STATE OF NEW YORK

5642--A

2017-2018 Regular Sessions

IN SENATE

April 24, 2017

Introduced by Sens. CROCI, BONACIC, LARKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions -- recommitted to the Committee on Corporations, Authorities and Commissions 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 New York state urban development corporation act and the economic development law, in relation to establishing a certified service-disabled veteran-owned business enterprise development and lending program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 1 of chapter 174 of the laws of 1968 constituting the New York state urban development corporation act is amended by adding a new section 16-c-1 to read as follows:

§ 16-c-1. Certified service-disabled veteran-owned business enterprise development and lending program. (1) Certified service-disabled veteran-owned business enterprise development and lending program. (a) There is hereby created a certified service-disabled veteran-owned business enterprise development and lending program for the purpose of providing financial and technical assistance to certified service-disabled veteran-owned business enterprises.

(b) For the purposes of this section the following words or terms shall mean as follows:

(i) "certified service-disabled veteran-owned business enterprise" shall mean a business enterprise, certified pursuant to article seventeen-B of the executive law.

(ii) "incubator" shall mean a facility providing low-cost space, technical assistance and support services, including, but not limited to, central services shared by tenants of the facility, to certified service-disabled veteran-owned business enterprises.

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

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(c) Assistance shall not be provided under this section for:

(i) the purchase or rehabilitation of real property for speculative purposes;

(ii) payment of any tax or employee benefit arrearage;

(iii) residential construction, renovation or development construction, except for assistance to certified service-disabled veteran-owned business enterprise contractors under subdivision four of this section;

(iv) educational institutions and proprietary education firms, except licensed child care facilities;

(v) hospitals or residential health care facilities;

(vi) overnight lodging facilities;

(vii) refinancing of debt or equity invested in an enterprise or project.

(d) The corporation is authorized to:

(i) establish programs in conjunction with locally and community-based entities to decentralize lending for small loans and loans to start up certified service-disabled veteran-owned business enterprises;

(ii) establish a comprehensive program for certified service-disabled veteran-owned business enterprises, which may include assistance through loans, bonding assistance and technical assistance;

(iii) establish a program to provide loans to established certified service-disabled veteran-owned business enterprises including loans to such businesses seeking to acquire or expand a franchise;

(iv) provide loan guarantees to financial institutions and make linked deposits into federally and state chartered credit unions for the purpose of encouraging private financial institutions to make loans to certified service-disabled veteran-owned business enterprises;

(v) establish a program to create incubators to assist small and high risk certified service-disabled veteran-owned business enterprises to grow and prosper;

(vi) promote equity investment in certified service-disabled veteran-owned business enterprises;

(vii) establish a comprehensive technical assistance program in cooperation with the department of economic development to assist certified service-disabled veteran-owned business enterprises; and

(viii) notwithstanding any provision of law to the contrary, establish a certified service-disabled veteran-owned business enterprise investment fund to provide critical financial support to foster the development of new and emerging ideas and products of certified service-disabled veteran-owned business enterprises as well as to promote the long-term financial performance and success of early stage enterprises that are certified service-disabled veteran-owned business enterprise start-ups. The selection of an eligible applicant and beneficiary companies for the certified service-disabled veteran-owned business enterprise investment fund shall be selected by the process established pursuant to subdivisions two, three, and four of section sixteen-u of this act. Certified service-disabled veteran-owned business enterprises who participate in such certified service-disabled veteran-owned business enterprise investment fund under this subdivision shall not be precluded from qualifying for any other assistance, grant or loan made available from the state.

(2) Certified service-disabled veteran-owned business enterprise revolving loan trust fund. For the purpose of establishing programs in conjunction with locally and community based entities to decentralize lending for small loans and loans to start up certified service-disabled

veteran-owned business enterprises, the corporation shall establish certified service-disabled veteran-owned business enterprise revolving loan trust fund accounts and related administrative expenses trust fund accounts.

