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

6609--A

I N S E N A T E

February 12, 2014

A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to expanding opportunities for service-disabled veteran-owned business enterprises

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") is home to more than 900,000 veterans, seventy-two percent of whom have served during periods of conflict. Additionally, the state is home to approximately 30,000 active duty military personnel as well as 30,000 national guard and reserve personnel. In honor of their service to and sacrifice for our nation, New York state declares that it is the public policy of the state to promote and encourage the continuing economic development of service-disabled veteran-owned businesses. In the furtherance of this policy, the state aims to assist service-disabled veterans in playing a greater role in the economy of the state and to provide additional assistance and support to disabled veterans to better equip them to form and expand small businesses, thereby enabling them to realize the American dream they fought to protect. To achieve this objective, the legislature finds that it is in the best interest of the economic development of the state to enact the "Service-Disabled Veteran-Owned Business Act".

S 1-a. Short title. This act shall be known and may be cited as the "Service-Disabled Veteran-Owned Business Act".

S 2. The executive law is amended by adding a new article 17-B to read as follows:

ARTICLE 17-B

PARTICIPATION BY SERVICE-DISABLED VETERANS WITH RESPECT TO STATE CONTRACTS

SECTION 369-H. DEFINITIONS.

369-I. DIVISION OF SERVICE-DISABLED VETERANS' BUSINESS DEVELOPMENT.

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

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369-J. OPPORTUNITIES FOR CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES.
369-K. SEVERABILITY.

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

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

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

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

(C) AN ENTERPRISE IN WHICH SUCH SERVICE-DISABLED 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 IS INDEPENDENTLY-OWNED AND OPERATED;

(E) AN ENTERPRISE THAT IS A SMALL BUSINESS WHICH HAS A SIGNIFICANT BUSINESS PRESENCE IN THE STATE, NOT DOMINANT IN ITS FIELD, AND EMPLOYS LESS THAN THREE HUNDRED PERSONS; AND

(F) CERTIFIED BY THE OFFICE OF GENERAL SERVICES.

2. "COMMISSIONER" SHALL MEAN THE COMMISSIONER OF THE OFFICE OF GENERAL SERVICES.

3. "DIRECTOR" SHALL MEAN THE DIRECTOR OF THE DIVISION OF SERVICE-DISABLED VETERANS' BUSINESS DEVELOPMENT.

4. "DIVISION" SHALL MEAN THE DIVISION OF SERVICE-DISABLED VETERANS' BUSINESS DEVELOPMENT IN THE OFFICE OF GENERAL SERVICES.

5. "SERVICE DISABLED VETERAN" SHALL MEAN (A) IN THE CASE OF THE UNITED STATES ARMY, NAVY, AIR FORCE, MARINES, COAST GUARD, ARMY NATIONAL GUARD OR AIR NATIONAL GUARD AND/OR RESERVES THEREOF, A VETERAN WHO RECEIVED A COMPENSATION RATING OF TEN PERCENT OR GREATER FROM THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS OR FROM THE UNITED STATES DEPARTMENT OF DEFENSE BECAUSE OF A SERVICE-CONNECTED DISABILITY INCURRED IN THE LINE OF DUTY, AND (B) IN THE CASE OF THE NEW YORK GUARD OR THE NEW YORK NAVAL MILITIA AND/OR RESERVES THEREOF, A VETERAN WHO CERTIFIES, PURSUANT TO THE RULES AND REGULATIONS PROMULGATED BY THE DIRECTOR, TO HAVING INCURRED AN INJURY EQUIVALENT TO A COMPENSATION RATING OF TEN PERCENT OR GREATER FROM THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS OR FROM THE UNITED STATES DEPARTMENT OF DEFENSE BECAUSE OF A SERVICE-CONNECTED DISABILITY INCURRED IN THE LINE OF DUTY.

