amended to read as follows:

(a) Contracting agencies shall administer the rules and regulations promulgated by the director to ensure compliance with the provisions of this section. Such rules and regulations: shall require a contractor to submit a utilization plan after bids are opened, when bids are required, but prior to the award of a state contract; shall require the contracting agency to review the utilization plan submitted by the contractor and to post the utilization plan and any waivers of compliance issued pursuant to subdivision five of this section on the website of the contracting agency within a reasonable period of time as established by the director; shall require the contracting agency to notify the contractor in writing within a period of time specified by the director as to any deficiencies contained in the contractor's utilization plan; shall require remedy thereof within a period of time specified by the director; shall require the contractor to submit periodic compliance reports relating to the operation and implementation of any utilization

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

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plan; shall NOT ALLOW ANY AUTOMATIC WAIVERS, BUT SHALL allow a contractor to apply for a partial or total waiver of the minority and women-owned business enterprise participation requirements pursuant to subdivisions five and six of this section; shall allow a contractor to file a complaint with the director pursuant to subdivision seven of this section in the event a contracting agency has failed or refused to issue a waiver of the minority and women-owned business enterprise participation requirements or has denied such request for a waiver; and shall allow a contracting agency to file a complaint with the director pursuant to subdivision eight of this section in the event a contractor is failing or has failed to comply with the minority and women-owned business enterprise participation requirements set forth in the state contract where no waiver has been granted.

S 2. Subdivision 3 of section 315 of the executive law is REPEALED and two new subdivisions 3 and 4 are added to read as follows:

3. EACH CONTRACTING AGENCY SHALL REPORT TO THE DIRECTOR WITH RESPECT TO ACTIVITIES UNDERTAKEN TO PROMOTE EMPLOYMENT OF MINORITY GROUP MEMBERS AND TO PROMOTE AND INCREASE PARTICIPATION BY CERTIFIED BUSINESSES WITH RESPECT TO STATE CONTRACTS AND SUBCONTRACTS. SUCH REPORTS SHALL BE SUBMITTED ON A QUARTERLY AND ANNUAL BASIS, AND SHALL INCLUDE SUCH INFORMATION AS IS NECESSARY FOR THE DIRECTOR TO DETERMINE SUCH CONTRACTING AGENCIES AND ITS CONTRACTORS' COMPLIANCE WITH THE PURPOSES OF THIS ARTICLE AND SUCH SPECIFIC INFORMATION AS THE DIRECTOR MAY REQUEST, INCLUDING, WITHOUT LIMITATION; (A) A SUMMARY OF ALL WAIVERS OF THE REQUIREMENTS OF SUBDIVISIONS FIVE AND SIX OF SECTION THREE HUNDRED THIRTEEN OF THIS ARTICLE ALLOWED BY SUCH CONTRACTING AGENCY DURING THE PERIOD COVERED BY THE REPORT, INCLUDING A DESCRIPTION OF THE BASIS OF THE WAIVER REQUEST AND THE CONTRACTING AGENCIES' RATIONALE FOR GRANTING ANY SUCH WAIVER; (B) WITH RESPECT TO CONTRACTING AGENCIES THAT CONTRACT WITH EMERGING INVESTMENT MANAGERS, A BREAKDOWN OF THE AGGREGATE DOLLAR AMOUNT OF INVESTMENT ASSETS MANAGED BY OR COMMITMENTS TO INVEST CAPITAL WITH MINORITY-OWNED BUSINESS ENTERPRISES AND WOMEN-OWNED BUSINESS ENTERPRISES ENTERED INTO DURING THE REPORTING PERIOD AS COMPARED TO ALL SUCH CONTRACTS ENTERED INTO DURING SUCH PERIOD; (C) WITH RESPECT TO CONTRACTING AGENCIES THAT CONTRACT WITH MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES THAT ARE BROKER-DEALERS, A BREAKDOWN OF THE AGGREGATE DOLLAR AMOUNT OF COMMISSIONS RECEIVED IN EXCHANGE FOR TRADING ACTIVITY WITH MINORITY-OWNED BUSINESS ENTERPRISES AND WOMEN-OWNED BUSINESS ENTERPRISES ENTERED INTO DURING THE REPORTING PERIOD AS COMPARED TO ALL SUCH CONTRACTS ENTERED INTO DURING SUCH PERIOD; (D) WITH RESPECT TO CONTRACTING AGENCIES THAT CONTRACT WITH MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES THAT PROVIDE FINANCIAL SERVICES, A BREAKDOWN OF THE AGGREGATE DOLLAR AMOUNT OF COMPENSATION RECEIVED IN EXCHANGE FOR FINANCIAL SERVICES (EXCLUDING ASSET MANAGEMENT SERVICES AND COMMISSIONS FOR BROKERAGE ACTIVITY) WITH MINORITY-OWNED BUSINESS ENTERPRISES AND WOMEN-OWNED BUSINESS ENTERPRISES ENTERED INTO DURING THE REPORTING PERIOD AS COMPARED TO ALL SUCH CONTRACTS ENTERED INTO DURING SUCH PERIOD; AND (E) WITH RESPECT TO CONTRACTING AGENCIES THAT CONTRACT WITH MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES THAT ARE PROFESSIONAL SERVICE FIRMS, A BREAKDOWN OF THE AGGREGATE DOLLAR AMOUNT OF COMPENSATION RECEIVED IN EXCHANGE FOR PROFESSIONAL SERVICES WITH MINORITY-OWNED BUSINESS ENTERPRISES AND WOMEN-OWNED BUSINESS ENTERPRISES ENTERED INTO DURING THE REPORTING PERIOD AS COMPARED TO ALL SUCH CONTRACTS ENTERED INTO DURING SUCH PERIOD.

