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

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I N S E N A T E

June 22, 2010

Introduced by Sen. HASSELL-THOMPSON -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the executive law and the state finance law, in relation to expanding opportunities for women and minority-owned business enterprises and increasing competition and diversity in procurements by the state and its public authorities; and to amend chapter 261 of the laws of 1988 amending the state finance law and other laws relating to the New York state infrastructure trust fund, in relation to the effectiveness of article 15-A of the executive law

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

Section 1. Legislative findings. New York state ("the state") declares that it is the public policy of the state to promote and encourage the continuing economic development of minority and women-owned businesses, that minority and women-owned businesses participate in the state procurement process as both prime contractors and subcontractors and that the state procurement process operate and award contracts in a manner that is free from discrimination and bias against minority and women-owned businesses that are ready, willing and able to engage in business with the state.

The state first adopted its Minority and Women-Owned Business Enterprise Program in 1988 to address the significant underrepresentation of minority and women-owned businesses in state contracts, despite relatively large populations of minorities and women throughout the state. The program, chaptered within article 15-A of the executive law, supported the state's commitment to promote equal opportunity in employment for all persons, without discrimination on account of race, creed, color, national origin, sex, age, disability or marital status, to promote equality of economic opportunity for minority group members and women, business enterprises owned by them, and to eradicate through effective programs the barriers that have unreasonably impaired access by minority and women-owned business enterprises to state contracting opportunities.

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

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In 2006, a disparity study was commissioned by the empire state development corporation, pursuant to executive law section 312-a, to evaluate whether minority and women-owned businesses in the state contracting marketplace had full and fair opportunities to compete for prime contracts and associated subcontracts. Published on April 29, 2010, "the State of Minority and Women-Owned Business Enterprise: Evidence From New York" ("the 2010 disparity study"), found strong evidence of large, adverse, and statistically significant disparities between minority and women participation in business enterprise activity in the state's relevant market area and the actual current availability of those businesses. The study further concluded that said disparities could not be explained solely, or even mostly, by differences between minority and women-owned businesses and non-minority and women-owned business populations in factors untainted by discrimination, and that the differences therefore gave rise to a strong inference of the presence of discrimination. The findings of the study are hereby adopted by the legislature.

The legislature further finds that the Assembly conducted hearings on the efficiency and effectiveness of services to minority and women-owned businesses and on the effectiveness of article 15-A of the executive law in Utica, New York on February 23, 2005, in New York City on March 3, 2005, and in Syracuse, New York on October 25, 2005; it conducted a hearing on the efforts by public authorities to attract and retain women and minority-owned businesses in securing contracts for construction, goods, and services on June 11, 2002 in Albany, New York, and a hearing on access to surety bonding on state contracts for small, minority and women-owned businesses on April 14, 2005 in New York City. The Senate conducted hearings on the efficiency and effectiveness of services to minority and women-owned business and on the effectiveness of article 15-A of the executive law at the Legislative Office Building hearing rooms in Albany, New York on February 12, 2009, on Minority and Women-Owned Business Enterprise participation opportunities in public finance/asset management, and on March 3, 2010 on the reform of article 15-A of the executive law.

At these hearings, testimony was received that supplemented and was consistent with the anecdotal evidence set forth in the 2010 disparity study that women and minority-owned businesses participate in state procurements at significantly lower percentages than their numbers and expertise would indicate would be expected if no discrimination had existed and provided anecdotal evidence of continuing patterns of discrimination.

The legislature further finds that in order to redress the discrimination documented by the study it is necessary to implement a program that identifies businesses owned by minorities and by women and that actively promotes the participation of such businesses in the state procurement process. The legislature further finds that it is in the best interests of the economic development of the state to enact the 2010 Business Diversification Act to redress discrimination against minority and women-owned business enterprises in the state marketplace.

S 1-a. Short title. This act shall be known and may be cited as the "2010 Business Diversification Act".

S 2. Subdivisions 7 and 15 of section 310 of the executive law, as added by chapter 261 of the laws of 1988, are amended and five new subdivisions 18, 19, 20, 21 and 22 are added to read as follows:

7. "Minority-owned business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:

(a) at least fifty-one percent owned by one or more minority group members;
(b) an enterprise in which such minority ownership is real, substantial and continuing;
(c) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; [and]
(d) an enterprise authorized to do business in this state and independently owned and operated[.];
(E) AN ENTERPRISE OWNED BY AN INDIVIDUAL OR INDIVIDUALS, WHOSE OWNERSHIP, CONTROL AND OPERATION ARE RELIED UPON FOR CERTIFICATION, WITH A PERSONAL NET WORTH THAT DOES NOT EXCEED THREE MILLION FIVE HUNDRED THOUSAND DOLLARS, AS ADJUSTED ANNUALLY ON THE FIRST OF JANUARY FOR INFLATION ACCORDING TO THE CONSUMER PRICE INDEX OF THE PREVIOUS YEAR; AND
(F) AN ENTERPRISE THAT IS A SMALL BUSINESS PURSUANT TO SUBDIVISION TWENTY OF THIS SECTION.
15. "Women-owned business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:
(a) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women;
(b) an enterprise in which the ownership interest of such women is real, substantial and continuing;
(c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; [and]
(d) an enterprise authorized to do business in this state and independently owned and operated[.];
(E) AN ENTERPRISE OWNED BY AN INDIVIDUAL OR INDIVIDUALS, WHOSE OWNERSHIP, CONTROL AND OPERATION ARE RELIED UPON FOR CERTIFICATION, WITH A PERSONAL NET WORTH THAT DOES NOT EXCEED THREE MILLION FIVE HUNDRED THOUSAND DOLLARS, AS ADJUSTED ANNUALLY ON THE FIRST OF JANUARY FOR INFLATION ACCORDING TO THE CONSUMER PRICE INDEX OF THE PREVIOUS YEAR; AND
(F) AN ENTERPRISE THAT IS A SMALL BUSINESS PURSUANT TO SUBDIVISION TWENTY OF THIS SECTION.
A FIRM OWNED BY A MINORITY GROUP MEMBER WHO IS ALSO A WOMAN MAY BE CERTIFIED AS A MINORITY-OWNED BUSINESS ENTERPRISE, A WOMEN-OWNED BUSINESS ENTERPRISE, OR BOTH, AND MAY BE COUNTED TOWARDS EITHER A MINORITY-OWNED BUSINESS ENTERPRISE GOAL OR A WOMEN-OWNED BUSINESS ENTERPRISE GOAL, IN REGARD TO ANY CONTRACT OR ANY GOAL, SET BY AN AGENCY OR AUTHORITY, BUT SUCH PARTICIPATION MAY NOT BE COUNTED TOWARDS BOTH SUCH GOALS. SUCH AN ENTERPRISE'S PARTICIPATION IN A CONTRACT MAY NOT BE DIVIDED BETWEEN THE MINORITY-OWNED BUSINESS ENTERPRISE GOAL AND THE WOMEN-OWNED BUSINESS ENTERPRISE GOAL.
18. "LESSEE" SHALL MEAN AN INDIVIDUAL, A BUSINESS ENTERPRISE, INCLUDING A SOLE PROPRIETORSHIP, A PARTNERSHIP, A CORPORATION, A NOT-FOR-PROFIT CORPORATION, OR ANY OTHER PARTY TO A LEASE WITH A STATE AGENCY AS DEFINED IN SUBDIVISION ELEVEN OF THIS SECTION, OR A RESPONDENT IN CONJUNCTION WITH THE AWARD OF SUCH A LEASE OR A PROPOSED LESSEE WITH A STATE AGENCY AS DEFINED IN SUBDIVISION ELEVEN OF THIS SECTION.
19. "PERSONAL NET WORTH" SHALL MEAN THE AGGREGATE ADJUSTED NET VALUE OF THE ASSETS OF AN INDIVIDUAL REMAINING AFTER TOTAL LIABILITIES ARE DEDUCTED. PERSONAL NET WORTH INCLUDES THE INDIVIDUAL'S SHARE OF ASSETS HELD JOINTLY WITH SAID INDIVIDUAL'S SPOUSE AND DOES NOT INCLUDE THE INDIVIDUAL'S OWNERSHIP INTEREST IN THE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE, THE INDIVIDUAL'S EQUITY IN HIS OR HER

