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

March 6, 2012

Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

AN ACT to amend the executive law, in relation to veteran-owned business enterprises

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

Section 1. The executive law is amended by adding a new article 17-A to read as follows:

ARTICLE 17-A
PARTICIPATION BY VETERANS WITH RESPECT TO STATE CONTRACTS

SECTION 369. DEFINITIONS.
369-A. OPPORTUNITIES FOR VETERAN-OWNED BUSINESS ENTERPRISES.
369-B. STATEWIDE CERTIFICATION PROGRAM.
369-C. RESPONSIBILITIES OF CONTRACTING AGENCIES.
369-D. ENFORCEMENT.
369-E. SEVERABILITY.

S 369. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "CERTIFIED BUSINESS" SHALL MEAN A BUSINESS VERIFIED AS A VETERAN-OWNED BUSINESS ENTERPRISE PURSUANT TO SECTION THREE HUNDRED SIXTY-NINE-B OF THIS ARTICLE.

2. "CONTRACTING AGENCY" SHALL MEAN A STATE AGENCY WHICH IS A PARTY OR A PROPOSED PARTY TO A STATE CONTRACT OR, IN THE CASE OF A STATE CONTRACT DESCRIBED IN SUBDIVISION NINE OF THIS SECTION, SHALL MEAN THE NEW YORK STATE HOUSING FINANCE AGENCY, HOUSING TRUST FUND CORPORATION OR AFFORDABLE HOUSING CORPORATION, WHICHEVER HAS MADE OR PROPOSES TO MAKE THE GRANT OR LOAN FOR THE STATE ASSISTED HOUSING PROJECT.

3. "CONTRACTOR" 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 STATE CONTRACT, OR A

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

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BIDDER IN CONJUNCTION WITH THE AWARD OF A STATE CONTRACT OR A PROPOSED PARTY TO A STATE CONTRACT.

4. "DIRECTOR" SHALL MEAN THE DIRECTOR OF THE DIVISION OF VETERAN-OWNED BUSINESS DEVELOPMENT IN THE DEPARTMENT OF ECONOMIC DEVELOPMENT.

5. "VETERAN" SHALL MEAN A RESIDENT OF THIS STATE, WHO HAS SERVED ON ACTIVE DUTY IN THE UNITED STATES ARMY, NAVY, AIR FORCE, MARINES, COAST GUARD, AND/ OR RESERVES THEREOF, AND/OR THE ARMY NATIONAL GUARD, AIR NATIONAL GUARD, NEW YORK GUARD AND/OR THE NEW YORK NAVAL MILITIA, AND WHO IS CURRENTLY IN SERVICE, OR HAS BEEN RELEASED FROM SUCH SERVICE BY HONORABLE DISCHARGE, OR WHO HAS BEEN FURLOUGHED TO THE RESERVE.

6. "VETERAN-OWNED BUSINESS ENTERPRISE" SHALL MEAN A BUSINESS ENTERPRISE, INCLUDING A SOLE PROPRIETORSHIP, PARTNERSHIP, CORPORATION, OR LIMITED LIABILITY COMPANY THAT IS:

(A) AT LEAST FIFTY-ONE PERCENT OWNED BY A VETERAN;

(B) AN ENTERPRISE IN WHICH SUCH VETERAN OWNERSHIP IS REAL, SUBSTANTIAL AND CONTINUING;

(C) AN ENTERPRISE IN WHICH SUCH VETERAN OWNERSHIP HAS AND EXERCISES THE AUTHORITY TO CONTROL INDEPENDENTLY THE DAY-TO-DAY BUSINESS DECISIONS OF THE ENTERPRISE;

(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 FOURTEEN OF THIS SECTION.

7. "STATE AGENCY" SHALL MEAN:

(A) (I) ANY STATE DEPARTMENT; OR

(II) ANY DIVISION, BOARD, COMMISSION OR BUREAU OF ANY STATE DEPARTMENT; OR

(III) THE STATE UNIVERSITY OF NEW YORK AND THE CITY UNIVERSITY OF NEW YORK, INCLUDING ALL THEIR CONSTITUENT UNITS EXCEPT COMMUNITY COLLEGES AND THE INDEPENDENT INSTITUTIONS OPERATING STATUTORY OR CONTRACT COLLEGES ON BEHALF OF THE STATE; OR

(IV) A BOARD, A MAJORITY OF WHOSE MEMBERS ARE APPOINTED BY THE GOVERNOR OR WHO SERVE BY VIRTUE OF BEING STATE OFFICERS OR EMPLOYEES AS DEFINED IN SUBPARAGRAPH (I), (II) OR (III) OF PARAGRAPH (I) OF SUBDIVISION ONE OF SECTION SEVENTY-THREE OF THE PUBLIC OFFICERS LAW; OR

(B) A "STATE AUTHORITY," AS DEFINED IN SUBDIVISION ONE OF SECTION TWO OF THE PUBLIC AUTHORITIES LAW.

