

7654

I N S E N A T E

April 29, 2010

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

AN ACT to amend the executive law, in relation to participation by
minority group members and women with respect to certain state
contracts; and to amend the state finance law, in relation to estab-
lishing a mentor-protege program for small and minority and women-
owned business concerns and in relation to performance and payment
bond requirements

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

1 Section 1. Subdivisions 3 and 4 of section 311 of the executive law,
2 subdivision 3 as added by chapter 261 of the laws of 1988, paragraphs
3 (d) and (e) of subdivision 3 as amended by chapter 55 of the laws of
4 1992, paragraphs (g) and (h) of subdivision 3 as amended and paragraph
5 (i) of subdivision 3 as added by section 1 of part BB of chapter 59 of
6 the laws of 2006 and subdivision 4 as amended by chapter 361 of the laws
7 of 2009, are amended to read as follows:
8 3. The director shall have the following powers and duties:
9 (a) to encourage and assist contracting agencies in their efforts to
10 increase participation by minority and women-owned business enterprises
11 on state contracts and subcontracts so as to facilitate the award of a
12 fair share of such contracts to them AND TO PROVIDE ON THE DIVISION'S
13 WEBSITE A LIST OF EACH CONTRACTING AGENCY'S MINORITY AND WOMEN-OWNED
14 BUSINESS ENTERPRISES CERTIFICATION OUTREACH SEMINARS;
15 (b) to develop standardized forms and reporting documents necessary to
16 implement this article;
17 (c) to conduct educational OUTREACH programs TO ENCOURAGE THE CERTIF-
18 ICATION OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES consistent with
19 the purposes of this article;
20 (d) to review [periodically] QUARTERLY the practices and procedures of
21 each contracting agency with respect to compliance with the provisions
22 of this article, and to require them to file [periodic] QUARTERLY
23 reports with the division of minority and women's business development
24 as to the level of minority and women-owned business enterprises partic-

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

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1 ipation in the awarding of agency contracts for goods and services
2 INCLUDING BUT NOT LIMITED TO THE NUMBER OF STATE CONTRACTS AWARDED TO
3 CERTIFIED MINORITY-OWNED OR WOMEN-OWNED BUSINESS ENTERPRISES, THE MAXI-
4 MUM DOLLAR AMOUNT OBLIGATED PURSUANT TO ALL THOSE CONTRACTS, AND THE
5 TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH CONTRACTS; THE NUMBER OF
6 STATE CONTRACTS AWARDED TO CERTIFIED MINORITY OR WOMEN-OWNED BUSINESS
7 ENTERPRISES, THE MAXIMUM DOLLAR AMOUNT OBLIGATED PURSUANT TO ALL THOSE
8 CONTRACTS, AND THE TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH
9 CONTRACTS; THE NUMBER OF STATE CONTRACTS AWARDED WHICH INCLUDE A UTILI-
10 ZATION PLAN FOR BUSINESS PARTICIPATION BY CERTIFIED MINORITY OR
11 WOMEN-OWNED BUSINESS ENTERPRISES, THE MAXIMUM AMOUNT OBLIGATED PURSUANT
12 TO THOSE CONTRACTS, AND THE TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH
13 CONTRACTS; THE NUMBER OF STATE CONTRACTS AWARDED UPON WHICH A WAIVER WAS
14 GRANTED FROM GOALS REQUIRED BY THE CONTRACTS FOR BUSINESS PARTICIPATION
15 BY CERTIFIED MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES, AND THE MAXI-
16 MUM AMOUNT OBLIGATED PURSUANT TO THOSE CONTRACTS; THE NUMBER OF STATE
17 CONTRACTS AWARDED WHICH REQUIRED GOALS FOR EMPLOYMENT OF MINORITY GROUP
18 MEMBERS AND WOMEN; AND THE NUMBER OF STATE CONTRACTS AWARDED FOR WHICH
19 WAIVERS OF EMPLOYMENT GOALS REQUIRED BY THE CONTRACTS HAVE BEEN GRANTED;