PRIMARY RESIDENCE, OR UP TO FIVE HUNDRED THOUSAND DOLLARS OF THE PRESENT CASH VALUE OF ANY QUALIFIED RETIREMENT SAVINGS PLAN OR INDIVIDUAL RETIREMENT ACCOUNT HELD BY THE INDIVIDUAL LESS ANY PENALTIES FOR EARLY WITHDRAWAL.

20. "SMALL BUSINESS" AS USED IN THIS SECTION, UNLESS OTHERWISE INDICATED, SHALL MEAN A BUSINESS WHICH HAS A SIGNIFICANT BUSINESS PRESENCE IN THE STATE, IS INDEPENDENTLY OWNED AND OPERATED, NOT DOMINANT IN ITS FIELD AND EMPLOYS, BASED ON ITS INDUSTRY, A CERTAIN NUMBER OF PERSONS AS DETERMINED BY THE DIRECTOR, BUT NOT TO EXCEED THREE HUNDRED, TAKING INTO CONSIDERATION FACTORS WHICH INCLUDE, BUT ARE NOT LIMITED TO, FEDERAL SMALL BUSINESS ADMINISTRATION STANDARDS PURSUANT TO 13 CFR PART 121 AND ANY AMENDMENTS THERETO. THE DIRECTOR MAY ISSUE REGULATIONS ON THE CONSTRUCTION OF THE TERMS IN THIS DEFINITION.

21. "THE 2010 DISPARITY STUDY" SHALL REFER TO THE DISPARITY STUDY COMMISSIONED BY THE EMPIRE STATE DEVELOPMENT CORPORATION, PURSUANT TO SECTION THREE HUNDRED TWELVE-A OF THIS ARTICLE, AND PUBLISHED ON APRIL TWENTY-NINE, TWO THOUSAND TEN.

22. "DIVERSITY PRACTICES" SHALL MEAN THE CONTRACTOR'S PRACTICES AND POLICIES WITH RESPECT TO:

(A) UTILIZING CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES IN CONTRACTS AWARDED BY A STATE AGENCY OR OTHER PUBLIC CORPORATION, AS SUBCONTRACTORS AND SUPPLIERS; AND

(B) ENTERING INTO PARTNERSHIPS, JOINT VENTURES OR OTHER SIMILAR ARRANGEMENTS WITH CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AS DEFINED IN THIS ARTICLE OR OTHER APPLICABLE STATUTE OR REGULATION GOVERNING AN ENTITY'S UTILIZATION OF MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES.

S 3. The executive law is amended by adding a new section 4-a to read as follows:

S 4-A. CHIEF DIVERSITY OFFICER. A CHIEF DIVERSITY OFFICER FOR THE STATE SHALL BE APPOINTED BY THE GOVERNOR AND SHALL RECEIVE A SALARY TO BE FIXED BY THE GOVERNOR WITHIN THE AMOUNT APPROPRIATED THEREFOR. THE CHIEF DIVERSITY OFFICER'S RESPONSIBILITIES SHALL INCLUDE THE FOLLOWING:

1. ADVISE AND ASSIST THE GOVERNOR IN FORMULATING POLICIES RELATING TO WORKFORCE DIVERSITY AND MINORITY AND WOMEN'S BUSINESS ENTERPRISES;

2. WORK WITH THE DIRECTOR OF THE DIVISION OF MINORITY AND WOMEN'S BUSINESS DEVELOPMENT TO PREPARE AN ANNUAL PLAN FOR ENSURING FULL COMPLIANCE WITH ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW BY STATE AGENCIES AND THE USE OF DIVERSITY PRACTICES BY SUCH AGENCIES;

3. ADVISE THE GOVERNOR AND THE AGENCIES REGARDING ANY MEASURES NECESSARY TO ENSURE FULL COMPLIANCE WITH ARTICLE FIFTEEN-A OF THIS CHAPTER AND USE OF DIVERSITY PRACTICES BY STATE PUBLIC AUTHORITIES;

4. SERVE AS A MEMBER OF THE STATE PROCUREMENT COUNCIL ESTABLISHED UNDER SECTION ONE HUNDRED SIXTY-ONE OF THE STATE FINANCE LAW;

5. SERVE AS THE GOVERNOR'S LIAISON WITH ORGANIZATIONS REPRESENTING MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND OTHER ORGANIZATIONS RELATED TO DIVERSITY IN THE STATE WORKFORCE AND IN STATE CONTRACTING;

6. SERVE AS THE GOVERNOR'S LIAISON TO THE SMALL BUSINESS ADVISORY COUNCIL FOR ISSUES RELATED TO THE CREATION OF A DIVERSE WORKFORCE AND STATE PROCUREMENT PRACTICES RELATING TO MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES;

7. REVIEW AND CONSULT WITH THE DIRECTOR OF MINORITY AND WOMEN'S BUSINESS DEVELOPMENT REGARDING POLICIES RELATING TO MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE CONTRACT SPECIALISTS AT STATE AGENCIES; AND

8. ENGAGE IN OTHER ACTIONS ASSIGNED TO HIM OR HER BY THE GOVERNOR RELATING TO DIVERSITY IN HIRING OR PROMOTION OF THE STATE WORKFORCE AND

IN ENCOURAGING DIVERSITY PRACTICES AND COMPLIANCE WITH ARTICLE FIFTEEN-A OF THIS CHAPTER IN PROCUREMENT.