8. "STATE ASSISTED HOUSING PROJECT" OR "PROJECT" SHALL MEAN, FOR SUCH PROJECTS WHICH RECEIVE FROM THE NEW YORK STATE HOUSING FINANCE AGENCY, THE AFFORDABLE HOUSING CORPORATION, THE HOUSING TRUST FUND CORPORATION OR THE DIVISION OF HOUSING AND COMMUNITY RENEWAL A GRANT OR LOAN FOR ALL OR PART OF THE TOTAL PROJECT COST:

(A) A "PERMANENT HOUSING PROJECT FOR HOMELESS FAMILIES" AS DEFINED IN SUBDIVISION FIVE OF SECTION SIXTY-FOUR OF THE PRIVATE HOUSING FINANCE LAW;

(B) A "PROJECT" AS DEFINED IN SUBDIVISION TWELVE OF SECTION ONE THOUSAND ONE HUNDRED ONE OF THE PRIVATE HOUSING FINANCE LAW PROVIDED SAID PROJECT IS LOCATED IN A LARGE COUNTY AND CONSISTS OF MORE THAN TWELVE RESIDENTIAL UNITS AT A SINGLE SITE;

(C) "AFFORDABLE HOME OWNERSHIP DEVELOPMENT PROGRAMS" AS DEFINED IN SUBDIVISION EIGHT OF SECTION ONE THOUSAND ONE HUNDRED ELEVEN OF THE

PRIVATE HOUSING FINANCE LAW PROVIDED SAID PROJECT IS LOCATED IN A METROPOLITAN AREA AS HEREIN DEFINED AND CONSISTS OF MORE THAN TWELVE RESIDENTIAL UNITS AT A SINGLE SITE;

(D) A "TURNKEY/ENHANCED RENTAL PROJECT" AS DEFINED IN SUBDIVISION TWO OF SECTION ONE THOUSAND ONE HUNDRED SIX-A OF THE PRIVATE HOUSING FINANCE LAW;

(E) "INFRASTRUCTURE IMPROVEMENTS" AS DEFINED IN SUBDIVISION TWO OF SECTION ONE THOUSAND ONE HUNDRED THIRTY-ONE OF THE PRIVATE HOUSING FINANCE LAW, TO THE EXTENT THAT SUCH "INFRASTRUCTURE IMPROVEMENTS" ARE APPLIED FOR IN CONNECTION WITH A STATE ASSISTED HOUSING PROJECT AS DEFINED IN PARAGRAPHS (A) THROUGH (D) OF THIS SUBDIVISION AND PROVIDED FURTHER THAT THE APPLICANT FOR SUCH INFRASTRUCTURE IMPROVEMENTS AND FOR SUCH STATE ASSISTED HOUSING PROJECT ARE IDENTICAL.

9. "STATE CONTRACT" SHALL MEAN:

(A) A WRITTEN AGREEMENT OR PURCHASE ORDER INSTRUMENT, PROVIDING FOR A TOTAL EXPENDITURE IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS, WHEREBY A CONTRACTING AGENCY IS COMMITTED TO EXPEND OR DOES EXPEND FUNDS IN RETURN FOR LABOR, SERVICES INCLUDING BUT NOT LIMITED TO LEGAL, FINANCIAL AND OTHER PROFESSIONAL SERVICES, SUPPLIES, EQUIPMENT, MATERIALS OR ANY COMBINATION OF THE FOREGOING, TO BE PERFORMED FOR, OR RENDERED OR FURNISHED TO THE CONTRACTING AGENCY;

(B) A WRITTEN AGREEMENT IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS WHEREBY A CONTRACTING AGENCY IS COMMITTED TO EXPEND OR DOES EXPEND FUNDS FOR THE ACQUISITION, CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND IMPROVEMENTS THEREON; AND

(C) A WRITTEN AGREEMENT IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS WHEREBY THE OWNER OF A STATE ASSISTED HOUSING PROJECT IS COMMITTED TO EXPEND OR DOES EXPEND FUNDS FOR THE ACQUISITION, CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND IMPROVEMENTS THEREON FOR SUCH PROJECT.