20 (e) on January first of each year report to the governor, THE TEMPO-
21 RARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY
22 LEADERS OF THE SENATE AND THE ASSEMBLY, and the chairpersons of the
23 senate finance and assembly ways and means committees on the [level]
24 ACTUAL VERSUS PROJECTED LEVELS of minority and women-owned business
25 enterprises participating in each agency's contracts for goods [and],
26 services AND CONSTRUCTION, INCLUDING BUT NOT LIMITED TO THE NUMBER OF
27 STATE CONTRACTS AWARDED TO CERTIFIED MINORITY-OWNED OR WOMEN-OWNED BUSI-
28 NESS ENTERPRISES, THE MAXIMUM DOLLAR AMOUNT OBLIGATED PURSUANT TO ALL
29 THOSE CONTRACTS, AND THE TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH
30 CONTRACTS, and on activities of the office and effort by each contract-
31 ing agency to promote employment of minority group members and women,
32 and to promote and increase participation by certified businesses with
33 respect to state contracts and subcontracts so as to facilitate the
34 award of a fair share of state contracts to such businesses. The comp-
35 troller shall assist the division in collecting information on the
36 participation of certified business for each contracting agency. Such
37 report may recommend new activities and programs to effectuate the
38 purposes of this article;

39 (f) THE DIRECTOR SHALL LIST IN THE DIVISION'S ANNUAL REPORT THE NAMES
40 OF NON-COMPLIANT AGENCIES AND THE EXTENT OF THEIR NONCOMPLIANCE IN
41 SUBMITTING ITS QUARTERLY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE
42 UTILIZATION REPORTS; AND, SHALL IMPLEMENT A MASTER LIST OF ALL THE STATE
43 AGENCIES REQUIRED TO FILE QUARTERLY COMPLIANCE REPORTS AND SHALL ATTACH
44 SUCH LIST TO THE DIVISION'S ANNUAL REPORT.

45 (G) to prepare and update [periodically] QUARTERLY a directory of
46 certified minority and women-owned business enterprises which shall,
47 wherever practicable, be divided into categories of labor, services,
48 supplies, equipment, materials and recognized construction trades and
49 which shall indicate areas or locations of the state where such enter-
50 prises are available to perform services, AND TO USE THIS INFORMATION TO
51 CREATE AN INTERNET BASED, CENTRALIZED STATE REGISTRY TO ENABLE APPROPRI-
52 ATE STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES TO
53 ACCESS CONTRACT AND SUBCONTRACT OPPORTUNITIES;

54 [(g)] (H) to appoint independent hearing officers who by contract or
55 terms of employment shall preside over adjudicatory hearings pursuant to

1 section three hundred fourteen of this article for the office and who
2 are assigned no other work by the office;

3 [(h)] (I) notwithstanding the provisions of section two hundred nine-
4 ty-six of this chapter, to file a complaint pursuant to the provisions
5 of section two hundred ninety-seven of this chapter where the director
6 has knowledge that a contractor may have violated the provisions of
7 paragraph (a), (b) or (c) of subdivision one of section two hundred
8 ninety-six of this chapter where such violation is unrelated, separate
9 or distinct from the state contract as expressed by its terms; and

10 [(i)] (J) to streamline the state certification process to accept
11 federal and municipal corporation certifications.

12 4. The director [may] SHALL provide assistance to, and facilitate
13 access to programs serving certified businesses as well as applicants to
14 ensure that such businesses benefit, as needed, from technical, manage-
15 rial and financial, and general business assistance; training; market-
16 ing; organization and personnel skill development; project management
17 assistance; technology assistance; bond and insurance education assist-
18 ance; and other business development assistance. In addition, the direc-
19 tor [may] SHALL, either independently or in conjunction with other state
20 agencies:

21 (a) develop a clearinghouse of information on programs and services
22 provided by entities that may assist such businesses;

23 (b) review bonding and paperwork requirements imposed by contracting
24 agencies that may unnecessarily impede the ability of such businesses to
25 compete; and

26 (c) seek to maximize utilization by minority and women-owned business
27 enterprises of available federal resources including but not limited to
28 federal grants, loans, loan guarantees, surety bonding guarantees, tech-
29 nical assistance, and programs and services of the federal small busi-
30 ness administration.

