

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

8555--A

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 -- reported
and referred to the Committee on Codes -- committee discharged, bill
amended, ordered reprinted as amended and recommitted to said commit-
tee

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;

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

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

3 4. "VETERAN" SHALL MEAN A PERSON, MALE OR FEMALE, RESIDENT OF THIS
4 STATE, WHO HAS SERVED IN THE ACTIVE MILITARY, NAVAL, OR AIR SERVICE OF
5 THE UNITED STATES DURING A WAR IN WHICH THE UNITED STATES ENGAGED AND
6 WHO HAS BEEN RELEASED FROM SUCH SERVICE OTHERWISE THAN BY DISHONORABLE
7 DISCHARGE, OR WHO HAS BEEN FURLOUGHED TO THE RESERVE;

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

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

16 7. "SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISE" SHALL MEAN A
17 BUSINESS ENTERPRISE, INCLUDING A SOLE PROPRIETORSHIP, PARTNERSHIP OR
18 CORPORATION:

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

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

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

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

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

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

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

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

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

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

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

55 (B) THE NAMES OF ALL OWNERS OF THE BUSINESS ENTERPRISE, INCLUDING
56 OWNERS WHO ARE SERVICE-DISABLED VETERANS AND OWNERS WHO ARE NOT

1 SERVICE-DISABLED VETERANS, AND THE PERCENTAGE OF OWNERSHIP INTEREST HELD
2 BY EACH OWNER;

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

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

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

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

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

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

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

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

54 (B) A SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISE WHOSE CERTIF-
55 ICATION HAS BEEN REVOKED UNDER THE PROVISION OF PARAGRAPH (A) OF THIS
56 SUBDIVISION MAY CONTINUE TO BID ON STATE CONTRACTS BUT IS NOT ELIGIBLE

FOR ANY OPPORTUNITIES AVAILABLE UNDER SECTION ONE HUNDRED THIRTY-NINE-L OF THE STATE FINANCE LAW UNTIL SUCH TIME AS SUCH CERTIFICATION MAY BE REINSTATED.

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

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

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

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

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

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

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

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

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

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

2. ENCOURAGE AND ASSIST ELIGIBLE SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES TO APPLY FOR CERTIFICATION UNDER THIS ARTICLE.

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

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

1 AN-OWNED BUSINESS ENTERPRISE DOES NOT EXCEED THE LOWEST BID BY MORE THAN
2 SIX PERCENT. IF TWO OR MORE QUALIFIED SERVICE-DISABLED VETERAN-OWNED
3 BUSINESS ENTERPRISES ARE THE LOWEST BIDDERS ON A CONTRACT, ALL OTHER
4 THINGS BEING EQUAL, THE QUALIFIED SERVICE-DISABLED VETERAN WITH THE
5 LOWEST BID SHALL BE AWARDED THE CONTRACT UNDER THIS ACT.
6 S 5. This act shall take effect on the first of April next succeeding
7 the date on which it shall have become law; provided, however, that
8 effective immediately, the addition, amendment and/or repeal of any rule
9 or regulation necessary for the implementation of this act on its effective
10 date are authorized and directed to be made and completed on or
11 before such effective date.