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

3302

2009-2010 Regular Sessions

I N S E N A T E

March 16, 2009

Introduced by Sen. OPPENHEIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the New York state urban development corporation act, in relation to certain employment discrimination

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

Section 1. Legislative intent. It is hereby found and declared that the state has had a leadership role in maximizing equal opportunity in employment for all its citizens, but that in many communities in the state, because of past sex discrimination, women and women-owned business enterprises do not have such equal opportunity.

It is further found and declared that as a result of such past discrimination, many women and women-owned business enterprises do not enjoy full opportunity to participate in and contribute to the state's economy, or to obtain the experience necessary to become more productive contributors to the economy.

It is further found and declared that the lack of opportunity to participate in public contracts tends to decrease the pool of available labor, thereby adversely affecting the cost and progress of such public contracts.

It is further found and declared that the state has a compelling interest in eradicating the effects of such past discrimination, and that well chosen efforts at eradication result in a gain which substantially outweighs any detrimental effects.

It is further found and declared that the patterns, causes, effects and victims of such past discrimination have varied and do vary widely among communities, occupations and industries, and that no one approach to remedying the effects of this discrimination will be most effective in all circumstances, but rather that, where feasible, corrective programs should be tailored to the particular situation.

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

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It is further found and declared that under some circumstances equal opportunity can be afforded to women and women-owned business enterprises, only by the temporary use of preferential methods such as numerical goals for participation by women and women-owned enterprises, and that such methods can and should be carefully chosen, using statistical and other information where available, so that the methods are employed only where they are considered necessary to achieve equal opportunity, and have the least practicable adverse impact on men and men-owned businesses.

It is further found and declared that the New York state urban development corporation and its subsidiaries have developed extensive knowledge and expertise in the areas of manpower development and training, urban blight and revitalization, affirmative action, the letting of public contracts, the construction of public projects, and the statistical analysis of employment and economic patterns throughout the state.

It is further found and declared that the New York state urban development corporation and its subsidiaries have the requisite knowledge and expertise to examine employment and economic patterns in particular communities, occupations and industries, and to ascertain whether the effects of past discrimination persist, and if so, how they might best be remedied.

It is further found and declared that affirmative action is consistent with, and a necessary component of fulfilling, the New York state urban development corporation's mission of revitalizing the blighted urban areas and the economy of the state, and of improving the conditions of the low income residents of the state.

Therefore, it is hereby found and declared that it is in the public interest and necessary and desirable that the New York state urban development corporation, for itself and for its subsidiaries, develop and implement affirmative action programs where and as necessary for their projects, applicable to the corporation and its subsidiaries, and their projects and activities, and their contractors, subcontractors, consultants, vendees and lessees, based where necessary upon analysis of the circumstances in the relevant communities, occupations and industries, with the goal of ensuring equal opportunity for women and business enterprises actually owned and operated by women.

S 2. This act shall be deemed an exercise of the police power and the procurement power of the state, and in fulfillment of the provisions of the constitution of the state concerning civil rights.

S 3. Section 4 of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, is amended by adding a new subdivision 12 to read as follows:

(12) THE CORPORATION AND EACH OF ITS SUBSIDIARIES, WHETHER CREATED SPECIALLY BY STATUTE OR OTHERWISE, SHALL TAKE AFFIRMATIVE ACTION IN WORKING WITH CONSTRUCTION FIRMS, CONTRACTORS, SUBCONTRACTORS, CONSULTANTS AND OTHER FIRMS, TO THE END THAT WOMEN AND BUSINESS ENTERPRISES OWNED AND OPERATED BY WOMEN, SHALL BE AFFORDED EQUAL OPPORTUNITY TO PARTICIPATE IN THE PLANNING, CONSTRUCTION AND OPERATION OF PROJECTS OF THE CORPORATION AND ITS SUBSIDIARIES, AND IN ALL OTHER ACTIVITIES OF THE CORPORATION AND ITS SUBSIDIARIES. TOWARD THIS END: (A) THE CORPORATION SHALL FROM TIME TO TIME GATHER INFORMATION AND MAKE WRITTEN FINDINGS, IF WARRANTED, WITH RESPECT TO THE AREAS OF THE STATE WHERE ITS PROJECTS ARE LOCATED, CONCERNING THE EFFECTS OF ANY PAST DISCRIMINATION AGAINST WOMEN AND BUSINESS ENTERPRISES OWNED AND OPERATED BY WOMEN.

(B) SUCH FINDINGS MAY, BUT NEED NOT BE BASED, IN WHOLE OR IN PART, UPON STATISTICS INDICATING THAT CERTAIN WOMEN OR BUSINESS ENTERPRISES

OWNED AND OPERATED BY WOMEN HAVE A DISPROPORTIONATELY LOW PARTICIPATION IN RELEVANT OCCUPATIONS OR INDUSTRIES IN THE AREA, RELATIVE TO THEIR PROPORTION IN THE RELEVANT POPULATION OR LABOR FORCE.