31 S 2. Subdivision 5 of section 312 of the executive law, as added by
32 chapter 261 of the laws of 1988, is amended to read as follows:

33 5. The director shall promulgate rules and regulations to ensure that
34 contractors and subcontractors undertake programs of affirmative action
35 and equal employment opportunity as required by this section. Such rules
36 and regulations as they pertain to any particular agency shall be devel-
37 oped after consultation with contracting agencies. Such rules and regu-
38 lations [may] SHALL require a contractor, after notice in a bid solici-
39 tation, to submit an equal employment opportunity program [after bid
40 opening and prior to the award of any contract] AT THE TIME BIDS ARE
41 SUBMITTED, and [may] SHALL require the contractor or subcontractor to
42 submit compliance reports relating to the contractor's or subcontrac-
43 tor's operation and implementation of any equal employment opportunity
44 program in effect as of the date the contract is executed. The contract-
45 ing agency [may recommend to the director that] SHALL HAVE THE RIGHT TO
46 RECOMMEND THAT the director take appropriate action according to the
47 procedures set forth in section three hundred sixteen of this article
48 against the contractor for noncompliance with the requirements of this
49 section. The contracting agency shall be responsible for monitoring
50 compliance with this section.

51 S 3. Subdivisions 1 and 2 and paragraph (a) of subdivision 4 of
52 section 313 of the executive law, subdivisions 1 and 2 as added by chap-
53 ter 261 of the laws of 1988 and paragraph (a) of subdivision 4 as
54 amended by chapter 429 of the laws of 2009, are amended to read as
55 follows:

1 1. The director shall promulgate rules and regulations that provide
2 measures and procedures to ensure that certified businesses shall be
3 given the opportunity for [meaningful] INCREASED participation in the
4 performance of state contracts and to identify those state contracts for
5 which certified businesses may best bid to actively and affirmatively
6 promote and assist their participation in the performance of state
7 contracts so as to facilitate the award of a fair share of state
8 contracts to such businesses AND ENCOURAGE JOINT VENTURES, PARTNERSHIPS,
9 AND MENTOR-PROTEGE RELATIONSHIPS AS DEFINED IN SECTION ONE HUNDRED
10 FORTY-SEVEN OF THE STATE FINANCE LAW, BETWEEN PRIME CONTRACTORS AND
11 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES. Such rules and regu-
12 lations as they pertain to any particular agency shall be developed
13 after consultation with the contracting agency. Nothing in the
14 provisions of this article shall be construed to limit the ability of
15 any certified business to bid on any contract.

16 2. Contracting agencies shall include or require to be included with
17 respect to state contracts for the acquisition, construction, demoli-
18 tion, replacement, major repair or renovation of real property and
19 improvements thereon, such provisions as [may] SHALL be necessary to
20 effectuate the provisions of this section in every bid specification and
21 state contract, including, but not limited to: (a) provisions requiring
22 contractors to make a good faith effort to solicit active participation
23 by enterprises identified in the directory of certified businesses
24 provided to the contracting agency by the office; (b) requiring the
25 parties to agree as a condition of entering into such contract, to be
26 bound by the provisions of section three hundred sixteen of this arti-
27 cle; and (c) requiring the contractor to include the provisions set
28 forth in paragraphs (a) and (b) above in every subcontract in a manner
29 that the provisions will be binding upon each subcontractor as to work
30 in connection with such contract. Provided, however, that no such
31 provisions shall be binding upon contractors or subcontractors in the
32 performance of work or the provision of services that are unrelated,
33 separate or distinct from the state contract as expressed by its terms,
34 and nothing in this section shall authorize the director or any
35 contracting agency to impose any requirement on a contractor or subcon-
36 tractor except with respect to a state contract.

37 (a) Contracting agencies shall administer the rules and regulations
38 promulgated by the director to ensure compliance with the provisions of
39 this section. Such rules and regulations: shall require a contractor to
40 submit a utilization plan [after bids are opened] AT THE TIME THE BIDS
41 ARE SUBMITTED, when bids are required[, but prior to the award of a
42 state contract]; shall require the contracting agency to review the
43 utilization plan submitted by the contractor and to post the utilization
44 plan and any waivers of compliance issued pursuant to subdivision five
45 of this section on the website of the contracting agency within a
46 reasonable period of time as established by the director; shall require
47 the contracting agency to notify the contractor in writing within a
48 period of time specified by the director as to any deficiencies
49 contained in the contractor's utilization plan; shall require remedy
50 thereof within a period of time specified by the director; shall require
51 the contractor to submit [periodic] QUARTERLY compliance reports relat-
52 ing to the operation and implementation of any utilization plan; shall
53 NOT ALLOW ANY AUTOMATIC WAIVERS, BUT SHALL allow a contractor to apply
54 for a partial or total waiver of the minority and women-owned business
55 enterprise participation requirements pursuant to subdivisions five and
56 six of this section; shall allow a contractor to file a complaint with

