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

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2015-2016 Regular Sessions

I N S E N A T E

November 6, 2015

Introduced by Sen. MARCHIONE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Veterans, Homeland Security and Military Affairs in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to a comprehensive plan and operational guidelines to promote veteran-owned business enterprises

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

Section 1. The article heading of article 17-B of the executive law, as added by chapter 22 of the laws of 2014, is amended to read as follows:

PARTICIPATION BY [SERVICE-DISABLED] VETERANS WITH RESPECT TO STATE CONTRACTS

S 2. Section 369-h of the executive law, as added by chapter 22 of the laws of 2014, is amended to read as follows:

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;

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

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(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, 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; and
(f) certified by the office of general services.
2. "CERTIFIED 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 VETERANS;
(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 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, 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; AND
(F) CERTIFIED BY THE OFFICE OF GENERAL SERVICES.
3. "Commissioner" shall mean the commissioner of the office of general services.
[3.] 4. "Director" shall mean the director of the division of [service-disabled] veterans' business development.
[4.] 5. "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.

(d) "state contract" shall mean: (i) 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; (ii) 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 (iii) 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.

7. "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, marines, 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 3. Section 369-i of the executive law, as added by chapter 22 of the laws of 2014, is amended to read as follows:

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 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 (i) department, division, board, bureau, or executive commission of the state or (ii) state agency, 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. Such directory shall be posted on the office of general services website.

(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) To appoint independent hearing officers who by contract or terms of employment shall preside over adjudicatory hearings pursuant to this section for the office and who are assigned no other work by the office.

(f) 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.

(f) Submit a report by the thirty-first of December each year, with the first report due by the thirty-first of December in the calendar year next succeeding the calendar year in which this article shall have become a law, to the governor, the temporary president of the senate, and the speaker of the assembly. Such report shall include information including, but not limited to, the number of contracts entered into pursuant to this article, the average amount of such contracts, the number of [service-disabled] veteran-owned business enterprises certified, the number of applications for certification as a [service-disabled] veteran-owned business enterprise, the number of denials for such certification, the number of appeals of such denials, and the outcome of such appeals and the average time that is required for such certification to be completed.

5. Certification. (a) The director, or in the absence of the director, the commissioner, within ninety days of the effective date of this article, 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. Such rules and regulations shall include, but not be limited to, such matters as may be required to ensure that the established procedures thereunder shall at least be in compliance with the code of fair procedure set forth in section seventy-three of the civil rights law.

(b) The division of [service-disabled] veterans' business development shall be responsible for verifying businesses as being owned, operated, and controlled by a [service-disabled] veteran and for certifying such verified businesses. Status as a [service-disabled] veteran pursuant to paragraph (a) of this subdivision shall be documented by a copy of the veteran's certificate of release or discharge from active duty, including but not limited to, a DD-214 form or an honorable service certificate/report of causality from the department of defense, a letter of certification by the United States department of veterans affairs or the United States department of defense and any additional information that may be required by the division of [service-disabled] veterans'

business development. In the case of the New York guard or the New York naval militia and/or reserves thereof, status as a [service-disabled] veteran pursuant to this paragraph shall be documented pursuant to rules and regulations promulgated by the director, or in the absence of the director, the commissioner.

(c) 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 director 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 reason 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.

(d) All certifications shall be valid for a period of five years.

S 4. Section 369-j of the executive law, as added by chapter 22 of the laws of 2014, is amended to read as follows:

S 369-j. Opportunities for certified [service-disabled] veteran-owned business enterprises. 1. The director, or in the absence of the 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 six percent;

(d) provide for procedures relating to submission and receipt of applications by [service-disabled] veteran-owned business enterprises for certification;

(e) provide for the monitoring and compliance of state contracts by state agencies with respect to the provisions of this article;

(f) 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;

(g) notwithstanding any provision of the state finance law, the public buildings law, the highway law, the transportation 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; provided, however, that such procurements shall remain subject to (i) priority of preferred sources pursuant to sections one hundred sixty-two and one hundred sixty-three of the state finance law; (ii) the approval of the comptroller of the state of New York pursuant to section one hundred twelve and section one hundred sixty-three of the state finance law and section twenty-eight hundred seventy-nine-a of the public authorities law; and (iii) the procurement record requirements pursuant to paragraph g of subdivision nine of section one hundred sixty-three of the state finance law; and

(h) 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 5. The commissioner of the office of general services shall determine the percentage of contracts to be set aside under this legislation for both service-disabled veteran-owned businesses and all veteran-owned businesses.

S 6. No later than one-hundred eighty calendar days after this act shall have become law, the commissioner of the office of general services shall complete the study pursuant to section five of this act.

S 7. This act shall take effect immediately; provided, however that the amendments to the article heading of article 17-B, sections 369-h, 369-i and 369-j of the executive law made by sections one, two, three and four of this act shall not affect the repeal of such article and shall be deemed repealed therewith.