S 3-a. Paragraph a of subdivision 1 of section 161 of the state finance law, as added by chapter 83 of the laws of 1995, is amended to read as follows:

a. The state procurement council shall continuously strive to improve the state's procurement process. Such council shall consist of [nineteen] TWENTY members, including the commissioner, the state comptroller, the director of the budget, THE CHIEF DIVERSITY OFFICER and the commissioner of economic development, or their respective designees; seven members who shall be the heads of other large and small state agencies chosen by the governor, or their respective designees; and eight at large members appointed as follows: three appointed by the temporary president of the senate, one of whom shall be a representative of local government and one of whom shall be a representative of private business; three appointed by the speaker of the assembly, one of whom shall be a representative of local government and one of whom shall be a representative of private business; one appointed by the minority leader of the senate; and, one appointed by the minority leader of the assembly; and two non-voting observers appointed as follows: one appointed by the temporary president of the senate and one appointed by the speaker of the assembly. The non-voting observers shall be provided, contemporaneously, all documentation and materials distributed to members. The council shall be chaired by the commissioner and shall meet at least quarterly.

S 4. Section 312-a of the executive law, as added by section 6 of part BB of chapter 59 of the laws of 2006, is amended to read as follows:

S 312-a. Study of minority and women-owned business enterprise programs. 1. The director of the division of minority and women-owned business development in the department of economic development is authorized and directed to [commission] RECOMMISSION a statewide disparity study regarding the participation of minority and women-owned business enterprises in state contracts since the [enactment] AMENDMENT of this article TO BE DELIVERED TO THE GOVERNOR AND LEGISLATURE NO LATER THAN FEBRUARY FIFTEENTH, TWO THOUSAND SIXTEEN. The study shall be prepared by an entity independent of the department and selected through a request for proposal process. The purpose of such study is:

(A) to determine whether there is a disparity between the number of qualified minority and women-owned businesses ready, willing and able to perform state contracts for commodities, services and construction, and the number of such contractors actually engaged to perform such contracts, and to determine what changes, if any, should be made to state policies affecting minority and women-owned business enterprises; AND (B) TO DETERMINE WHETHER THERE IS A DISPARITY BETWEEN THE NUMBER OF QUALIFIED MINORITIES AND WOMEN READY, WILLING AND ABLE, WITH RESPECT TO LABOR MARKETS, QUALIFICATIONS AND OTHER RELEVANT FACTORS, TO PARTICIPATE IN CONTRACTOR EMPLOYMENT, MANAGEMENT LEVEL BODIES, INCLUDING BOARDS OF DIRECTORS, AND AS SENIOR EXECUTIVE OFFICERS WITHIN CONTRACTING ENTITIES AND THE NUMBER OF SUCH GROUP MEMBERS ACTUALLY EMPLOYED OR AFFILIATED WITH STATE CONTRACTORS IN THE AFOREMENTIONED CAPACITIES, AND TO DETERMINE WHAT CHANGES, IF ANY, SHOULD BE MADE TO STATE POLICIES AFFECTING MINORITY AND WOMEN GROUP POPULATIONS WITH REGARD TO STATE CONTRACTORS' EMPLOYMENT AND APPOINTMENT PRACTICES RELATIVE TO DIVERSE GROUP MEMBERS. Such study shall include, but not be limited to, an analysis of the [impact of court decisions regarding the use of quotas and set-asides] HISTORY OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PROGRAMS AND

THEIR EFFECTIVENESS as a means of securing and ensuring participation by minorities and women, and a disparity analysis by market area and region of the state. SUCH STUDY SHALL DISTINGUISH BETWEEN MINORITY MALES, MINORITY FEMALES AND NON-MINORITY FEMALES IN THE STATISTICAL ANALYSIS.

2. The director of the division of minority and women-owned business development is directed to transmit the disparity study to the governor and the legislature not later than [eighteen months after the effective date of this subdivision] FEBRUARY FIFTEENTH, TWO THOUSAND SIXTEEN, and to post the study on the website of the department of economic development.

S 5. Section 313 of the executive law, as added by chapter 261 of the laws of 1988, paragraph (a) of subdivision 4 as amended by chapter 429 of the laws of 2009, is amended to read as follows:

S 313. Opportunities for minority and women-owned business enterprises. 1. [The director shall promulgate rules and regulations that provide measures and procedures to ensure that certified businesses shall be given the opportunity for meaningful participation in the performance of state contracts and to identify those state contracts for which certified businesses may best bid to actively and affirmatively promote and assist their participation in the performance of state contracts so as to facilitate the award of a fair share of state contracts to such businesses. Such rules and regulations as they pertain to any particular agency shall be developed after consultation with the contracting agency. Nothing in the provisions of this article shall be construed to limit the ability of any certified business to bid on any contract.

2.] GOALS AND REQUIREMENTS FOR AGENCIES AND CONTRACTORS. EACH AGENCY SHALL STRUCTURE PROCUREMENT PROCEDURES FOR CONTRACTS MADE DIRECTLY OR INDIRECTLY TO MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES, IN ACCORDANCE WITH THE FINDINGS OF THE TWO THOUSAND TEN DISPARITY STUDY, CONSISTENT WITH THE PURPOSES OF THIS ARTICLE, TO ATTEMPT TO ACHIEVE THE FOLLOWING RESULTS WITH REGARD TO TOTAL ANNUAL STATEWIDE PROCUREMENT:

(A) CONSTRUCTION INDUSTRY FOR CERTIFIED MINORITY-OWNED BUSINESS ENTERPRISES: FOURTEEN AND THIRTY-FOUR HUNDREDTHS PERCENT;

(B) CONSTRUCTION INDUSTRY FOR CERTIFIED WOMEN-OWNED BUSINESS ENTERPRISES: EIGHT AND FORTY-ONE HUNDREDTHS PERCENT;

(C) CONSTRUCTION RELATED PROFESSIONAL SERVICES INDUSTRY FOR CERTIFIED MINORITY-OWNED BUSINESS ENTERPRISES: THIRTEEN AND TWENTY-ONE HUNDREDTHS PERCENT;

(D) CONSTRUCTION RELATED PROFESSIONAL SERVICES INDUSTRY FOR CERTIFIED WOMEN-OWNED BUSINESS ENTERPRISES: ELEVEN AND THIRTY-TWO HUNDREDTHS PERCENT;