1 the director pursuant to subdivision seven of this section in the event
2 a contracting agency has failed or refused to issue a waiver of the
3 minority and women-owned business enterprise participation requirements
4 or has denied such request for a waiver; and shall allow a contracting
5 agency to file a complaint with the director pursuant to subdivision
6 eight of this section in the event a contractor is failing or has failed
7 to comply with the minority and women-owned business enterprise partic-
8 ipation requirements set forth in the state contract where no waiver has
9 been granted.

10 S 4. Section 315 of the executive law, as added by chapter 261 of the
11 laws of 1988, is amended to read as follows:

12 S 315. Responsibilities of contracting agencies. 1. Each contracting
13 agency shall be responsible for monitoring state contracts under its
14 jurisdiction, and recommending matters to the office respecting non-com-
15 pliance with the provisions of this article so that the office [may]
16 SHALL take such action as [is appropriate] STATED IN SUBDIVISION THREE
17 OF SECTION THREE HUNDRED SIXTEEN OF THIS ARTICLE. EACH CONTRACTING AGEN-
18 CY SHALL HAVE THE RIGHT TO RECOMMEND THAT THE DIRECTOR IMPOSE A SANC-
19 TION, PENALTY, OR FINE FOR THREE OR MORE VIOLATIONS OF SUBDIVISION ONE
20 OF SECTION THREE HUNDRED SIXTEEN OF THIS ARTICLE, to insure compliance
21 with the provisions of this article, the rules and regulations of the
22 director issued hereunder and the contractual provisions required pursu-
23 ant to this article. All contracting agencies shall comply with the
24 rules and regulations of the office and are directed to cooperate with
25 the office and to furnish to the office such information and assistance
26 as may be required in the performance of its functions under this arti-
27 cle.

28 2. Each contracting agency shall provide to prospective bidders a
29 current copy of the directory of certified businesses, and a copy of the
30 regulations required pursuant to sections three hundred twelve and three
31 hundred thirteen of this article at the time bids or proposals are
32 solicited.

33 3. [Each contracting agency shall report to the director with respect
34 to activities undertaken to promote employment of minority group members
35 and women and promote and increase participation by certified businesses
36 with respect to state contracts and subcontracts. Such reports shall be
37 submitted periodically as required by the director.] EACH CONTRACTING
38 AGENCY WHEN NOTIFYING A CONTRACTOR OF A WINNING BID AWARD SHALL ALSO
39 NOTIFY ANY MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES AFFILIATED WITH
40 SUCH CONTRACTOR, PER THE CONTRACTOR'S SUBMITTED UTILIZATION PLAN, OF
41 SUCH CONTRACTOR'S RECEIPT OF THE WINNING BID AWARD.

42 4. (A) EACH CONTRACTING AGENCY SHALL PREPARE A QUARTERLY REPORT AND
43 SUBMIT COPIES TO THE COMMISSIONER OF ECONOMIC DEVELOPMENT, THE COMMIS-
44 SIONER OF GENERAL SERVICES, AND THE DIRECTOR AS TO THE LEVEL OF MINORITY
45 AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION IN THE AWARDING OF
46 AGENCY CONTRACTS FOR GOODS AND SERVICES, INCLUDING BUT NOT LIMITED TO,
47 THE NUMBER OF STATE CONTRACTS AWARDED TO CERTIFIED MINORITY OR
48 WOMEN-OWNED BUSINESS ENTERPRISES; THE MAXIMUM DOLLAR AMOUNT OBLIGATED
49 PURSUANT TO ALL THOSE CONTRACTS, AND THE TOTAL EXPENDITURES MADE PURSU-
50 ANT TO ALL SUCH CONTRACTS; THE NUMBER OF STATE CONTRACTS AWARDED WHICH
51 INCLUDE A UTILIZATION PLAN FOR BUSINESS PARTICIPATION BY CERTIFIED
52 MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES, THE MAXIMUM AMOUNT OBLI-
53 GATED PURSUANT TO THOSE CONTRACTS, AND THE TOTAL EXPENDITURES MADE
54 PURSUANT TO ALL SUCH CONTRACTS; THE NUMBER OF STATE CONTRACTS AWARDED
55 UPON WHICH A WAIVER WAS GRANTED FROM GOALS REQUIRED BY THE CONTRACTS FOR
56 BUSINESS PARTICIPATION BY CERTIFIED MINORITY OR WOMEN-OWNED BUSINESS