10. "SUBCONTRACT" SHALL MEAN AN AGREEMENT PROVIDING FOR A TOTAL EXPENDITURE IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS FOR THE CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR, RENOVATION, PLANNING OR DESIGN OF REAL PROPERTY AND IMPROVEMENTS THEREON BETWEEN A CONTRACTOR AND ANY INDIVIDUAL OR BUSINESS ENTERPRISE, INCLUDING A SOLE PROPRIETORSHIP, PARTNERSHIP, CORPORATION, OR NOT-FOR-PROFIT CORPORATION, IN WHICH A PORTION OF A CONTRACTOR'S OBLIGATION UNDER A STATE CONTRACT IS UNDERTAKEN OR ASSUMED, BUT SHALL NOT INCLUDE ANY CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR, RENOVATION, PLANNING OR DESIGN OF REAL PROPERTY OR IMPROVEMENTS THEREON FOR THE BENEFICIAL USE OF THE CONTRACTOR.

11. "COMMISSIONER" SHALL MEAN THE COMMISSIONER OF ECONOMIC DEVELOPMENT.

12. "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 SEVEN 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 SEVEN OF THIS SECTION.

13. "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 VETERAN-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.

14. "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, 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. THE DIRECTOR MAY ISSUE REGULATIONS ON THE CONSTRUCTION OF THE TERMS IN THIS DEFINITION.

S 369-A. OPPORTUNITIES FOR VETERAN-OWNED BUSINESS ENTERPRISES. 1. GOALS AND REQUIREMENTS FOR AGENCIES AND CONTRACTORS. EACH AGENCY SHALL STRUCTURE PROCUREMENT PROCEDURES FOR CONTRACTS MADE DIRECTLY OR INDIRECTLY TO VETERAN-OWNED BUSINESS ENTERPRISES, 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 VETERAN-OWNED BUSINESS ENTERPRISES: THREE PERCENT;

(B) CONSTRUCTION RELATED PROFESSIONAL SERVICES INDUSTRY FOR CERTIFIED VETERAN-OWNED BUSINESS ENTERPRISES: THREE PERCENT;

(C) NON-CONSTRUCTION RELATED SERVICES INDUSTRY FOR CERTIFIED VETERAN-OWNED BUSINESS ENTERPRISES: THREE PERCENT;

(D) COMMODITIES INDUSTRY FOR CERTIFIED VETERAN-OWNED BUSINESS ENTERPRISES: THREE PERCENT; AND

(E) OVERALL AGENCY TOTAL DOLLAR VALUE OF PROCUREMENT FOR CERTIFIED VETERAN-OWNED BUSINESS ENTERPRISES: THREE PERCENT.

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 VETERAN-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 VETERAN-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 VETERAN-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 VETERAN-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 VETERAN-OWNED BUSINESS ENTERPRISES TO RESPOND COMPETITIVELY TO THE POTENTIAL SUBCONTRACT OPPORTUNITIES;

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

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

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

(F) CONSISTENT WITH SUBDIVISION FIVE OF THIS SECTION, PROVIDE FOR CIRCUMSTANCES UNDER WHICH AN AGENCY MAY WAIVE OBLIGATIONS OF THE CONTRACTOR RELATING TO VETERAN BUSINESS ENTERPRISE PARTICIPATION;

(G) REQUIRE THAT AN AGENCY VERIFY THAT VETERAN-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 VETERAN-OWNED BUSINESS ENTERPRISE PARTICIPATION; AND

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 SIXTY-NINE-C 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 SIXTY-NINE-D OF THIS ARTICLE; AND (C) REQUIRING THE CONTRACTOR TO INCLUDE THE PROVISIONS SET FORTH IN PARAGRAPHS (A) AND (B) 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.

