

# STATE OF NEW YORK

11027

## IN ASSEMBLY

October 7, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Schmitt) --  
read once and referred to the Committee on Veterans' Affairs

AN ACT to amend the executive law, in relation to expanding opportunities for veteran-owned business enterprises; and providing for the repeal of such provisions upon expiration thereof

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 article 17-C  
2 to read as follows:

### ARTICLE 17-C

#### PARTICIPATION BY VETERANS

#### WITH RESPECT TO STATE CONTRACTS

#### Section 369-m. Definitions.

#### 369-n. Division of veterans' business development.

#### 369-o. Opportunities for certified veteran-owned business enterprises.

#### 369-p. Severability.

11 § 369-m. Definitions. As used in this article, the following terms  
12 shall have the following meanings:

13 1. "Certified veteran-owned business enterprise" shall mean a business  
14 enterprise, including a sole proprietorship, partnership, limited  
15 liability company or corporation that is:

16 (a) at least fifty-one percent owned by one or more veterans;

17 (b) an enterprise in which such veteran ownership is real, substan-  
18 tial, and continuing;

19 (c) an enterprise in which such veteran ownership has and exercises  
20 the authority to control independently the day-to-day business decisions  
21 of the enterprise;

22 (d) an enterprise authorized to do business in this state and is inde-  
23 pendently-owned and operated;

24 (e) an enterprise that is a small business which has a significant  
25 business presence in the state, not dominant in its field and employs,  
26 based on its industry, a certain number of persons as determined by the  
27 director, but not to exceed three hundred, taking into consideration

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

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1 factors which include, but are not limited to, federal small business  
2 administration standards pursuant to 13 CFR part 121 and any amendments  
3 thereto; and

4 (f) certified by the office of general services.

5 2. "Commissioner" shall mean the commissioner of the office of general  
6 services.

7 3. "Director" shall mean the director of the division of veterans'  
8 business development.

9 4. "Division" shall mean the division of veterans' business develop-  
10 ment in the office of general services.

11 5. "State agency" shall mean: (a)(i) any state department; or (ii) any  
12 division, board, commission or bureau of any state department; or (iii)  
13 the state university of New York and the city university of New York,  
14 including all their constituent units except community colleges and the  
15 independent institutions operating statutory or contract colleges on  
16 behalf of the state; or (iv) a board, a majority of whose members are  
17 appointed by the governor or who serve by virtue of being state officers  
18 or employees as defined in subparagraph (i), (ii) or (iii) of paragraph  
19 (i) of subdivision one of section seventy-three of the public officers  
20 law.

21 (b) a "state authority," as defined in subdivision one of section two  
22 of the public authorities law, and the following:

23 Albany County Airport Authority;

24 Albany Port District Commission;

25 Alfred, Almond, Hornellsville Sewer Authority;

26 Battery Park City Authority;

27 Cayuga County Water and Sewer Authority;

28 (Nelson A. Rockefeller) Empire State Plaza Performing Arts Center  
29 Corporation;

30 Industrial Exhibit Authority;

31 Livingston County Water and Sewer Authority;

32 Long Island Power Authority;

33 Long Island Rail Road;

34 Long Island Market Authority;

35 Manhattan and Bronx Surface Transit Operating Authority;

36 Metro-North Commuter Railroad;

37 Metropolitan Suburban Bus Authority;

38 Metropolitan Transportation Authority;

39 Natural Heritage Trust;

40 New York City Transit Authority;

41 New York Convention Center Operating Corporation;

42 New York State Bridge Authority;

43 New York State Olympic Regional Development Authority;

44 New York State Thruway Authority;

45 Niagara Falls Public Water Authority;

46 Niagara Falls Water Board;

47 Port of Oswego Authority;

48 Power Authority of the State of New York;

49 Roosevelt Island Operating Corporation;

50 Schenectady Metroplex Development Authority;

51 State Insurance Fund;

52 Staten Island Rapid Transit Operating Authority;

53 State University Construction Fund;

54 Syracuse Regional Airport Authority;

55 Triborough Bridge and Tunnel Authority;

56 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.

6. "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.

§ 369-n. Division of veterans' business development. 1. The head of the division of 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 veteran-owned business.

(b) Develop and make available to state agencies a directory of certified 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.

1 (c) Assist state agencies in the development of programs to foster and  
2 promote the use of veteran-owned business enterprises on state  
3 contracts.

4 (d) Coordinate the plans, programs and operations of the state govern-  
5 ment which affect or may contribute to the establishment, preservation  
6 and development of veteran-owned business enterprises.

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

10 (f) In conjunction with the commissioner, develop a comprehensive  
11 statewide plan and operational guidelines to promote veteran-owned busi-  
12 ness enterprises and to assist them in obtaining opportunities to  
13 participate in the procurement of goods and services by the state,  
14 including identification of barriers to veterans' business development  
15 and investigation and evaluation of their impact on achieving the objec-  
16 tives of this article.

17 4. The commissioner shall:

18 (a) Coordinate training of all procurement personnel of state agen-  
19 cies, emphasizing increased sensitivity and responsiveness to the unique  
20 needs and requirements of veteran-owned business enterprises.

