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I N   S E N A T E

May 6, 2016

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Introduced by Sen. HASSELL-THOMPSON -- 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, the penal law and the state finance law, in relation to minority and women-owned business enterprises post completion certification, duties of the director and creating the minority and women-owned business enterprise fund

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

1     Section 1. The executive law is amended by adding a new section 314-a  
2 to read as follows:

3     S 314-A. POST COMPLETION CERTIFICATION. THE DIRECTOR, IN COLLABORATION  
4 WITH THE DIVISION OF MINORITY AND WOMEN'S BUSINESS DEVELOPMENT AND THE  
5 DEPARTMENT OF SMALL BUSINESS SERVICES, SHALL DEVELOP THE FOLLOWING  
6 STANDARDIZED CERTIFICATION FORMS THAT MUST BE COMPLETED UNDER PENALTY OF  
7 PERJURY PRIOR TO THE PRIME CONTRACTOR BEING PAID:

8     1. CERTIFICATION FROM A REPRESENTATIVE OF THE PRIME CONTRACTOR THAT  
9 THE MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISE IN FACT PERFORMED THE  
10 SERVICES OR PROVIDED THE MATERIALS THAT THEY WERE CONTRACTED TO PERFORM  
11 OR PROVIDE; AND

12     2. CERTIFICATION FROM A REPRESENTATIVE OF THE MINORITY OR WOMEN-OWNED  
13 BUSINESS ENTERPRISE THAT THEY IN FACT PERFORMED THE SERVICES OR PROVIDED  
14 THE MATERIALS THAT THEY WERE CONTRACTED TO PERFORM OR PROVIDE.

15     S 2. Paragraphs (f), (h) and (i) of subdivision 3 of section 311 of  
16 the executive law, paragraph (f) as added by chapter 261 of the laws of  
17 1988, paragraph (h) as amended and paragraph (i) as added by section 1  
18 of part BB of chapter 59 of the laws of 2006, are amended and three new  
19 paragraphs (j), (k) and (l) are added to read as follows:

20     (f) to prepare and update periodically a directory of certified minor-  
21 ity and women-owned business enterprises which shall, wherever practica-  
22 ble, be divided into categories of labor, services, supplies, equipment,  
23 materials and recognized construction trades and which shall indicate  
24 areas or locations of the state where such enterprises are available to

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

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perform services, AND TO USE THIS INFORMATION TO CREATE AN INTERNET BASED, SEARCHABLE, CENTRALIZED STATE REGISTRY DETAILING CERTIFICATIONS, DENIALS, WAIVERS AND ALL DOCUMENTS SUBMITTED DURING THE LIFE OF THE CONTRACT;

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

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

(J) TO PERFORM INSPECTIONS OF MINORITY OR WOMEN-OWNED BUSINESS'S PLACE OF BUSINESS, WAREHOUSE OR STORAGE FACILITY TO CONFIRM THE EXISTENCE OF A WORKFORCE, EQUIPMENT AND SUPPLIES;

(K) TO PERFORM INSPECTIONS OF FINANCIAL RECORDS OF MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES TO ENSURE SUCH ENTERPRISES ARE IN COMPLIANCE WITH APPLICABLE LAWS; AND

(L) TO ENSURE THE PROTECTION OF INDIVIDUALS WHO REPORT SUSPECTED VIOLATIONS OF THIS ARTICLE AND APPLICABLE LAWS RELATED TO MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES.

S 3. Subdivision 1 of section 314 of the executive law, as added by chapter 261 of the laws of 1988, is amended to read as follows:

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, INCLUDING REVOCATIONS FOR FELONY CONVICTIONS FOR FRAUDULENTLY MISREPRESENTING THE STATUS OF MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES. 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, AND CONSISTENT WITH THE PROVISIONS OF ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW.

S 4. Paragraph c of subdivision 1 of section 80.00 of the penal law, as amended by section 27 of subpart A of part H of chapter 55 of the laws of 2014, is amended and a new paragraph d is added to read as follows:

c. if the conviction is for any felony defined in article two hundred twenty or two hundred twenty-one of this chapter, according to the following schedule:

(i) for A-I felonies, one hundred thousand dollars;

(ii) for A-II felonies, fifty thousand dollars;

(iii) for B felonies, thirty thousand dollars;

(iv) for C felonies, fifteen thousand dollars.

When imposing a fine pursuant to the provisions of this paragraph, the court shall consider the profit gained by defendant's conduct, whether the amount of the fine is disproportionate to the conduct in which defendant engaged, its impact on any victims, and defendant's economic circumstances, including the defendant's ability to pay, the effect of the fine upon his or her immediate family or any other persons to whom the defendant owes an obligation of support[.]; OR

D. IF THE CONVICTION IS FOR ANY FELONY INVOLVING FRAUD RELATED TO ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW OR OTHER LAWS APPLICABLE TO MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES, THE COURT MAY DOUBLE THE

1 AMOUNT THAT SHOULD HAVE BEEN PAID TO THE MINORITY OR WOMEN-OWNED BUSI-  
2 NESS ENTERPRISE FOR BONA FIDE WORK OR MATERIALS UNDER THE CONTRACT.