4. (A) CONTRACTING AGENCIES SHALL ADMINISTER THE RULES AND REGULATIONS PROMULGATED BY THE DIRECTOR IN A GOOD FAITH EFFORT TO 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 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 VETERAN-OWNED BUSINESS ENTERPRISE PARTICIPATION REQUIREMENTS PURSUANT TO SUBDIVISIONS FIVE AND SIX OF THIS SECTION; SHALL ALLOW A CONTRACTOR TO FILE A COMPLAINT WITH THE DIRECTOR PURSUANT TO SUBDIVISION SIX OF THIS SECTION IN THE EVENT A CONTRACTING AGENCY HAS FAILED OR REFUSED TO ISSUE A WAIVER OF THE VETERAN-OWNED BUSINESS ENTERPRISE PARTICIPATION REQUIREMENTS OR HAS DENIED SUCH REQUEST FOR A WAIVER.

(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. WHERE IT APPEARS THAT A CONTRACTOR CANNOT, AFTER A GOOD FAITH EFFORT, COMPLY WITH THE VETERAN-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 VETERAN-OWNED BUSINESS ENTERPRISE PARTICIPATION. IN IMPLEMENTING THE PROVISIONS OF THIS SECTION, THE CONTRACTING AGENCY SHALL CONSIDER THE NUMBER AND TYPES OF VETERAN-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 VETERAN-OWNED BUSINESSES LOCATED OUTSIDE THE REGION IN WHICH THE CONTRACT IS TO BE PERFORMED TO PERFORM THE STATE CONTRACT.

6. 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 THEREFORE PURSUANT TO SUBDIVISION FIVE 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 SIXTY-NINE-D 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.

7. IF, AFTER THE REVIEW OF A CONTRACTOR'S VETERAN-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 VETERAN-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 SIXTY-NINE-D 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 369-B. STATEWIDE CERTIFICATION PROGRAM. 1. THE DIRECTOR SHALL PROMULGATE RULES AND REGULATIONS PROVIDING FOR THE ESTABLISHMENT OF A STATEWIDE CERTIFICATION PROGRAM INCLUDING RULES AND REGULATIONS GOVERNING THE APPROVAL, DENIAL OR REVOCATION OF ANY SUCH CERTIFICATION.

2. FOR THE PURPOSES OF THIS ARTICLE, THE OFFICE SHALL BE RESPONSIBLE FOR VERIFYING BUSINESSES AS BEING OWNED, OPERATED, AND CONTROLLED BY VETERANS AND FOR CERTIFYING SUCH VERIFIED BUSINESSES. THE DIRECTOR SHALL PREPARE A DIRECTORY OF CERTIFIED BUSINESSES FOR USE BY CONTRACTING AGENCIES AND CONTRACTORS IN CARRYING OUT THE PROVISIONS OF THIS ARTICLE. THE DIRECTOR SHALL PERIODICALLY UPDATE THE DIRECTORY.

3. FOLLOWING APPLICATION FOR CERTIFICATION PURSUANT TO THIS SECTION, THE DIRECTOR SHALL PROVIDE THE APPLICANT WITH WRITTEN NOTICE OF THE STATUS OF THE APPLICATION, INCLUDING NOTICE OF ANY OUTSTANDING DEFICIENCIES, WITHIN THIRTY DAYS. WITHIN SIXTY DAYS OF SUBMISSION OF A FINAL COMPLETED APPLICATION, THE DIRECTOR SHALL PROVIDE THE APPLICANT WITH WRITTEN NOTICE OF A DETERMINATION BY THE OFFICE APPROVING OR DENYING SUCH CERTIFICATION AND, IN THE EVENT OF A DENIAL A STATEMENT SETTING FORTH THE REASONS FOR SUCH DENIAL. UPON A DETERMINATION DENYING OR REVOKING CERTIFICATION, THE BUSINESS ENTERPRISE FOR WHICH CERTIFICATION