(E) NON-CONSTRUCTION RELATED SERVICES INDUSTRY FOR CERTIFIED MINORITY-OWNED BUSINESS ENTERPRISES: NINETEEN AND SIXTY HUNDREDTHS PERCENT;

(F) NON-CONSTRUCTION RELATED SERVICES INDUSTRY FOR CERTIFIED WOMEN-OWNED BUSINESS ENTERPRISES: SEVENTEEN AND FORTY-FOUR HUNDREDTHS PERCENT;

(G) COMMODITIES INDUSTRY FOR CERTIFIED MINORITY-OWNED BUSINESS ENTERPRISES: SIXTEEN AND ELEVEN HUNDREDTHS PERCENT;

(H) COMMODITIES INDUSTRY FOR CERTIFIED WOMEN-OWNED BUSINESS ENTERPRISES: TEN AND NINETY-THREE HUNDREDTHS PERCENT;

(I) OVERALL AGENCY TOTAL DOLLAR VALUE OF PROCUREMENT FOR CERTIFIED MINORITY-OWNED BUSINESS ENTERPRISES: SIXTEEN AND FIFTY-THREE HUNDREDTHS PERCENT;

(J) OVERALL AGENCY TOTAL DOLLAR VALUE OF PROCUREMENT FOR CERTIFIED WOMEN-OWNED BUSINESS ENTERPRISES: TWELVE AND THIRTY-NINE HUNDREDTHS PERCENT; AND

(K) OVERALL AGENCY TOTAL DOLLAR VALUE OF PROCUREMENT FOR CERTIFIED MINORITY, WOMEN-OWNED BUSINESS ENTERPRISES: TWENTY-EIGHT AND NINETY-TWO HUNDREDTHS PERCENT.

1-A. THE DIRECTOR SHALL ENSURE THAT EACH STATE AGENCY HAS BEEN PROVIDED WITH A COPY OF THE TWO THOUSAND TEN DISPARITY STUDY.

1-B. EACH AGENCY SHALL DEVELOP AND ADOPT AGENCY-SPECIFIC GOALS BASED ON THE FINDINGS OF THE TWO THOUSAND TEN DISPARITY STUDY.

2. THE DIRECTOR SHALL PROMULGATE RULES AND REGULATIONS PURSUANT TO THE GOALS ESTABLISHED IN SUBDIVISION ONE OF THIS SECTION THAT PROVIDE MEASURES AND PROCEDURES TO ENSURE THAT CERTIFIED MINORITY AND WOMEN-OWNED BUSINESSES SHALL BE GIVEN THE OPPORTUNITY FOR MAXIMUM FEASIBLE PARTICIPATION IN THE PERFORMANCE OF STATE CONTRACTS AND TO ASSIST IN THE AGENCY'S IDENTIFICATION OF THOSE STATE CONTRACTS FOR WHICH MINORITY AND WOMEN-OWNED CERTIFIED BUSINESSES MAY BEST BID TO ACTIVELY AND AFFIRMATIVELY PROMOTE AND ASSIST THEIR PARTICIPATION IN THE PERFORMANCE OF STATE CONTRACTS SO AS TO FACILITATE THE AGENCY'S ACHIEVEMENT OF THE MAXIMUM FEASIBLE PORTION OF THE GOALS FOR STATE CONTRACTS TO SUCH BUSINESSES.

2-A. THE DIRECTOR SHALL PROMULGATE RULES AND REGULATIONS THAT WILL ACCOMPLISH THE FOLLOWING:

(A) PROVIDE FOR THE CERTIFICATION AND DECERTIFICATION OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES FOR ALL AGENCIES THROUGH A SINGLE PROCESS THAT MEETS APPLICABLE REQUIREMENTS;

(B) REQUIRE THAT EACH CONTRACT SOLICITATION DOCUMENT ACCOMPANYING EACH SOLICITATION SET FORTH THE EXPECTED DEGREE OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION BASED, IN PART, ON:

(I) THE POTENTIAL SUBCONTRACT OPPORTUNITIES AVAILABLE IN THE PRIME PROCUREMENT CONTRACT; AND

(II) THE AVAILABILITY, AS CONTAINED WITHIN THE STUDY, OF CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES TO RESPOND COMPETITIVELY TO THE POTENTIAL SUBCONTRACT OPPORTUNITIES;

(C) REQUIRE THAT EACH AGENCY PROVIDE A CURRENT LIST OF CERTIFIED MINORITY BUSINESS ENTERPRISES TO EACH PROSPECTIVE CONTRACTOR;

(D) ALLOW A CONTRACTOR THAT IS A CERTIFIED MINORITY-OWNED OR WOMEN-OWNED BUSINESS ENTERPRISE TO USE THE WORK IT PERFORMS TO MEET REQUIREMENTS FOR USE OF CERTIFIED MINORITY-OWNED OR WOMEN-OWNED BUSINESS ENTERPRISES AS SUBCONTRACTORS;

(E) PROVIDE FOR JOINT VENTURES, WHICH A BIDDER MAY COUNT TOWARD MEETING ITS MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION;

(F) CONSISTENT WITH SUBDIVISION SIX OF THIS SECTION, PROVIDE FOR CIRCUMSTANCES UNDER WHICH AN AGENCY MAY WAIVE OBLIGATIONS OF THE CONTRACTOR RELATING TO MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION;

(G) REQUIRE THAT AN AGENCY VERIFY THAT MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES LISTED IN A SUCCESSFUL BID ARE ACTUALLY PARTICIPATING TO THE EXTENT LISTED IN THE PROJECT FOR WHICH THE BID WAS SUBMITTED;

(H) PROVIDE FOR THE COLLECTION OF STATISTICAL DATA BY EACH AGENCY CONCERNING ACTUAL MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION; AND

(I) REQUIRE EACH AGENCY TO CONSULT THE MOST CURRENT DISPARITY STUDY WHEN CALCULATING AGENCY-WIDE AND CONTRACT SPECIFIC PARTICIPATION GOALS PURSUANT TO THIS ARTICLE.