4. THE DIVISION OF MINORITY AND WOMEN-BUSINESS DEVELOPMENT SHALL ISSUE AN ANNUAL REPORT WHICH: (A) SUMMARIZES ALL REPORTS SUBMITTED TO IT BY

EACH CONTRACTING AGENCY PURSUANT TO SUBDIVISION THREE OF THIS SECTION; (B) CONTAINS SUCH COMPARATIVE OR OTHER INFORMATION AS THE DIRECTOR DEEMS APPROPRIATE TO EVALUATE THE EFFECTIVENESS OF THE ACTIVITIES UNDERTAKEN BY EACH SUCH CONTRACTING AGENCY TO PROMOTE INCREASED PARTICIPATION BY CERTIFIED BUSINESSES WITH RESPECT TO STATE CONTRACTS AND SUBCONTRACTS; (C) CONTAINS A SUMMARY OF ALL WAIVERS OF THE REQUIREMENTS OF SUBDIVISIONS FIVE AND SIX OF SECTION THREE HUNDRED THIRTEEN OF THIS ARTICLE ALLOWED BY EACH CONTRACTING AGENCY DURING THE PERIOD COVERED BY THE REPORT, INCLUDING A DESCRIPTION OF THE BASIS OF THE WAIVER REQUEST AND THE CONTRACTING AGENCIES' RATIONALE FOR GRANTING ANY SUCH WAIVER; AND (D) CONTAINS A SUMMARY OF (I) ALL DETERMINATIONS (PURSUANT TO SECTION THREE HUNDRED SIXTEEN OF THIS ARTICLE) OF VIOLATIONS OF THIS ARTICLE BY A CONTRACTOR OR A CONTRACTING AGENCY MADE DURING THE PERIOD COVERED BY THE ANNUAL REPORT AND (II) THE PENALTIES OR SANCTIONS, IF ANY, ASSESSED IN CONNECTION WITH SUCH DETERMINATION AND THE RATIONALE FOR SUCH PENALTIES OR SANCTIONS. COPIES OF THE ANNUAL REPORT SHALL BE PROVIDED TO THE COMMISSIONER, GOVERNOR, THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE SENATE AND SHALL ALSO BE MADE WIDELY AVAILABLE TO THE PUBLIC, INCLUDING BY PUBLICATION ON A WEBSITE MAINTAINED BY THE DIVISION FOR SUCH PURPOSE.

S 3. The opening paragraph of subdivision (h) of section 121 of chapter 261 of the laws of 1988, amending the state finance law and other laws relating to the New York state infrastructure trust fund, is REPEALED.

S 4. This act shall take effect immediately.