ENTERPRISES, AND THE MAXIMUM AMOUNT OBLIGATED PURSUANT TO THOSE CONTRACTS; THE NUMBER OF STATE CONTRACTS AWARDED WHICH REQUIRED GOALS FOR EMPLOYMENT OF MINORITY GROUP MEMBERS AND WOMEN; AND THE NUMBER OF STATE CONTRACTS AWARDED FOR WHICH WAIVERS OF EMPLOYMENT GOALS REQUIRED BY THE CONTRACTS HAVE BEEN GRANTED;

(B) IN ADDITION, EACH CONTRACTING AGENCY SHALL BE RESPONSIBLE FOR THE COST OF AN INDEPENDENT AUDIT RESULTING FROM THE AGENCY'S REPEATED VIOLATIONS OF THIS SECTION.

5. WITHIN THIRTY DAYS AFTER COMPLETION, A COPY OF THE QUARTERLY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE REPORT SHALL BE TRANSMITTED TO THE COMMISSIONER OF ECONOMIC DEVELOPMENT, THE COMMISSIONER OF GENERAL SERVICES, AND THE DIRECTOR. A CONTRACTING AGENCY, WHICH HAS NOT LET MORE THAN TWO MILLION DOLLARS IN SERVICE AND/OR CONSTRUCTION CONTRACTS WITHIN THE APPLICABLE PERIOD MAY APPLY TO THE COMMISSIONER OF ECONOMIC DEVELOPMENT, AND THE DIRECTOR FOR A WAIVER OF THE REQUIRED ANNUAL REPORT. THE WAIVER APPLICATION SHALL BE MADE ON SUCH FORM AS THE COMMISSIONER OF ECONOMIC DEVELOPMENT AND THE DIRECTOR MAY PRESCRIBE.

6. IF A CONTRACTING AGENCY SHALL FAIL TO FILE OR SUBSTANTIALLY COMPLETE, AS DETERMINED BY THE COMMISSIONER OF ECONOMIC DEVELOPMENT AND THE DIRECTOR, THE REPORT REQUIRED BY THIS SECTION, THE DIRECTOR SHALL PROVIDE NOTICE TO THE CONTRACTING AGENCY. THE NOTICE SHALL STATE THE FOLLOWING:

(A) THAT THE FAILURE TO FILE A REPORT AS REQUIRED IS A VIOLATION OF THIS SECTION, OR IN THE CASE OF AN INSUFFICIENT REPORT, THE MANNER IN WHICH THE REPORT SUBMITTED IS DEFICIENT;

(B) THAT THE CONTRACTING AGENCY HAS THIRTY DAYS TO COMPLY WITH THIS SECTION OR PROVIDE AN ADEQUATE WRITTEN EXPLANATION TO THE COMMISSIONER OF ECONOMIC DEVELOPMENT AND THE COMMISSIONER OF GENERAL SERVICES AND THE DIRECTOR OF THE CONTRACTING AGENCY'S REASONS FOR THE INABILITY TO COMPLY; AND

(C) THAT THE CONTRACTING AGENCY'S CONTINUED FAILURE TO PROVIDE EITHER THE REQUIRED REPORT OR AN ADEQUATE EXPLANATION WILL RESULT IN AN INDEPENDENT AUDIT OF THE CONTRACTING AGENCY, THE COST OF WHICH SHALL BE BORNE BY THE CONTRACTING AGENCY.