(a) Each certified service-disabled veteran-owned business enterprise revolving loan trust fund account shall be administered by one or more of the following types of entities that provide services to community businesses and have as one of their primary purposes the provision of services and assistance to certified service-disabled veteran-owned business enterprises:

(i) empire zone capital corporations established pursuant to section nine hundred sixty-four of the general municipal law;

(ii) community-based local development corporations or industrial development agencies that serve a municipality in which an empire zone has been established pursuant to article eighteen-B of the general municipal law and have as their primary purpose assistance to certified service-disabled veteran-owned business enterprises located or to be located in such empire zone; or

(iii) local and community development corporations, industrial development agencies, or other not-for-profit entities, representative of the community.

(b) To be eligible to administer a certified service-disabled veteran-owned business enterprise revolving loan trust fund account, the entity must also:

(i) have staff with sufficient expertise to analyze applications for financial assistance, to regularly monitor financial assistance to clients, and to provide management or technical assistance to clients; and

(ii) have established a loan committee composed of six or more persons experienced in business management, commercial lending or in the operation of a for-profit business, at least one-half of whom shall be experienced in commercial lending, and at least one-quarter of whom shall be service-disabled veterans as defined in article seventeen-B of the executive law. Such loan committee shall review every application, determine the feasibility of the proposed project and the likelihood of repayment of the requested financing and shall recommend to the governing body of the entity such action on the application as the loan committee deems appropriate. The corporation shall identify entities eligible to administer the certified service-disabled veteran-owned business enterprise revolving loan trust fund accounts through a competitive statewide request for proposal process.

(c) Any entity selected to administer a certified service-disabled veteran-owned business enterprise revolving loan trust fund account shall be eligible to draw funds from the account as needed to provide the following types of financial assistance to certified service-disabled veteran-owned business enterprises upon certification to and acceptance by the corporation that such assistance complies with rules and regulations promulgated by the corporation:

(i) working capital loans, provided that the amount of the loan does not exceed thirty-five thousand dollars and the term of the loan does not exceed five years; and

(ii) loans for the acquisition and/or improvement of real property and for the acquisition of machinery and equipment provided that the amount of the loan does not exceed fifty thousand dollars and the term of the loan does not exceed the useful life of the equipment or property.

(d) (i) Notwithstanding any provision of law to the contrary, the corporation may establish an administrative expenses trust fund account for the benefit of each entity selected to administer a certified service-disabled veteran-owned business enterprise revolving loan trust fund account. The initial deposit of funds to an administrative expenses trust fund account shall be an amount determined by the corporation but shall not exceed twenty-five thousand dollars.

(ii) An entity selected to administer a certified service-disabled veteran-owned business enterprise revolving loan trust fund account may use the funds in the administrative expenses trust fund account for costs incurred by it in the start-up and administration of the financial assistance program authorized pursuant to this subdivision.

(iii) The corporation shall deposit into each administrative expenses trust fund account:

(A) all income earned from the moneys on deposit in the corresponding certified service-disabled veteran-owned business enterprise revolving loan trust fund account during the first year of the entity's administration of said account; and

(B) beginning with its second year in administering a certified service-disabled veteran-owned business enterprise revolving loan trust fund account, said amounts may be used for costs incurred by the entity in administering the certified service-disabled veteran-owned business enterprise revolving loan trust fund account; and

(C) repayments of interest on loans made from the corresponding certified service-disabled veteran-owned business enterprise revolving loan trust fund account.

(iv) Funds from the administrative expenses trust fund account may be used for costs incurred at any time by an administering entity in its administration of a certified service-disabled veteran-owned business enterprise revolving loan trust fund account pursuant to this section.

(v) Funds deposited in an administrative expenses trust fund account shall be disbursed by the corporation to the entity that administers the corresponding certified service-disabled veteran-owned business enterprise revolving loan trust fund account on a periodic basis and shall be expended by the entity in accordance with an annual budget and any updates of same, approved by the corporation.