3. SOLELY FOR THE PURPOSE OF PROVIDING THE OPPORTUNITY FOR MEANINGFUL PARTICIPATION BY CERTIFIED BUSINESSES IN THE PERFORMANCE OF STATE CONTRACTS AS PROVIDED IN THIS SECTION, STATE CONTRACTS SHALL INCLUDE LEASES OF REAL PROPERTY BY A STATE AGENCY TO A LESSEE WHERE: THE TERMS OF SUCH LEASES PROVIDE FOR THE CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND IMPROVEMENTS THEREON BY SUCH LESSEE; AND THE COST OF SUCH CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND IMPROVEMENTS THEREON SHALL EXCEED THE SUM OF ONE HUNDRED THOUSAND DOLLARS. REPORTS TO THE DIRECTOR PURSUANT TO SECTION THREE HUNDRED FIFTEEN OF THIS ARTICLE SHALL INCLUDE ACTIVITIES WITH RESPECT TO ALL SUCH STATE CONTRACTS. Contracting agencies shall include or require to be included with respect to state contracts for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, such provisions as may be necessary to effectuate the provisions of this section in every bid specification and state contract, including, but not limited to: (a) provisions requiring contractors to make a good faith effort to solicit active participation by enterprises identified in the directory of certified businesses provided to the contracting agency by the office; (b) requiring the parties to agree as a condition of entering into such contract, to be bound by the provisions of section three hundred sixteen of this article; and (c) requiring the contractor to include the provisions set forth in paragraphs (a) and (b) [above] OF THIS SUBDIVISION in every subcontract in a manner that the provisions will be binding upon each subcontractor as to work in connection with such contract. Provided, however, that no such provisions shall be binding upon contractors or subcontractors in the performance of work or the provision of services that are unrelated, separate or distinct from the state contract as expressed by its terms, and nothing in this section shall authorize the director or any contracting agency to impose any requirement on a contractor or subcontractor except with respect to a state contract.

[3.] 4. In the implementation of this section, the contracting agency shall (A) CONSULT THE FINDINGS CONTAINED WITHIN THE DISPARITY STUDY EVIDENCING RELEVANT INDUSTRY SPECIFIC AVAILABILITY OF CERTIFIED BUSINESSES;

(B) IMPLEMENT A PROGRAM THAT WILL ENABLE THE AGENCY TO EVALUATE EACH CONTRACT TO DETERMINE THE APPROPRIATENESS OF THE GOAL PURSUANT TO SUBDIVISION ONE OF THIS SECTION;

(C) consider WHERE PRACTICABLE, THE SEVERABILITY OF CONSTRUCTION PROJECTS AND OTHER BUNDLED CONTRACTS; AND

(D) CONSIDER compliance with the requirements of any federal law concerning opportunities for minority and women-owned business enterprises which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of any such law duplicate or conflict with the provisions hereof and if such duplication or conflict exists, the contracting agency shall waive the applicability of this section to the extent of such duplication or conflict.

[4.] 5. (a) Contracting agencies shall administer the rules and regulations promulgated by the director IN A GOOD FAITH EFFORT to [ensure compliance with the provisions of this section] MEET THE MAXIMUM FEASIBLE PORTION OF THE AGENCY'S GOALS ADOPTED PURSUANT TO THIS ARTICLE AND THE REGULATIONS OF THE DIRECTOR. 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] SIX 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 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 AND SEVEN of this section; shall allow a contractor to file a complaint with the director pursuant to subdivision [seven] EIGHT 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] NINE 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.

(b) The rules and regulations promulgated pursuant to this subdivision regarding a utilization plan shall provide that where enterprises have been identified within a utilization plan, a contractor shall attempt, in good faith, to utilize such enterprise at least to the extent indicated. A contracting agency may require a contractor to indicate, within a utilization plan, what measures and procedures he or she intends to take to comply with the provisions of this article, but may not require, as a condition of award of, or compliance with, a contract that a contractor utilize a particular enterprise in performance of the contract.

(c) Without limiting other grounds for the disqualification of bids or proposals on the basis of non-responsibility, a contracting agency may disqualify the bid or proposal of a contractor as being non-responsible for failure to remedy notified deficiencies contained in the contractor's utilization plan within a period of time specified in regulations promulgated by the director after receiving notification of such deficiencies from the contracting agency. Where failure to remedy any notified deficiency in the utilization plan is a ground for disqualification, that issue and all other grounds for disqualification shall be stated in writing by the contracting agency. Where the contracting agency states that a failure to remedy any notified deficiency in the utilization plan is a ground for disqualification the contractor shall be entitled to an administrative hearing, on a record, involving all grounds stated by the contracting agency. Such hearing shall be conducted by the appropriate authority of the contracting agency to review the determination of disqualification. A final administrative determination made following such hearing shall be reviewable in a proceeding commenced under article seventy-eight of the civil practice law and rules, provided that such proceeding is commenced within thirty days of the notice given by certified mail return receipt requested rendering such final administrative determination. Such proceeding shall be commenced in the supreme court, appellate division, third department

and such proceeding shall be preferred over all other civil causes except election causes, and shall be heard and determined in preference to all other civil business pending therein, except election matters, irrespective of position on the calendar. Appeals taken to the court of appeals of the state of New York shall be subject to the same preference.

[5.] 6. Where it appears that a contractor cannot, after a good faith effort, comply with the minority and women-owned business enterprise participation requirements set forth in a particular state contract, a contractor may file a written application with the contracting agency requesting a partial or total waiver of such requirements setting forth the reasons for such contractor's inability to meet any or all of the participation requirements together with an explanation of the efforts undertaken by the contractor to obtain the required minority and women-owned business enterprise participation. In implementing the provisions of this section, the contracting agency shall consider the number and types of minority and women-owned business enterprises located in the region in which the state contract is to be performed, the total dollar value of the state contract, the scope of work to be performed and the project size and term. If, based on such considerations, the contracting agency determines there is not a reasonable availability of contractors on the list of certified business to furnish services for the project, it shall issue a waiver of compliance to the contractor. In making such determination, the contracting agency shall first consider the availability of other business enterprises located in the region and shall thereafter consider the financial ability of minority and women-owned businesses located outside the region in which the contract is to be performed to perform the state contract.

[6.] 7. For purposes of determining a contractor's good faith effort to comply with the requirements of this section or to be entitled to a waiver therefrom the contracting agency shall consider:

(a) whether the contractor has advertised in general circulation media, trade association publications, and minority-focus and women-focus media and, in such event, (i) whether or not certified minority or women-owned businesses which have been solicited by the contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and

(ii) whether certified businesses which have been solicited by the contractor have responded in a timely fashion to the contractor's solicitations for timely competitive bid quotations prior to the contracting agency's bid date; and

(b) whether there has been written notification to appropriate certified businesses that appear in the directory of certified businesses prepared pursuant to paragraph (f) of subdivision three of section three hundred eleven of this article; and

(c) whether the contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified businesses.

[7.] 8. In the event that a contracting agency fails or refuses to issue a waiver to a contractor as requested within twenty days after having made application therefor pursuant to subdivision [five] SIX of this section or if the contracting agency denies such application, in whole or in part, the contractor may file a complaint with the director pursuant to section three hundred sixteen of this article setting forth the facts and circumstances giving rise to the contractor's complaint together with a demand for relief. The contractor shall serve a copy of

such complaint upon the contracting agency by personal service or by certified mail, return receipt requested. The contracting agency shall be afforded an opportunity to respond to such complaint in writing.