S 5. Section 316 of the executive law, as added by chapter 261 of the laws of 1988, is amended to read as follows:

S 316. [Enforcement] VIOLATIONS AND ENFORCEMENT. 1. IT SHALL BE A VIOLATION FOR ANY PERSON OR ENTITY TO:

(A) INTENTIONALLY USE OR ACQUIRE AN MWBE NAME THROUGH DECEIT OR OTHER DISHONEST MEANS IN ORDER TO NEGOTIATE A LOWER BID FROM A NON-MWBE.

(B) SUBMIT TO THE DEPARTMENT OF ECONOMIC DEVELOPMENT, DOCUMENTS OR OTHER MATERIAL AS EVIDENCE OF A GOOD FAITH EFFORT TO COMPLY WITH THE PROVISIONS OF THIS ARTICLE WITHOUT, IN FACT, HAVING ENTERED INTO ANY CONTRACT, AGREEMENT, SUBCONTRACT, OR SUB-AGREEMENT WITH AN MWBE FOR THE USE OR PURCHASE OF SUCH BUSINESS ENTERPRISE'S GOODS OR SERVICES IN THE PERFORMANCE OF THE AWARDED STATE CONTRACT.

(C) FAIL TO PROVIDE AN MWBE WITH SUFFICIENT INFORMATION OR OTHER REQUIRED SUPPORTING DOCUMENTATION IN ORDER FOR THE MWBE TO PREPARE A PROPER BID.

2. Upon receipt by the director of a complaint by a contracting agency that a contractor has violated the provisions of a state contract which have been included to comply with the provisions of this article or of a contractor that a contracting agency has violated such provisions or has failed or refused to issue a waiver where one has been applied for pursuant to subdivision five of section three hundred thirteen of this article or has denied such application, the director shall attempt to

1 resolve the matter giving rise to such complaint. If efforts to resolve
2 such matter to the satisfaction of all parties are unsuccessful, the
3 director shall refer the matter, within thirty days of the receipt of
4 the complaint, to the American Arbitration Association for proceeding
5 thereon. Upon conclusion of the arbitration proceedings, the arbitrator
6 shall submit to the director his or her award regarding the alleged
7 violation of the contract and recommendations regarding the imposition
8 of sanctions, fines or penalties. The director shall either: (a) adopt
9 the recommendation of the arbitrator; or (b) determine that no sanc-
10 tions, fines or penalties should be imposed; or (c) modify the recommen-
11 dation of the arbitrator, provided that such modification shall not
12 expand upon any sanction recommended or impose any new sanction, or
13 increase the amount of any recommended fine or penalty. The director,
14 within ten days of receipt of the arbitrator's award and recommenda-
15 tions, shall file a determination of such matter and shall cause a copy
16 of such determination along with a copy of this article to be served
17 upon the respondent by personal service or by certified mail return
18 receipt requested. The award of the arbitrator shall be final and may
19 only be vacated or modified as provided in article seventy-five of the
20 civil practice law and rules upon an application made within the time
21 provided by section seventy-five hundred eleven of the civil practice
22 law and rules. The determination of the director as to the imposition of
23 any fines, sanctions or penalties shall be reviewable pursuant to arti-
24 cle seventy-eight of the civil practice law and rules.

25 3. THE DIRECTOR SHALL IMPOSE A SANCTION, PENALTY, OR FINE ON ANY
26 INDIVIDUAL OR ENTITY THAT HAS THREE OR MORE VIOLATIONS OF THIS ARTICLE
27 WITHIN FIVE YEARS. SUCH FINE SHALL BE PAID BY SUCH INDIVIDUAL OR ENTITY.
28 SUCH FINE SHALL BE REMITTED AND DEPOSITED INTO A FUND, TO BE MANAGED BY
29 THE COMMISSIONER OF ECONOMIC DEVELOPMENT. SUCH FUNDS SHALL BE USED TO
30 SUBSIDIZE THE FACILITATION OF THE PROVISIONS OF THIS ARTICLE. OTHER
31 SANCTIONS SHALL INCLUDE BARRING SUCH ENTITY OR INDIVIDUAL FROM CONTRACT-
32 ING WITH SUCH AGENCY FOR A PERIOD NOT TO EXCEED FIVE YEARS.