(e) Any entity selected to administer a certified service-disabled veteran-owned business enterprise revolving loan trust fund account shall pay to the corporation for deposit any repayments received in connection with financial assistance provided from its account. Payments consisting of the repayment of the principal amount of a loan shall be deposited by the corporation into the certified service-disabled veteran-owned business enterprise revolving loan trust fund account from which the loan was made. The interest earned by the corporation from the investment of moneys in each certified service-disabled veteran-owned business enterprise revolving loan trust fund account during and after the second year of a selected entity's administration of said account shall be deposited by the corporation into the corresponding certified service-disabled veteran-owned business enterprise revolving loan trust fund account and used to provide the financial assistance to certified service-disabled veteran-owned business enterprises as authorized pursuant to this section.

(f) The provisions of subdivisions eight, nine, fourteen, fifteen, sixteen, seventeen, eighteen and nineteen of section sixteen-a of this act pertaining to the regional revolving loan trust fund shall also be applicable to the certified service-disabled veteran-owned business

enterprise revolving loan trust fund, provided that: where the term "regional corporation" appears therein it shall be interpreted to mean an entity selected to administer a certified service-disabled veteran-owned business enterprise revolving loan trust fund account, and "regional revolving loans trust fund" shall mean a certified service-disabled veteran-owned business enterprise revolving loan trust fund, and where the term "this section" appears therein it shall mean this section.

(g) The corporation may provide funds from an appropriation for the certified service-disabled veteran-owned business enterprise development and lending program to any entity selected to administer a certified service-disabled veteran-owned business enterprise revolving loan trust fund for the purposes of recapitalizing such account and the entity's corresponding administrative expenses trust fund account following an evaluation by the corporation of the entity's administration and use of such accounts.

(h) Notwithstanding any provision of law to the contrary, the corporation shall establish a certified service-disabled veteran-owned business enterprise revolving loan trust fund to pay into such fund any moneys made available to the corporation for such fund from any source, including moneys appropriated by the state and any income earned by, or increment to, the account due to the investment thereof, or any repayment of moneys advanced from the fund. The corporation shall not commingle the moneys of such fund with any moneys held in trust by the corporation, except for investment purposes.

(3) Micro-loan program. (a) For the purposes of this subdivision "micro-loan" shall mean a loan of under seven thousand five hundred dollars.

(b) The corporation shall, pursuant to requests for proposals, enter into agreements for other types of locally, regionally or community-administered loan programs than those set forth in subdivision two of this section, including micro-loan programs to be administered by local development corporations, local industrial development organizations, municipalities and not-for-profit organizations, to provide micro-loans to small and high risk certified service-disabled veteran-owned business enterprises located within their respective service areas, provided that loan review committees are established by such administering entity, including service-disabled veterans, as defined in article seventeen-B of the executive law, experienced in business management, business development, commercial lending, entrepreneurship, or in the operation of a for-profit business.

(c) Agreements entered into pursuant to paragraph (b) of this subdivision shall be governed by paragraphs (d), (e), (f), (g) and (h) of subdivision two of this section, and certified service-disabled veteran-owned business enterprise revolving loan trust fund accounts and administrative expenses trust fund accounts shall be established in a similar fashion for entities selected to administer micro-loan funds pursuant to this subdivision.

(4) Certified service-disabled veteran-owned business enterprise contracting program. For the purpose of establishing a comprehensive program to assist certified service-disabled veteran-owned business enterprise contractors, the corporation may provide loans, loan guarantees, technical assistance and bonding assistance, the corporation may enter into cooperative agreements with cities, counties, municipalities, authorities, agencies, federally and state chartered credit unions in

the state and federally insured banking organizations and financial institutions for such purposes.

(a) To be eligible for a contractor loan, the borrower must have either:

(i) a construction contract with, or a contract to provide goods or services to, a governmental entity or authority;

(ii) a subcontract on a government-sponsored construction contract;

(iii) a contract or subcontract on a government sponsored residential project; or

(iv) a contract or subcontract on a construction project previously approved by the corporation pursuant to section ten of this act.