HAS BEEN SO DENIED OR REVOKED SHALL, UPON WRITTEN REQUEST MADE WITHIN THIRTY DAYS FROM RECEIPT OF NOTICE OF SUCH DETERMINATION, BE ENTITLED TO A HEARING BEFORE AN INDEPENDENT HEARING OFFICER DESIGNATED FOR SUCH PURPOSE BY THE DIRECTOR. IN THE EVENT THAT A REQUEST FOR A HEARING IS NOT MADE WITHIN SUCH THIRTY DAY PERIOD, SUCH DETERMINATION SHALL BE DEEMED TO BE FINAL. THE INDEPENDENT HEARING OFFICER SHALL CONDUCT A HEARING AND UPON THE CONCLUSION OF SUCH HEARING, ISSUE A WRITTEN RECOMMENDATION TO THE DIRECTOR TO AFFIRM, REVERSE OR MODIFY SUCH DETERMINATION OF THE DIRECTOR. SUCH WRITTEN RECOMMENDATION SHALL BE ISSUED TO THE PARTIES. THE DIRECTOR, WITHIN THIRTY DAYS, BY ORDER, MUST ACCEPT, REJECT OR MODIFY SUCH RECOMMENDATION OF THE HEARING OFFICER AND SET FORTH IN WRITING THE REASONS THEREFOR. THE DIRECTOR SHALL SERVE A COPY OF SUCH ORDER AND REASONS THEREFOR UPON THE BUSINESS ENTERPRISE BY PERSONAL SERVICE OR BY CERTIFIED MAIL RETURN RECEIPT REQUESTED. THE ORDER OF THE DIRECTOR SHALL BE SUBJECT TO REVIEW PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

4. ALL CERTIFICATIONS SHALL BE VALID FOR A PERIOD OF THREE YEARS.

S 369-C. RESPONSIBILITIES OF CONTRACTING AGENCIES. 1. EACH CONTRACTING AGENCY SHALL BE RESPONSIBLE FOR MONITORING STATE CONTRACTS UNDER ITS JURISDICTION, AND RECOMMENDING MATTERS TO THE OFFICE RESPECTING NON-COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE SO THAT THE OFFICE MAY TAKE SUCH ACTION AS IS APPROPRIATE TO INSURE COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE, THE RULES AND REGULATIONS OF THE DIRECTOR ISSUED HEREUNDER AND THE CONTRACTUAL PROVISIONS REQUIRED PURSUANT TO THIS ARTICLE. ALL CONTRACTING AGENCIES SHALL COMPLY WITH THE RULES AND REGULATIONS OF THE OFFICE AND ARE DIRECTED TO COOPERATE WITH THE OFFICE AND TO FURNISH TO THE OFFICE SUCH INFORMATION AND ASSISTANCE AS MAY BE REQUIRED IN THE PERFORMANCE OF ITS FUNCTIONS UNDER THIS ARTICLE.

2. EACH CONTRACTING AGENCY SHALL PROVIDE TO PROSPECTIVE BIDDERS A CURRENT COPY OF THE DIRECTORY OF CERTIFIED BUSINESSES, AND A COPY OF THE REGULATIONS REQUIRED PURSUANT TO SECTIONS THREE HUNDRED SIXTY-NINE-A OF THIS ARTICLE AT THE TIME BIDS OR PROPOSALS ARE SOLICITED.

3. EACH CONTRACTING AGENCY SHALL REPORT TO THE DIRECTOR WITH RESPECT TO ACTIVITIES UNDERTAKEN TO PROMOTE EMPLOYMENT OF VETERANS 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 FIVE AND SIX OF SECTION THREE HUNDRED SIXTY-NINE-A 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.

S 369-D. 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 OF SECTION THREE HUNDRED SIXTY-NINE-A 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 DIVISION'S HEARING OFFICERS. UPON CONCLUSION OF THE ADMINISTRATIVE HEARING, THE HEARING OFFICER SHALL SUBMIT TO THE DIRECTOR HIS OR HER DECISION REGARDING THE ALLEGED VIOLATION OF THE CONTRACT AND RECOMMENDATIONS REGARDING THE IMPOSITION OF SANCTIONS, FINES OR PENALTIES. THE DIRECTOR, WITHIN TEN DAYS OF RECEIPT OF THE 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 CONTRACTOR BY PERSONAL SERVICE OR BY CERTIFIED MAIL RETURN RECEIPT REQUESTED. THE DECISION OF THE HEARING OFFICER SHALL BE FINAL AND MAY ONLY BE VACATED OR MODIFIED AS PROVIDED IN ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES UPON AN APPLICATION MADE WITHIN THE TIME PROVIDED BY 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 VETERAN-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 VETERAN'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 369-E. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE 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 ARTICLE DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH THE JUDGMENT SHALL HAVE BEEN RENDERED.

S 2. This act shall take effect immediately.