33 S 6. Subdivision 1 of section 137 of the state finance law, as sepa-
34 rately amended by section 17 of part MM of chapter 57 and by chapter 619
35 of the laws of 2008, is amended to read as follows:

36 1. In addition to other bond or bonds, if any, required by law for the
37 completion of a work specified in a contract for the prosecution of a
38 public improvement for the state of New York a municipal corporation, a
39 public benefit corporation or a commission appointed pursuant to law, or
40 in the absence of any such requirement, the comptroller may or the other
41 appropriate official, respectively, shall nevertheless require prior to
42 the approval of any such contract a bond guaranteeing prompt payment of
43 moneys due to all persons furnishing labor or materials to the contrac-
44 tor or any subcontractors in the prosecution of the work provided for in
45 such contract. Whenever a municipal corporation issues a permit subject
46 to compliance with section two hundred twenty of the labor law, such
47 permittee or its contractor or subcontractors furnishing workers shall
48 post a payment bond subject to this section. Provided, however, that all
49 performance bonds and payment bonds may, at the discretion of the head
50 of the state agency, public benefit corporation or commission, or his or
51 her designee, be dispensed with for the completion of a work specified
52 in a contract for the prosecution of a public improvement for the state
53 of New York for which bids are solicited where the aggregate amount of
54 the contract is under one hundred FIFTY thousand dollars and provided
55 further, that in a case where the contract is not subject to the multi-
56 ple contract award requirements of section one hundred thirty-five of

1 this article, such requirements may be dispensed with where the head of
2 the state agency, public benefit corporation or commission finds it to
3 be in the public interest and where the aggregate amount of the contract
4 awarded or to be awarded is less than two hundred thousand dollars. THE
5 HEAD OF THE STATE AGENCY, PUBLIC BENEFIT CORPORATION OR COMMISSION, OR
6 HIS OR HER DESIGNEE, SHALL ADJUST THE AGGREGATE CONTRACT AMOUNTS LISTED
7 IN THIS SUBDIVISION EVERY YEAR TO ACCOUNT FOR INCREASES IN THE COSTS OF
8 CONSTRUCTION. ADVERTISEMENTS FOR BIDS SHALL PROVIDE INFORMATION ON THE
9 REQUIREMENTS FOR, OR DISPENSATION OF, PERFORMANCE AND PAYMENT BONDS.
10 Provided further, that in a case where a performance or payment bond is
11 dispensed with, twenty per centum may be retained from each progress
12 payment or estimate until the entire contract work has been completed
13 and accepted, at which time the head of the state agency, public benefit
14 corporation or commission shall, pending the payment of the final esti-
15 mate, pay not to exceed seventy-five per centum of the amount of the
16 retained percentage.

17 S 7. Subdivision 4 of section 139-f of the state finance law, as
18 amended by chapter 83 of the laws of 1995, is amended to read as
19 follows:

20 4. Notwithstanding any other provision of this section or other law,
21 requirements for the furnishing of a performance bond or a payment bond
22 may be dispensed with at the discretion of the head of the state agency
23 or corporation, or his or her designee, where the public owner is a
24 state agency or corporation described in subdivision one-a of this
25 section and the aggregate amount of the contract awarded or to be
26 awarded is under fifty thousand dollars and, in a case where the
27 contract is not subject to the multiple contract award requirements of
28 section one hundred thirty-five of this article, such requirements may
29 be dispensed with where the head of the state agency or corporation
30 finds it to be in the public interest and where the aggregate amount of
31 the contract awarded or to be awarded is under [two] THREE hundred thou-
32 sand dollars. THE HEAD OF THE STATE AGENCY, PUBLIC BENEFIT CORPORATION
33 OR COMMISSION, OR HIS OR HER DESIGNEE, SHALL ADJUST THE AGGREGATE
34 CONTRACT AMOUNTS LISTED IN THIS SUBDIVISION EVERY YEAR TO ACCOUNT FOR
35 INCREASES IN THE COSTS OF CONSTRUCTION. ADVERTISEMENTS FOR BIDS SHALL
36 PROVIDE INFORMATION ON THE REQUIREMENTS FOR, OR DISPENSATION OF,
37 PERFORMANCE AND PAYMENT BONDS. Provided further, that in a case where a
38 performance or payment bond is dispensed with, twenty per centum may be
39 retained from each progress payment or estimate until the entire
40 contract work has been completed and accepted, at which time the head of
41 the state agency or corporation shall, pending the payment of the final
42 estimate, pay not to exceed seventy-five per centum of the amount of the
43 retained percentage.