6. "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:

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

ALBANY COUNTY AIRPORT AUTHORITY;
ALBANY PORT DISTRICT COMMISSION;
ALFRED, ALMOND, HORNELLSVILLE SEWER AUTHORITY;
BATTERY PARK CITY AUTHORITY;

CAYUGA COUNTY WATER AND SEWER AUTHORITY;
(NELSON A. ROCKEFELLER) EMPIRE STATE PLAZA PERFORMING ARTS CENTER CORPORATION;
INDUSTRIAL EXHIBIT AUTHORITY;
LIVINGSTON COUNTY WATER AND SEWER AUTHORITY;
LONG ISLAND POWER AUTHORITY;
LONG ISLAND RAIL ROAD;
LONG ISLAND MARKET AUTHORITY;
MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY;
METRO-NORTH COMMUTER RAILROAD;
METROPOLITAN SUBURBAN BUS AUTHORITY;
METROPOLITAN TRANSPORTATION AUTHORITY;
NATURAL HERITAGE TRUST;
NEW YORK CITY TRANSIT AUTHORITY;
NEW YORK CONVENTION CENTER OPERATING CORPORATION;
NEW YORK STATE BRIDGE AUTHORITY;
NEW YORK STATE OLYMPIC REGIONAL DEVELOPMENT AUTHORITY;
NEW YORK STATE THRUWAY AUTHORITY;
NIAGARA FALLS PUBLIC WATER AUTHORITY;
NIAGARA FALLS WATER BOARD;
PORT OF OSWEGO AUTHORITY;
POWER AUTHORITY OF THE STATE OF NEW YORK;
ROOSEVELT ISLAND OPERATING CORPORATION;
SCHENECTADY METROPLEX DEVELOPMENT AUTHORITY;
STATE INSURANCE FUND;
STATEN ISLAND RAPID TRANSIT OPERATING AUTHORITY;
STATE UNIVERSITY CONSTRUCTION FUND;
SYRACUSE REGIONAL AIRPORT AUTHORITY;
TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY.
UPPER MOHAWK VALLEY REGIONAL WATER BOARD.
UPPER MOHAWK VALLEY REGIONAL WATER FINANCE AUTHORITY.
UPPER MOHAWK VALLEY MEMORIAL AUDITORIUM AUTHORITY.
URBAN DEVELOPMENT CORPORATION AND ITS SUBSIDIARY CORPORATIONS.

(C) THE FOLLOWING ONLY TO THE EXTENT OF STATE CONTRACTS ENTERED INTO FOR ITS OWN ACCOUNT OR FOR THE BENEFIT OF A STATE AGENCY AS DEFINED IN PARAGRAPH (A) OR (B) OF THIS SUBDIVISION:

DORMITORY AUTHORITY OF THE STATE OF NEW YORK;
FACILITIES DEVELOPMENT CORPORATION;
NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY;
NEW YORK STATE SCIENCE AND TECHNOLOGY FOUNDATION.

7. "STATE CONTRACT" SHALL MEAN ANY WRITTEN AGREEMENT FOR THE ACQUISITION OF GOODS OR SERVICES OF ANY KIND BY A STATE AGENCY IN THE ACTUAL OR ESTIMATED AMOUNT OF FIVE THOUSAND DOLLARS OR MORE.

8. "VETERAN" SHALL MEAN A PERSON WHO SERVED IN AND WHO HAS RECEIVED AN HONORABLE OR GENERAL DISCHARGE FROM, THE UNITED STATES ARMY, NAVY, AIR FORCE, MARINE CORPS, COAST GUARD, AND/OR RESERVES THEREOF, AND/OR IN THE ARMY NATIONAL GUARD, AIR NATIONAL GUARD, NEW YORK GUARD AND/OR THE NEW YORK NAVAL MILITIA.

S 369-I. DIVISION OF SERVICE-DISABLED VETERANS' BUSINESS DEVELOPMENT.

1. THE HEAD OF THE DIVISION OF SERVICE-DISABLED VETERANS' BUSINESS DEVELOPMENT SHALL BE THE DIRECTOR WHO SHALL BE APPOINTED BY THE GOVERNOR, UPON ADVICE AND CONSENT OF THE SENATE, AND WHO SHALL HOLD OFFICE AT THE PLEASURE OF THE COMMISSIONER.