(b) The corporation shall provide technical assistance specifically oriented to certified service-disabled veteran-owned business enterprise government contractors as part of its comprehensive technical assistance program.

(c) The corporation is authorized to provide assistance through the creation of, or assistance to, a certified service-disabled veteran-owned business enterprise bonding guarantee program to enable certified service-disabled veteran-owned business enterprise contractors and subcontractors to meet payment or performance bonding requirements.

(i) Through such program, assistance in the form of working capital loans and loan guarantees pursuant to subdivision six of this section may also be provided to certified service-disabled veteran-owned business enterprise contractors and subcontractors who have secured contracts by participating in the program.

(ii) The corporation shall either establish criteria for the bonding guarantee program and for any required escrow funds which shall include detailed provisions for eligibility; or if the corporation is providing assistance to a program other than one established by the corporation, review and approve the criteria established for such other program.

(5) Direct financial assistance for certified service-disabled veteran-owned business enterprises. For the purpose of establishing a program to provide direct financial assistance to certified service-disabled veteran-owned business enterprises, the corporation is authorized to provide assistance in the form of:

(a) Business development loans and loan guarantees pursuant to subdivision six of this section to eligible enterprises for the acquisition or improvement of real property, machinery, equipment or working capital, provided that to be eligible for a business development loan, the borrowers must have been in business for at least three years and provided that the loans must be in an amount equal to or in excess of fifty thousand dollars;

(b) Franchise loans to eligible enterprises seeking to acquire or expand franchises of nationally recognized corporations, provided that disbursements by the corporation of such loans shall be conditioned on obtaining such franchises;

(c) Equity assistance for eligible certified service-disabled veteran-owned business enterprises to match equity contributions to such enterprises by financial institutions and community development equity capital funds, provided, however, that such assistance shall be targeted to start-up and early stage enterprises in the manufacturing, retail and service sectors located in economically distressed areas.

(6) Deposits and loan guarantees. For the purpose of encouraging private financial institutions to make loans to eligible enterprises pursuant to this section for any of the eligible projects pursuant to

subdivisions four and five of this section, the corporation is authorized to:

(a) Make linked deposits of funds into federally and state chartered credit unions in the state, in order to encourage such organizations to make small loans to certified service-disabled veteran-owned business enterprises; and

(b) Provide loan guarantees to private financial institutions for loans made to eligible certified service-disabled veteran-owned business enterprises pursuant to this subdivision for eligible projects, provided that the guarantee shall be at least fifty percent backed by funds of the corporation. Any such loan guaranteed by the corporation shall be made to borrowers that are approved by the corporation and substantially meet the underwriting criteria the credit union or financial institution customarily applies to similar borrowers for similar loans supported by similar guarantees, and no guaranteed loan funds shall be disbursed until the corporation has received, reviewed and concurred, in writing, with the recommendation of the credit union or banking or financial institution to make a loan.

(7) Certified service-disabled veteran-owned business enterprise small business incubator program. (a) The corporation shall establish a certified service-disabled veteran-owned business enterprise small business incubator program for the purpose of providing financial support for the creation of incubators to nurture certified service-disabled veteran-owned business enterprises with growth potential.

(b) Under this subdivision the corporation is authorized to provide low-interest loans and grants for construction financing and permanent financing of up to seventy-five percent of project costs up to a maximum of six hundred fifty thousand dollars per project, provided that the total amount of grant assistance provided pursuant to this paragraph shall not exceed twenty percent of an appropriation provided for the purposes of this section.

(c) Incubator projects eligible for such assistance shall involve the renovation or reconstruction of existing facilities or the acquisition of equipment, except that construction shall be allowable in cases in which an applicant can demonstrate to the satisfaction of the corporation that an existing facility is unavailable in the area to be served by the new incubator facility.