[8.] 9. If, after the review of a contractor's minority and women owned business utilization plan or review of a periodic compliance report and after such contractor has been afforded an opportunity to respond to a notice of deficiency issued by the contracting agency in connection therewith, it appears that a contractor is failing or refusing to comply with the minority and women-owned business participation requirements as set forth in the state contract and where no waiver from such requirements has been granted, the contracting agency may file a written complaint with the director pursuant to section three hundred sixteen of this article setting forth the facts and circumstances giving rise to the contracting agency's complaint together with a demand for relief. The contracting agency shall serve a copy of such complaint upon the contractor by personal service or by certified mail, return receipt requested. The contractor shall be afforded an opportunity to respond to such complaint in writing.

S 6. The executive law is amended by adding a new section 313-a to read as follows:

S 313-A. DIVERSITY PRACTICES OF STATE CONTRACTORS. THE DIRECTOR SHALL PROMULGATE RULES AND REGULATIONS SETTING FORTH MEASURES AND PROCEDURES TO REQUIRE ALL CONTRACTING AGENCIES, WHERE PRACTICABLE, FEASIBLE AND APPROPRIATE, TO ASSESS THE DIVERSITY PRACTICES OF CONTRACTORS SUBMITTING BIDS OR PROPOSALS IN CONNECTION WITH THE AWARD OF A STATE CONTRACT. SUCH RULES AND REGULATIONS SHALL TAKE INTO ACCOUNT: THE NATURE OF THE LABOR, SERVICES, SUPPLIES, EQUIPMENT OR MATERIALS BEING PROCURED BY THE STATE AGENCY; THE METHOD OF PROCUREMENT REQUIRED TO BE USED BY A STATE AGENCY TO AWARD THE CONTRACT AND MINORITY AND WOMEN-OWNED BUSINESS UTILIZATION PLANS REQUIRED TO BE SUBMITTED PURSUANT TO SECTIONS THREE HUNDRED TWELVE AND THREE HUNDRED THIRTEEN OF THIS ARTICLE; AND SUCH OTHER FACTORS AS THE DIRECTOR DEEMS APPROPRIATE OR NECESSARY TO PROMOTE THE AWARD OF STATE CONTRACTS TO CONTRACTORS HAVING SOUND DIVERSITY PRACTICES. SUCH ASSESSMENT SHALL NOT IN ANY WAY PERMIT THE AUTOMATIC REJECTION OF A BID OR PROCUREMENT CONTRACT PROPOSAL BASED ON LACK OF ADHERENCE TO DIVERSITY PRACTICES. EACH BID OR PROPOSAL SHALL BE ANALYZED ON AN INDIVIDUAL PER BID OR PER PROPOSAL BASIS WITH THE CONTRACTOR'S DIVERSITY PRACTICES CONSIDERED AS ONLY A PART OF A WIDER CONSIDERATION OF SEVERAL FACTORS WHEN DECIDING TO AWARD OR DECLINE TO AWARD A BID OR PROPOSAL. THE DIRECTOR SHALL DEVELOP THE RULES AND REGULATIONS REQUIRED HEREUNDER ONLY AFTER CONSULTATION WITH THE STATE PROCUREMENT COUNCIL ESTABLISHED BY SECTION ONE HUNDRED SIXTY-ONE OF THE STATE FINANCE LAW.

S 7. Subdivision 3 of section 315 of the executive law, as added by chapter 261 of the laws of 1988, is amended and four new subdivisions 4, 5, 6 and 7 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 women and promote and increase participation by certified businesses with respect to state contracts and subcontracts. Such reports shall be submitted periodically, BUT NOT LESS FREQUENTLY THAN ANNUALLY, as required by the director, AND SHALL INCLUDE SUCH INFORMATION AS IS NECESSARY FOR THE DIRECTOR TO DETERMINE WHETHER THE CONTRACTING AGENCY AND CONTRACTOR HAVE COMPLIED WITH THE PURPOSES OF THIS ARTICLE, INCLUDING, WITHOUT LIMITATION, A SUMMARY OF ALL WAIVERS OF THE REQUIREMENTS OF SUBDIVISIONS SIX AND SEVEN OF SECTION THREE HUNDRED THIRTEEN OF THIS ARTICLE ALLOWED BY THE CONTRACTING AGENCY DURING THE PERIOD COVERED BY

THE REPORT, INCLUDING A DESCRIPTION OF THE BASIS OF THE WAIVER REQUEST AND THE RATIONALE FOR GRANTING ANY SUCH WAIVER. EACH AGENCY SHALL ALSO INCLUDE IN SUCH ANNUAL REPORT WHETHER OR NOT IT HAS BEEN REQUIRED TO PREPARE A REMEDIAL PLAN, AND, IF SO, THE PLAN AND THE EXTENT TO WHICH THE AGENCY HAS COMPLIED WITH EACH ELEMENT OF THE PLAN.

4. THE DIVISION OF MINORITY AND WOMEN'S BUSINESS DEVELOPMENT SHALL ISSUE AN ANNUAL REPORT WHICH: (A) SUMMARIZES THE REPORT SUBMITTED BY EACH CONTRACTING AGENCY PURSUANT TO SUBDIVISION THREE OF THIS SECTION; (B) CONTAINS SUCH COMPARATIVE OR OTHER INFORMATION AS THE DIRECTOR DEEMS APPROPRIATE, INCLUDING BUT NOT LIMITED TO GOALS COMPARED TO ACTUAL PARTICIPATION OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES IN STATE CONTRACTING, TO EVALUATE THE EFFECTIVENESS OF THE ACTIVITIES UNDERTAKEN BY EACH SUCH CONTRACTING AGENCY TO PROMOTE INCREASED PARTICIPATION BY CERTIFIED MINORITY OR WOMEN-OWNED BUSINESSES WITH RESPECT TO STATE CONTRACTS AND SUBCONTRACTS; (C) CONTAINS A SUMMARY OF ALL WAIVERS OF THE REQUIREMENTS OF SUBDIVISIONS SIX AND SEVEN 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 AGENCY'S RATIONALE FOR GRANTING ANY SUCH WAIVER; (D) DESCRIBES ANY EFFORTS TO CREATE A DATABASE OR OTHER INFORMATION STORAGE AND RETRIEVAL SYSTEM CONTAINING INFORMATION RELEVANT TO CONTRACTING WITH MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES; AND (E) CONTAINS A SUMMARY OF (I) ALL DETERMINATIONS OF VIOLATIONS OF THIS ARTICLE BY A CONTRACTOR OR A CONTRACTING AGENCY MADE DURING THE PERIOD COVERED BY THE ANNUAL REPORT PURSUANT TO SECTION THREE HUNDRED SIXTEEN-A OF THIS ARTICLE AND (II) THE PENALTIES OR SANCTIONS, IF ANY, ASSESSED IN CONNECTION WITH SUCH DETERMINATIONS AND THE RATIONALE FOR SUCH PENALTIES OR SANCTIONS. COPIES OF THE ANNUAL REPORT SHALL BE PROVIDED TO THE COMMISSIONER, THE GOVERNOR, THE COMPTROLLER, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE SENATE, THE MINORITY LEADER OF THE ASSEMBLY AND SHALL ALSO BE MADE WIDELY AVAILABLE TO THE PUBLIC VIA, AMONG OTHER THINGS, PUBLICATION ON A WEBSITE MAINTAINED BY THE DIVISION OF MINORITY AND WOMEN'S BUSINESS DEVELOPMENT.