44 S 8. The opening paragraph of section 139-g of the state finance law,
45 as amended by chapter 636 of the laws of 2003, is amended to read as
46 follows:

47 In every state agency, department and authority which has let more
48 than two million dollars in service and construction contracts AND STATE
49 ASSISTED PROJECT CONTRACTS in the prior fiscal year, the chief executive
50 officer of that agency, department or authority shall, with respect to
51 those contracts AND STATE ASSISTED PROJECT CONTRACTS let by his OR HER
52 agency, department or authority:

53 S 9. The opening paragraph of subdivision (b) of section 139-g of the
54 state finance law, as amended by chapter 636 of the laws of 2003, is
55 amended to read as follows:

1 identify all small-business and certified women and minority-owned
2 business concerns which, in the judgment of the chief executive officer
3 of that agency, department or authority, can bid on those contracts AND
4 STATE ASSISTED PROJECT CONTRACTS which are usually and customarily let
5 by that agency, department or authority, OR IN WHICH THAT AUTHORITY
6 PROVIDES A GRANT OR LOAN OR TAX EXEMPT FINANCING, with a reasonable
7 expectation of success. Such chief executive officers shall carry out
8 the provisions of this subdivision:

9 S 10. Section 139-g of the state finance law is amended by adding a
10 new subdivision (e) to read as follows:

11 (E) FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING WORDS SHALL HAVE
12 THE FOLLOWING MEANINGS:

13 (I) "STATE ASSISTED PROJECT CONTRACT" SHALL MEAN ANY WRITTEN AGREEMENT
14 ARISING OUT OF A STATE ASSISTED HOUSING PROJECT OR STATE ASSISTED
15 ECONOMIC DEVELOPMENT PROJECT OR STATE ASSISTED HIGHER EDUCATION PROJECT
16 OR STATE ASSISTED HOSPITAL OR HEALTH CARE FACILITY PROJECT, FOR WHICH
17 THE TOTAL PROJECT COST EXCEEDS TWO MILLION DOLLARS AND FOR WHICH THE
18 PROJECT OWNER IS COMMITTED TO SPEND OR DOES EXPEND FUNDS FOR THE ACQUI-
19 SITION, CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR, OR RENO-
20 VATION OF REAL PROPERTY AND IMPROVEMENTS THEREON FOR SUCH PROJECT.

21 (II) "STATE ASSISTED HOUSING PROJECT" SHALL MEAN THOSE PROJECTS WHICH
22 RECEIVE FROM THE NEW YORK STATE HOUSING FINANCE AGENCY TAX-EXEMPT
23 FINANCING FOR ALL OR PART OF THE TOTAL PROJECT COST.

24 (III) "STATE ASSISTED ECONOMIC DEVELOPMENT PROJECT" SHALL MEAN THOSE
25 PROJECTS WHICH RECEIVE FROM THE NEW YORK FOUNDATION OF SCIENCE TECHNOLO-
26 GY AND INNOVATION, OR THE URBAN DEVELOPMENT CORPORATION AND ITS SUBSID-
27 IARIES A GRANT OR LOAN OR TAX-EXEMPT FINANCING FOR ALL OR PART OF THE
28 TOTAL PROJECT COST.

29 (IV) "STATE ASSISTED HIGHER EDUCATION PROJECT" SHALL MEAN THOSE
30 PROJECTS WHICH RECEIVE FROM THE DORMITORY AUTHORITY OF THE STATE OF NEW
31 YORK A GRANT OR LOAN OR TAX-EXEMPT FINANCING FOR ALL OR PART OF THE
32 TOTAL PROJECT COST.

33 (V) "STATE ASSISTED HOSPITAL OR HEALTH CARE FACILITY PROJECT" SHALL
34 MEAN THOSE PROJECTS WHICH RECEIVE FROM THE DORMITORY AUTHORITY OF THE
35 STATE OF NEW YORK A GRANT OR LOAN OR TAX-EXEMPT FINANCING FOR ALL OR
36 PART OF THE TOTAL PROJECT COST.

37 S 11. This act shall take effect immediately, provided however, the
38 amendments to article 15-A of the executive law made by sections one,
39 two, three, four and five of this act shall not affect the expiration of
40 such article and shall expire therewith.