2. THE DIRECTOR MAY APPOINT SUCH DEPUTIES, ASSISTANTS, AND OTHER EMPLOYEES AS MAY BE NEEDED FOR THE PERFORMANCE OF THE DUTIES PRESCRIBED HEREIN SUBJECT TO THE PROVISIONS OF THE CIVIL SERVICE LAW AND THE RULES

AND REGULATIONS OF THE CIVIL SERVICE COMMISSION. THE DIRECTOR MAY REQUEST AND SHALL RECEIVE FROM ANY DEPARTMENT, DIVISION, BOARD, BUREAU, EXECUTIVE COMMISSION OR AGENCY OF THE STATE SUCH ASSISTANCE AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS ARTICLE.

3. THE DIRECTOR SHALL HAVE THE FOLLOWING POWERS AND DUTIES:

(A) DEVELOP, COLLECT, SUMMARIZE AND DISSEMINATE INFORMATION THAT WILL BE HELPFUL TO PERSONS AND ORGANIZATIONS THROUGHOUT THE STATE IN UNDERTAKING OR PROMOTING THE ESTABLISHMENT AND SUCCESSFUL OPERATION OF A SERVICE-DISABLED VETERAN-OWNED BUSINESS.

(B) DEVELOP AND MAKE AVAILABLE TO STATE AGENCIES A DIRECTORY OF CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES WHICH SHALL, WHEREVER PRACTICABLE, BE DIVIDED INTO CATEGORIES OF LABOR, SERVICES, SUPPLIES, EQUIPMENT, MATERIALS AND RECOGNIZED CONSTRUCTION TRADES AND WHICH SHALL INDICATE AREAS OR LOCATIONS OF THE STATE WHERE SUCH ENTERPRISES ARE AVAILABLE TO PERFORM SERVICES.

(C) ASSIST STATE AGENCIES IN THE DEVELOPMENT OF PROGRAMS TO FOSTER AND PROMOTE THE USE OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES ON STATE CONTRACTS.

(D) COORDINATE THE PLANS, PROGRAMS AND OPERATIONS OF THE STATE GOVERNMENT WHICH AFFECT OR MAY CONTRIBUTE TO THE ESTABLISHMENT, PRESERVATION AND DEVELOPMENT OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES.

(E) IN CONJUNCTION WITH THE COMMISSIONER, DEVELOP A COMPREHENSIVE STATEWIDE PLAN AND OPERATIONAL GUIDELINES TO PROMOTE SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES AND TO ASSIST THEM IN OBTAINING OPPORTUNITIES TO PARTICIPATE IN THE PROCUREMENT OF GOODS AND SERVICES BY THE STATE, INCLUDING IDENTIFICATION OF BARRIERS TO SERVICE-DISABLED VETERANS' BUSINESS DEVELOPMENT AND INVESTIGATION AND EVALUATION OF THEIR IMPACT ON ACHIEVING THE OBJECTIVES OF THIS ARTICLE.

4. THE COMMISSIONER SHALL:

(A) COORDINATE TRAINING OF ALL PROCUREMENT PERSONNEL OF STATE AGENCIES, EMPHASIZING INCREASED SENSITIVITY AND RESPONSIVENESS TO THE UNIQUE NEEDS AND REQUIREMENTS OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES.

(B) CONDUCT A COORDINATED REVIEW OF ALL EXISTING AND PROPOSED STATE TRAINING AND TECHNICAL ASSISTANCE ACTIVITIES IN DIRECT SUPPORT OF THE SERVICE-DISABLED VETERANS' BUSINESS DEVELOPMENT PROGRAM TO ASSURE CONSISTENCY WITH THE OBJECTIVES OF THIS ARTICLE.

(C) EVALUATE AND ASSESS AVAILABILITY OF FIRMS FOR THE PURPOSE OF INCREASING PARTICIPATION OF SUCH FIRMS IN STATE CONTRACTING IN CONSULTATION WITH RELEVANT STATE ENTITIES INCLUDING, BUT NOT LIMITED TO, THE NEW YORK STATE DIVISION OF VETERANS' AFFAIRS.