(d) Incubator projects are not eligible to receive loans for the purpose of covering operating costs or supplying incubator support services, except that incubators in their first eighteen months of operation may receive one-time grants not to exceed forty thousand dollars, which costs may include administrative costs of employing a resident administrator/advisor to the incubator, provided that the corporation shall not expend a sum greater than two hundred fifty thousand dollars in any one state fiscal year, or so much as may be specifically appropriated for this purpose.

(e) Eligible incubator projects shall be required to demonstrate to the corporation's satisfaction:

(i) public or private support and involvement sufficient to complete the renovation of existing facilities or the construction of new facilities and the acquisition of equipment;

(ii) significant community support for the project;

(iii) the existence of prospective tenants for such incubator space;

(iv) demand for such incubator space, which may include evidence of the unavailability of suitable space for prospective tenants at appro-

priate rental or lease costs in the community in which such prospective tenants are located; and

(v) the inability of the project to occur without financial assistance from the corporation.

(f) The corporation shall establish criteria for eligibility for funding for incubator projects, including but not limited to the following:

(i) the project must be designed to provide low-cost space and support services to incubator tenants, coordination with other sources of assistance and flexible leasing arrangements for tenants;

(ii) the project sponsors must provide a management plan and a business plan for operating the incubator satisfactory to the corporation; and

(iii) the project gives preference for incubator space and assistance to certified service-disabled veteran-owned business enterprises which currently receive, or have received, assistance from the corporation pursuant to this section and to incubator projects proposed to be located in economically distressed areas.

(8) Certified service-disabled veteran-owned business enterprise technical assistance program. (a) The corporation shall establish a comprehensive technical assistance program within the certified service-disabled veteran-owned business enterprise development office to provide technical assistance to certified service-disabled veteran-owned business enterprises through third party service providers, which assistance shall include, but not be limited to: (i) technical assistance in development and execution of business plans, including the formation of, acquisition of, management of, or diversification of a certified service-disabled veteran-owned business enterprise; (ii) technical assistance with applications for obtaining funds from public and private financing sources; (iii) technical assistance in the development of a working capital budget; (iv) referrals to other providers of technical assistance to certified service-disabled veteran-owned business enterprises and certified service-disabled veteran-owned business enterprise entrepreneurs, where appropriate, including the entrepreneurial assistance program established pursuant to article nine of the economic development law; and (v) technical assistance through education programs directed primarily at certified service-disabled veteran-owned business enterprise entrepreneurs.

(b) Technical assistance may be provided through direct corporate support, through grants to or contracts with service providers or governmental entities, and certified service-disabled veteran-owned business enterprises.

(9) Priorities. The corporation shall give priority to applications for assistance pursuant to this section in which the business seeking such assistance indicates a commitment to first consider persons eligible to participate in federal job training partnership act (P.L. 97-300) programs.

(10) Non-application of certain provisions. The provisions of section ten and subdivision two of section sixteen of this act shall not apply to assistance or projects authorized pursuant to this section.

(11) Rules and regulations. The corporation shall, assisted by the commissioner of economic development and in consultation with the department of economic development, promulgate rules and regulations in accordance with the state administrative procedure act. Such rules and regulations shall be consistent with the program plan required by subdivision nineteen of section one hundred of the economic development law. No funds shall be disbursed under this program until such rules and

regulations have been reviewed and approved by the corporation. All assistance and projects funded under this program shall be funded in accordance with the rules and regulations in effect on the date the completed application for such assistance shall be received by the corporation.