5. EACH AGENCY SHALL INCLUDE IN ITS ANNUAL REPORT TO THE GOVERNOR AND LEGISLATURE PURSUANT TO SECTION ONE HUNDRED SIXTY-FOUR OF THE EXECUTIVE LAW ITS ANNUAL GOALS FOR CONTRACTS WITH MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES, THE NUMBER OF ACTUAL CONTRACTS ISSUED TO MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES; AND A SUMMARY OF ALL WAIVERS OF THE REQUIREMENTS OF SUBDIVISIONS SIX AND SEVEN OF SECTION THREE HUNDRED THIRTEEN OF THIS ARTICLE ALLOWED BY THE REPORTING AGENCY DURING THE PRECEDING YEAR, INCLUDING A DESCRIPTION OF THE BASIS OF THE WAIVER REQUEST AND THE RATIONALE FOR GRANTING SUCH WAIVER. EACH AGENCY SHALL ALSO INCLUDE IN SUCH ANNUAL REPORT WHETHER OR NOT IT HAS BEEN REQUIRED TO PREPARE A REMEDIAL PLAN, AND, IF SO, THE PLAN AND THE EXTENT TO WHICH THE AGENCY HAS COMPLIED WITH EACH ELEMENT OF THE PLAN.

6. EACH CONTRACTING AGENCY THAT SUBSTANTIALLY FAILS TO MEET THE GOALS SUPPORTED BY THE DISPARITY STUDY, AS DEFINED BY REGULATION OF THE DIRECTOR, SHALL BE REQUIRED TO SUBMIT TO THE DIRECTOR A REMEDIAL ACTION PLAN TO REMEDY SUCH FAILURE.

7. IF IT IS DETERMINED BY THE DIRECTOR THAT ANY AGENCY HAS FAILED TO ACT IN GOOD FAITH TO IMPLEMENT THE REMEDIAL ACTION PLAN, PURSUANT TO SUBDIVISION SIX OF THIS SECTION WITHIN ONE YEAR, THE DIRECTOR SHALL PROVIDE WRITTEN NOTICE OF SUCH A FINDING, WHICH SHALL BE PUBLICLY AVAILABLE, AND DIRECT IMPLEMENTATION OF REMEDIAL ACTIONS TO:

(A) ASSURE THAT SUFFICIENT AND EFFECTIVE SOLICITATION EFFORTS TO WOMEN AND MINORITY-OWNED BUSINESS ENTERPRISES ARE BEING MADE BY SAID AGENCY;

(B) DIVIDE CONTRACT REQUIREMENTS, WHEN ECONOMICALLY FEASIBLE, INTO QUANTITIES THAT WILL EXPAND THE PARTICIPATION OF WOMEN AND MINORITY-OWNED BUSINESS ENTERPRISES;

(C) ELIMINATE EXTENDED EXPERIENCE OR CAPITALIZATION REQUIREMENTS, WHEN PROGRAMMATICALLY AND ECONOMICALLY FEASIBLE, THAT WILL EXPAND PARTICIPATION BY WOMEN AND MINORITY-OWNED BUSINESS ENTERPRISES;

(D) IDENTIFY SPECIFIC PROPOSED CONTRACTS AS PARTICULARLY ATTRACTIVE OR APPROPRIATE FOR PARTICIPATION BY WOMEN AND MINORITY-OWNED BUSINESS ENTERPRISES WITH SUCH IDENTIFICATION TO RESULT FROM AND BE COUPLED WITH THE EFFORTS OF PARAGRAPHS (A), (B), AND (C) OF THIS SUBDIVISION; AND

(E) UPON A FINDING BY THE DIRECTOR THAT AN AGENCY HAS FAILED TO TAKE AFFIRMATIVE MEASURES TO IMPLEMENT THE REMEDIAL PLAN AND TO FOLLOW ANY OF THE REMEDIAL ACTIONS SET FORTH BY THE DIRECTOR, AND IN THE ABSENCE OF ANY OBJECTIVE PROGRESS TOWARDS THE AGENCY'S GOALS, REQUIRE SOME OR ALL OF THE AGENCY'S PROCUREMENT, FOR A SPECIFIED PERIOD OF TIME, BE PLACED UNDER THE DIRECTION AND CONTROL OF ANOTHER AGENCY OR AGENCIES.

S 8. Subdivision 2-a of section 314 of the executive law, as added by section 2 of part BB of chapter 59 of the laws of 2006, is amended to read as follows:

2-a. (a) The director shall establish a procedure enabling the office to accept New York municipal corporation certification verification for minority and women-owned business enterprise applicants in lieu of requiring the applicant to complete the state certification process. The director shall promulgate rules and regulations to set forth criteria for the acceptance of municipal corporation certification. All eligible municipal corporation certifications shall require business enterprises seeking certification to meet the following standards:

(i) have at least fifty-one percent ownership by a minority or a women-owned enterprise and be owned by United States citizens or permanent resident aliens;

(ii) be an enterprise in which the minority and/or women-ownership interest is real, substantial and continuing;

(iii) be an enterprise in which the minority and/or women-ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;

(iv) be an enterprise authorized to do business in this state; [and]

(v) be subject to a physical site inspection to verify the fifty-one percent ownership requirement[.];

(VI) BE OWNED BY AN INDIVIDUAL OR INDIVIDUALS, WHOSE OWNERSHIP, CONTROL AND OPERATION ARE RELIED UPON FOR CERTIFICATION, WITH A PERSONAL NET WORTH THAT DOES NOT EXCEED THREE MILLION FIVE HUNDRED THOUSAND DOLLARS, AS ADJUSTED ANNUALLY FOR INFLATION ACCORDING TO THE CONSUMER PRICE INDEX; AND

(VII) BE AN ENTERPRISE THAT IS A SMALL BUSINESS PURSUANT TO SUBDIVISION TWENTY OF SECTION THREE HUNDRED TEN OF THIS ARTICLE.