3 S 5. Section 316 of the executive law, as amended by chapter 175 of  
4 the laws of 2010, is amended to read as follows:

5 S 316. Enforcement. 1. Upon receipt by the director of a complaint by  
6 a contracting agency that a contractor has violated the provisions of a  
7 state contract which have been included to comply with the provisions of  
8 this article or of a contractor that a contracting agency has violated  
9 such provisions or has failed or refused to issue a waiver where one has  
10 been applied for pursuant to subdivision six of section three hundred  
11 thirteen of this article or has denied such application, the director  
12 shall attempt to resolve the matter giving rise to such complaint. If  
13 efforts to resolve such matter to the satisfaction of all parties are  
14 unsuccessful, the director shall refer the matter, within thirty days of  
15 the receipt of the complaint, to the division's hearing officers. Upon  
16 conclusion of the administrative hearing, the hearing officer shall  
17 submit to the director his or her decision regarding the alleged  
18 violation of the contract and recommendations regarding the imposition  
19 of sanctions, fines or penalties. The director, within ten days of  
20 receipt of the decision, shall file a determination of such matter and  
21 shall cause a copy of such determination along with a copy of this arti-  
22 cle to be served upon the contractor by personal service or by certified  
23 mail return receipt requested. The decision of the hearing officer shall  
24 be final and may only be vacated or modified as provided in article  
25 seventy-eight of the civil practice law and rules upon an application  
26 made within the time provided by such article. The determination of the  
27 director as to the imposition of any fines, sanctions or penalties shall  
28 be reviewable pursuant to article seventy-eight of the civil practice  
29 law and rules. The penalties imposed for any violation which is premised  
30 upon either a fraudulent or intentional misrepresentation by the  
31 contractor or the contractor's willful and intentional disregard of the  
32 minority and women-owned participation requirement included in the  
33 contract may include a determination that the contractor shall be ineli-  
34 gible to submit a bid to any contracting agency or be awarded any such  
35 contract for a period not to exceed one year following the final deter-  
36 mination; provided however, if a contractor has previously been deter-  
37 mined to be ineligible to submit a bid pursuant to this section, the  
38 penalties imposed for any subsequent violation, if such violation occurs  
39 within five years of the first violation, may include a determination  
40 that the contractor shall be ineligible to submit a bid to any contract-  
41 ing agency or be awarded any such contract for a period not to exceed  
42 five years following the final determination. The division of minority  
43 and women's business development shall maintain a website listing all  
44 contractors that have been deemed ineligible to submit a bid pursuant to  
45 this section and the date after which each contractor shall once again  
46 become eligible to submit bids.

47 2. ANY FINES, OR PORTION THEREOF, IMPOSED PURSUANT TO THE FOREGOING  
48 SUBDIVISION, OR IMPOSED BY A COURT OF COMPETENT JURISDICTION RELATED TO  
49 CONVICTIONS INVOLVING FRAUD RELATED TO THIS ARTICLE OR OTHERWISE INVOLV-  
50 ING A MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISE, MAY BE REQUIRED BY  
51 THE ENTITY IMPOSING SUCH FINES TO BE PAID TO THE MINORITY AND  
52 WOMEN-OWNED BUSINESS ENTERPRISE FUND ESTABLISHED PURSUANT TO SECTION  
53 NINETY-SEVEN-J OF THE STATE FINANCE LAW.

54 S 6. The state finance law is amended by adding a new section 97-j to  
55 read as follows:

1 S 97-J. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE FUND. 1. THERE IS  
2 HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE  
3 COMMISSIONER OF TAXATION AND FINANCE A SPECIAL FUND TO BE KNOWN AS THE  
4 "MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE FUND".

5 2. SUCH FUNDS SHALL CONSIST OF ALL MONEYS APPROPRIATED FOR THE PURPOSE  
6 OF SUCH FUND, ALL MONEYS TRANSFERRED OR PAID TO SUCH FUND PURSUANT TO  
7 LAW, INCLUDING PURSUANT TO SECTION THREE HUNDRED SIXTEEN OF THE EXECU-  
8 TIVE LAW, AND CONTRIBUTIONS CONSISTING OF GRANTS, INCLUDING GRANTS OR  
9 OTHER FINANCIAL ASSISTANCE FROM ANY AGENCY OF GOVERNMENT AND ALL MONEYS  
10 REQUIRED BY THE PROVISIONS OF THIS SECTION OR ANY OTHER LAW TO BE PAID  
11 INTO OR CREDITED TO THIS FUND.

12 3. MONIES OF THE FUND, FOLLOWING APPROPRIATION BY THE LEGISLATURE,  
13 SHALL BE EXPENDED TO ACQUIRE SOFTWARE, EMPLOY PERSONNEL TO AUDIT, INVES-  
14 TIGATE AND PROSECUTE MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE FRAUD  
15 AND TO UNDERWRITE MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PROGRAMS  
16 TO ASSIST MINORITY AND WOMEN BUSINESS ENTERPRISE OWNERS TO DEVELOP  
17 SUSTAINABLE BUSINESSES.

18 S 7. This act shall take effect immediately, provided, however, that  
19 the amendments to article 15-A of the executive law made by sections  
20 one, two, three, and five of this act shall not affect the expiration of  
21 such article and shall be deemed to expire therewith.