(12) Certified service-disabled veteran-owned business enterprise development and lending account. Notwithstanding any provision of law to the contrary, the corporation shall establish within the treasury of the corporation a certified service-disabled veteran-owned business enterprise development and lending account, and shall pay into such account any moneys which may be made available to the corporation for this purpose from any source including, but not limited to, moneys appropriated by the state and any repayment of principal and interest on loans made by the corporation pursuant to the certified service-disabled veteran-owned business enterprise development and lending program. Funds in the certified service-disabled veteran-owned business enterprise development and lending account, including funds from the repayment of principal and interest on loans made by the corporation, may be used for any form of assistance authorized pursuant to this section. The amounts deposited in the certified service-disabled veteran-owned business enterprise development and lending account may not be interchanged with any other account, but may be commingled with any other account for investment purposes. All loans disbursed by the corporation shall be repaid into the account. The corporation shall enter into a written agreement with the director of the budget for repayment, to the state comptroller to the credit of the capital projects fund, of all moneys in the account after a period of time to be determined by the corporation and the director of the budget. The corporation shall transfer to the certified service-disabled veteran-owned business enterprise development and lending account: all moneys appropriated or reappropriated by New York state for the certified service-disabled veteran-owned business enterprise revolving loan trust fund that have not been committed prior to the effective date of the appropriation for the program in the current fiscal year, or become uncommitted subsequent to the effective date of the program's appropriation for the current fiscal year; and all repayments of principal and interest on loans made by the corporation which are currently on deposit in, or payable to, the certified service-disabled veteran-owned business enterprise development and lending account.

(13) Standardization. The corporation shall streamline the review and approval process for projects and wherever possible standardize all relevant attendant documentation and legal documents.

(14) Approval cycle. The corporation shall approve eligible loans or grants on at least a four-month cycle and shall give priority consideration to the comparative degree of economic distress within the areas in which the project is located. Other factors to be considered by the corporation shall include the impact of the project on the employment and economic condition of the community and the financial feasibility of the project.

(15) Repayment. Notwithstanding the provisions of section forty-a of the state finance law and any other general or special law, no written agreement under this program shall require repayment at any time or on any terms inconsistent with the provisions of this act or the New York state project finance agency act; except, however, that the corporation may make grants to projects using funds appropriated for this purpose and that the repayment provision may not apply to such grants.

(16) Reports. The chairman of the corporation shall submit to the director of the budget, the speaker of the assembly and the temporary president of the senate an evaluation of the effectiveness of the program prepared by an entity independent of the corporation. The corporation shall select the program evaluator through a request for proposal process. Such evaluation shall determine whether the assistance provided has enhanced the economic condition of assisted companies or communities, and shall make recommendation for improvements which would make the program more effective. Such evaluation shall be submitted by September first, two thousand twenty and September first every two years thereafter.

§ 2. Subdivision 1 of section 210 of the economic development law, as amended by section 1 of part DD of chapter 55 of the laws of 2014, is amended and a new subdivision 7 is added to read as follows:

1. "Development centers" shall mean the business enterprise development centers which provide assistance to primarily minority group members, women, individuals with a disability, **certified service-disabled veteran-owned business enterprises** and veterans as established by the department pursuant to section two hundred eleven of this article.

7. "Certified service-disabled veteran-owned business enterprise" shall mean a business enterprise, certified pursuant to article seventeen-B of the executive law.

§ 3. Subdivision 1 and paragraph (d) of subdivision 3 of section 211 of the economic development law, subdivision 1 as amended by section 3 of part DD of chapter 55 of the laws of 2014 and paragraph (d) of subdivision 3 as amended by chapter 227 of the laws of 1993, are amended to read as follows:

1. The department shall provide grants, within available appropriations, on a competitive basis, in response to a request for proposals to pilot development centers, to provide intensive community-based management and technical assistance targeted primarily to minority group members, women, individuals with a disability, **certified service-disabled veteran-owned business enterprises** and veterans who are seeking to start or are starting new business ventures.

(d) establish an advisory group of community business experts, at least one-half of whom shall be representative of the clientele to be served by the center, which shall constitute a support network to provide counseling and mentoring services to minority group members, women**, veterans** and individuals with a disability from the concept stage of development through the first one to two years of existence on a regular basis and as needed thereafter during the first five years of a new venture; and

§ 4. This act shall take effect one year after it shall have become a law.