(b) The director shall work with all municipal corporations that have a municipal minority and women-owned business enterprise program to develop standards to accept state certification to meet the municipal corporation minority and women-owned business enterprise certification standards.

(c) The director shall establish a procedure enabling the division to accept federal certification verification for minority and women-owned business enterprise applicants, PROVIDED SAID STANDARDS COMPORT WITH THOSE REQUIRED BY THE STATE MINORITY AND WOMEN-OWNED BUSINESS PROGRAM,

in lieu of requiring the applicant to complete the state certification process. The director shall promulgate rules and regulations to set forth criteria for the acceptance of federal certification.

S 9. 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. 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] SIX of section three hundred thirteen of this article or has denied such application, the director shall attempt to resolve the matter giving rise to such complaint. If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the director shall refer the matter, within thirty days of the receipt of the complaint, to the [American Arbitration Association for proceeding thereon] DIVISION'S HEARING OFFICERS. Upon conclusion of the [arbitration proceedings] ADMINISTRATIVE HEARING, the [arbitrator] HEARING OFFICER shall submit to the director his or her [award] DECISION regarding the alleged violation of the contract and recommendations regarding the imposition of sanctions, fines or penalties. [The director shall either: (a) adopt the recommendation of the arbitrator; or (b) determine that no sanctions, fines or penalties should be imposed; or (c) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction, or increase the amount of any recommended fine or penalty.] The director, within ten days of receipt of the [arbitrator's award and recommendations] DECISION, shall file a determination of such matter and shall cause a copy of such determination along with a copy of this article to be served upon the [respondent] CONTRACTOR by personal service or by certified mail return receipt requested. The [award] DECISION of the [arbitrator] HEARING OFFICER shall be final and may only be vacated or modified as provided in article [seventy-five] SEVENTY-EIGHT of the civil practice law and rules upon an application made within the time provided by [section seventy-five hundred eleven of the civil practice law and rules] SUCH ARTICLE. The determination of the director as to the imposition of any fines, sanctions or penalties shall be reviewable pursuant to article seventy-eight of the civil practice law and rules. THE PENALTIES IMPOSED FOR ANY VIOLATION WHICH IS PREMISED UPON EITHER A FRAUDULENT OR INTENTIONAL MISREPRESENTATION BY THE CONTRACTOR OR THE CONTRACTOR'S WILLFUL AND INTENTIONAL DISREGARD OF THE MINORITY AND WOMEN-OWNED PARTICIPATION REQUIREMENT INCLUDED IN THE CONTRACT MAY INCLUDE A DETERMINATION THAT THE CONTRACTOR SHALL BE INELIGIBLE TO SUBMIT A BID TO ANY CONTRACTING AGENCY OR BE AWARDED ANY SUCH CONTRACT FOR A PERIOD NOT TO EXCEED ONE YEAR FOLLOWING THE FINAL DETERMINATION; PROVIDED HOWEVER, IF A CONTRACTOR HAS PREVIOUSLY BEEN DETERMINED TO BE INELIGIBLE TO SUBMIT A BID PURSUANT TO THIS SECTION, THE PENALTIES IMPOSED FOR ANY SUBSEQUENT VIOLATION, IF SUCH VIOLATION OCCURS WITHIN FIVE YEARS OF THE FIRST VIOLATION, MAY INCLUDE A DETERMINATION THAT THE CONTRACTOR SHALL BE INELIGIBLE TO SUBMIT A BID TO ANY CONTRACTING AGENCY OR BE AWARDED ANY SUCH CONTRACT FOR A PERIOD NOT TO EXCEED FIVE YEARS FOLLOWING THE FINAL DETERMINATION. THE DIVISION OF MINORITY AND WOMEN'S BUSINESS DEVELOPMENT SHALL MAINTAIN A WEBSITE LISTING ALL CONTRACTORS THAT HAVE BEEN DEEMED INELIGIBLE TO SUBMIT A BID PURSUANT TO THIS SECTION AND THE DATE AFTER WHICH EACH CONTRACTOR SHALL ONCE AGAIN BECOME ELIGIBLE TO SUBMIT BIDS.

S 10. The executive law is amended by adding a new section 316-a to read as follows:

S 316-A. PROHIBITIONS IN CONTRACTS; VIOLATIONS. EVERY CONTRACTING AGENCY SHALL INCLUDE A PROVISION IN ITS STATE CONTRACTS EXPRESSLY PROVIDING THAT ANY CONTRACTOR WHO WILLFULLY AND INTENTIONALLY FAILS TO COMPLY WITH THE MINORITY AND WOMEN-OWNED PARTICIPATION REQUIREMENTS OF THIS ARTICLE AS SET FORTH IN SUCH STATE CONTRACT SHALL BE LIABLE TO THE CONTRACTING AGENCY FOR LIQUIDATED OR OTHER APPROPRIATE DAMAGES AND SHALL PROVIDE FOR OTHER APPROPRIATE REMEDIES ON ACCOUNT OF SUCH BREACH. A CONTRACTING AGENCY THAT ELECTS TO PROCEED AGAINST A CONTRACTOR FOR BREACH OF CONTRACT AS PROVIDED IN THIS SECTION SHALL BE PRECLUDED FROM SEEKING ENFORCEMENT PURSUANT TO SECTION THREE HUNDRED SIXTEEN OF THIS ARTICLE; PROVIDED HOWEVER, THAT THE CONTRACTING AGENCY SHALL INCLUDE A SUMMARY OF ALL ENFORCEMENT ACTIONS UNDERTAKEN PURSUANT TO THIS SECTION IN ITS ANNUAL REPORT SUBMITTED PURSUANT TO SUBDIVISION THREE OF SECTION THREE HUNDRED FIFTEEN OF THIS ARTICLE.

S 11. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

S 12. The state financial system is authorized and directed to assist the director of the office of minority and women's business development in the implementation of this act.

S 13. 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, as amended by chapter 628 of the laws of 2003, is amended to read as follows:

The provisions of section sixty-two through sixty-six of this act shall expire on December thirty-first, two thousand [eighteen] SIXTEEN, except that:

S 14. This act shall take effect on the ninetieth day after it shall have become a law; provided however, that the amendments to article 15-A of the executive law made by sections two, four, five, six, seven, eight, nine, and ten of this act shall not affect the expiration of such article and shall be deemed to expire therewith; provided, further that the director of the division of minority and women's business development shall be authorized to commence the rulemaking process required pursuant to sections five and six of this act prior to the effective date of this act; and provided further that any minority business enterprise and women's business enterprise certified prior to the effective date of this section shall not be subject to any certification restriction provided for in this act until such time as the certification is renewed.