(C) THE CORPORATION SHALL ADOPT, IN WRITING, AND IMPLEMENT SUCH ACTIONS TO ACHIEVE AND MAINTAIN EQUAL EMPLOYMENT AND BUSINESS OPPORTUNITY AS IT MAY REASONABLY DEEM NECESSARY AND APPROPRIATE. IN APPROPRIATE INSTANCES, THESE ACTIONS MAY INCLUDE, WITHOUT LIMITATION, AFFIRMATIVE EFFORTS AT RECRUITMENT, COUNSELLING, TRAINING, AND COMMUNITY LIAISON, AND WHEN FINDINGS OF DISCRIMINATION HAVE BEEN MADE, AND NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR LOCAL LAW, THE TEMPORARY USE OF ATTAINABLE PREFERENTIAL METHODS TO ENSURE THAT WOMEN AND BUSINESS ENTERPRISES ACTUALLY OWNED AND OPERATED BY WOMEN MAY PARTICIPATE FULLY IN THE PLANNING, CONSTRUCTION AND OPERATION OF THE APPLICABLE PROJECT, AND IN THE OCCUPATIONS AND INDUSTRIES WHICH PARTICIPATE IN SUCH PROJECT. AS USED IN THE PRECEDING SENTENCE, THE TERM "OWNED" MEANS BONA FIDE OWNERSHIP OF AT LEAST FIFTY PER CENTUM OF THE BUSINESS ENTERPRISE, AND THE TERM "OPERATED" MEANS THE CONTROL OF THE MANAGEMENT AND DAILY OPERATIONS OF SUCH BUSINESS ENTERPRISE. NO METHOD SELECTED SHALL MANDATE THE DISCHARGE OF ANY WORKER BECAUSE OF HIS OR HER SEX. WHERE APPROPRIATE BECAUSE OF DIFFERING CIRCUMSTANCES, THE CORRECTIVE ACTIONS CHOSEN MAY DIFFER AMONG AREAS AND PROJECTS, AND WITHIN PROJECTS AMONG OCCUPATIONS, INDUSTRIES, AND CONTRACTS. NOTHING IN THIS SUBDIVISION SHALL BE DEEMED TO REQUIRE THE HIRING OF UNQUALIFIED WORKERS, OR TO AUTHORIZE THE AWARDING OF CONTRACTS TO ENTERPRISES THAT ARE NOT RESPONSIBLE AND RELIABLE AND QUALIFIED TO PERFORM THE WORK REQUIRED.

(D) IN DETERMINING WHETHER A BIDDER OR PROPOSED CONTRACTOR FOR ANY TYPE OF WORK LET OR SERVICES PROCURED BY THE CORPORATION OR ITS SUBSIDIARIES IS RESPONSIBLE, THE CORPORATION AND ITS SUBSIDIARIES SHALL CONSIDER (BUT NEED NOT LIMIT THEIR CONSIDERATION TO) THE ABILITY AND WILLINGNESS OF SUCH BIDDER OR PROPOSED CONTRACTOR TO PROVIDE, AND TO COMMIT TO PROVIDE, FOR PARTICIPATION OF WOMEN AND BUSINESS ENTERPRISES ACTUALLY OWNED AND OPERATED BY WOMEN, TO THE EXTENT DETERMINED NECESSARY PURSUANT TO THIS SUBDIVISION, AND IN ACCORDANCE WITH THE PROCEDURES ESTABLISHED HEREIN.

(E) THE CORPORATION AND ITS SUBSIDIARIES, IF NECESSARY OR CONVENIENT TO ACHIEVE THE PURPOSES OF THIS SUBDIVISION, MAY IMPOSE THROUGH CONTRACT, LEASE OR CONVEYANCE PROVISIONS OR OTHERWISE, THE AFFIRMATIVE ACTION MEASURES UNDERTAKEN PURSUANT TO THIS SUBDIVISION UPON ANY PERSONS OR ENTITIES THAT PLAN, CONSTRUCT OR OPERATE ITS PROJECTS, INCLUDING BUT NOT LIMITED TO THOSE PROJECTS WHOSE CONSTRUCTION IS COMPLETE, AND WHETHER OR NOT THE CORPORATION OR ANY OF ITS SUBSIDIARIES RETAINS A REAL PROPERTY INTEREST IN ANY PORTION OF THE PROJECT.

(F) THE CORPORATION IN ITS ANNUAL REPORT SHALL FULLY DESCRIBE ITS ACTIVITIES PURSUANT TO THIS SUBDIVISION, SO THAT THE LEGISLATURE MAY FROM TIME TO TIME REASSESS ITS DELEGATION TO THE CORPORATION AND ITS SUBSIDIARIES OF FACT-FINDING AND IMPLEMENTING RESPONSIBILITIES CONCERNING AFFIRMATIVE ACTION.

(G) THE CORPORATION MAY FROM TIME TO TIME PROMULGATE PROCEDURES, REGULATIONS AND INTERPRETATIONS NECESSARY OR CONVENIENT TO EFFECT THE PURPOSES OF THIS SUBDIVISION. SUCH PROMULGATIONS SHALL NOT BE DEEMED TO BE "RULES" FOR PURPOSES OF CHAPTER 167 OF THE LAWS OF 1975, AS AMENDED.

S 4. If any provisions of this act, or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable, such judgment shall not affect, impair or invalidate the remainder of this act or the application of such provision to any other person or circumstance, but shall be

confined in its operation to the provision, person and circumstance directly involved in the controversy in which such judgment shall have been rendered.

S 5. This act shall take effect immediately.