(D) PROVIDE ADVICE AND TECHNICAL ASSISTANCE TO PROMOTE SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES' UNDERSTANDING OF STATE PROCUREMENT LAWS, PRACTICES AND PROCEDURES TO FACILITATE AND INCREASE THE PARTICIPATION OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES IN STATE PROCUREMENT.

(E) ESTABLISH REGULAR PERFORMANCE REPORTING SYSTEMS REGARDING IMPLEMENTATION OF THE PROGRAMS DESIGNED TO INCREASE SERVICE-DISABLED VETERAN-OWNED BUSINESS PARTICIPATION IN PROCUREMENT CONTRACTS BY STATE AGENCIES.

S 369-J. OPPORTUNITIES FOR CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES. 1. THE DIRECTOR, OR IN THE ABSENCE OF A DIRECTOR, THE COMMISSIONER, WITHIN NINETY DAYS OF THE EFFECTIVE DATE OF THIS ARTICLE, SHALL PROMULGATE RULES AND REGULATIONS FOR THE FOLLOWING PURPOSES:

(A) PROVIDE MEASURES AND PROCEDURES TO ENSURE THAT CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES ARE AFFORDED THE OPPORTUNITY

FOR MEANINGFUL PARTICIPATION IN THE PERFORMANCE OF STATE CONTRACTS AND TO ASSIST IN STATE AGENCIES' IDENTIFICATION OF THOSE STATE CONTRACTS FOR WHICH CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES MAY BEST PERFORM;

(B) PROVIDE FOR MEASURES AND PROCEDURES THAT ASSIST STATE AGENCIES IN THE IDENTIFICATION OF STATE CONTRACTS WHERE SERVICE-DISABLED VETERAN CONTRACT GOALS ARE PRACTICAL, FEASIBLE AND APPROPRIATE FOR THE PURPOSE OF INCREASING THE UTILIZATION OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISE PARTICIPATION ON STATE CONTRACTS;

(C) ACHIEVE A STATEWIDE GOAL FOR PARTICIPATION ON STATE CONTRACTS BY SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES OF FIVE PERCENT;

(D) PROVIDE FOR THE CERTIFICATION AND DECERTIFICATION OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES FOR ALL AGENCIES THROUGH A SINGLE PROCESS;

(E) PROVIDE FOR PROCEDURES RELATING TO SUBMISSION AND RECEIPT OF APPLICATIONS BY SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES FOR CERTIFICATION;

(F) PROVIDE FOR THE MONITORING AND COMPLIANCE OF STATE CONTRACTS BY STATE AGENCIES WITH RESPECT TO THE PROVISIONS OF THIS ARTICLE;

(G) PROVIDE FOR THE REQUIREMENT THAT STATE AGENCIES SUBMIT REGULAR REPORTS, AS DETERMINED BY THE DIRECTOR, WITH RESPECT TO THEIR SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISE PROGRAM ACTIVITY, INCLUDING BUT NOT LIMITED TO, UTILIZATION REPORTING AND STATE CONTRACT MONITORING AND COMPLIANCE;

(H) NOTWITHSTANDING ANY PROVISION OF THE STATE FINANCE LAW OR THE PUBLIC AUTHORITIES LAW TO THE CONTRARY, PROVIDE FOR THE RESERVATION OR SET-ASIDE OF CERTAIN PROCUREMENTS BY STATE AGENCIES IN ORDER TO ACHIEVE THE OBJECTIVES OF THIS ARTICLE; AND

(I) PROVIDE FOR ANY OTHER PURPOSES TO EFFECTUATE THIS ARTICLE.

2. STATE AGENCIES SHALL ADMINISTER THE RULES AND REGULATIONS PROMULGATED BY THE DIRECTOR FOR THE IMPLEMENTATION OF THIS ARTICLE.

S 369-K. 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 3. The opening paragraph of subdivision 7 of section 310 of the executive law, as amended by chapter 175 of the laws of 2010, is amended to read as follows:

"Minority-owned business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership, LIMITED LIABILITY COMPANY or corporation that is:

S 4. This act shall take effect immediately; provided that the amendments to section 310 of the executive law, made by section three of this act, shall not affect the expiration of such section and shall expire therewith.