21 (b) Conduct a coordinated review of all existing and proposed state  
22 training and technical assistance activities in direct support of the  
23 veterans' business development program to assure consistency with the  
24 objectives of this article.

25 (c) Evaluate and assess availability of firms for the purpose of  
26 increasing participation of such firms in state contracting in consulta-  
27 tion with relevant state entities including, but not limited to, the New  
28 York state division of veterans' affairs.

29 (d) Provide advice and technical assistance to promote veteran-owned  
30 business enterprises' understanding of state procurement laws, practices  
31 and procedures to facilitate and increase the participation of veteran-  
32 owned business enterprises in state procurement.

33 (e) Establish regular performance reporting systems regarding imple-  
34 mentation of the programs designed to increase veteran-owned business  
35 participation in procurement contracts by state agencies.

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

48 5. Certification. (a) The director, or in the absence of the director,  
49 the commissioner, within ninety days of the effective date of this arti-  
50 cle, shall promulgate rules and regulations providing for the establish-  
51 ment of a statewide certification program including rules and regu-  
52 lations governing the approval, denial, or revocation of any such  
53 certification. Such rules and regulations shall include, but not be  
54 limited to, such matters as may be required to ensure that the estab-  
55 lished procedures thereunder shall at least be in compliance with the

1 code of fair procedure set forth in section seventy-three of the civil  
2 rights law.

3 (b) The division of veterans' business development shall be responsi-  
4 ble for verifying businesses as being owned, operated, and controlled by  
5 a veteran or veterans and for certifying such verified businesses.  
6 Status as a veteran pursuant to paragraph (a) of this subdivision shall  
7 be documented by a copy of the veteran's certificate of release or  
8 discharge from active duty, including but not limited to, a DD-214 form  
9 or an honorable service certificate/report of causality from the depart-  
10 ment of defense, a letter of certification by the United States depart-  
11 ment of veterans affairs or the United States department of defense and  
12 any additional information that may be required by the division of  
13 veterans' business development. In the case of the New York guard or the  
14 New York naval militia and/or reserves thereof, status as a veteran  
15 pursuant to this paragraph shall be documented pursuant to rules and  
16 regulations promulgated by the director, or in the absence of the direc-  
17 tor, the commissioner.

18 (c) Following application for certification pursuant to this section,  
19 the director shall provide the applicant with written notice of the  
20 status of the application, including notice of any outstanding deficien-  
21 cies, within thirty days. Within sixty days of submission of a final  
22 completed application, the director shall provide the applicant with  
23 written notice of a determination by the director approving or denying  
24 such certification and, in the event of a denial, a statement setting  
25 forth the reasons for such denial. Upon a determination denying or  
26 revoking certification, the business enterprise for which certification  
27 has been so denied or revoked shall, upon written request made within  
28 thirty days from receipt of notice of such determination, be entitled to  
29 a hearing before an independent hearing officer designated for such  
30 purpose by the director. In the event that a request for a hearing is  
31 not made within such thirty day period, such determination shall be  
32 deemed to be final. The independent hearing officer shall conduct a  
33 hearing and upon the conclusion of such hearing, issue a written recom-  
34 mendation to the director to affirm, reverse, or modify such determi-  
35 nation of the director. Such written recommendation shall be issued to  
36 the parties. The director, within thirty days, by order, must accept,  
37 reject or modify such recommendation of the hearing officer and set  
38 forth in writing the reason therefor. The director shall serve a copy of  
39 such order and reasons therefor upon the business enterprise by personal  
40 service or by certified mail return receipt requested. The order of the  
41 director shall be subject to review pursuant to article seventy-eight of  
42 the civil practice law and rules.

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

44 § 369-o. Opportunities for certified veteran-owned business enter-  
45 prises. 1. The director, or in the absence of the director, the commis-  
46 sioner, within ninety days of the effective date of this article shall  
47 promulgate rules and regulations for the following purposes:

48 (a) provide measures and procedures to ensure that certified veteran-  
49 owned business enterprises are afforded the opportunity for meaningful  
50 participation in the performance of state contracts and to assist in  
51 state agencies' identification of those state contracts for which certi-  
52 fied veteran-owned business enterprises may best perform;

53 (b) provide for measures and procedures that assist state agencies in  
54 the identification of state contracts where veteran contract goals are  
55 practical, feasible and appropriate for the purpose of increasing the

1 utilization of veteran-owned business enterprise participation on state  
2 contracts;

3 (c) achieve a statewide goal for participation on state contracts by  
4 veteran-owned business enterprises at a percentage to be determined by  
5 the commissioner;

6 (d) provide for procedures relating to submission and receipt of  
7 applications by veteran-owned business enterprises for certification;

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

10 (f) provide for the requirement that state agencies submit regular  
11 reports, as determined by the director, with respect to their veteran-  
12 owned business enterprise program activity, including but not limited  
13 to, utilization reporting and state contract monitoring and compliance;

14 (g) notwithstanding any provision of the state finance law, the public  
15 buildings law, the highway law, the transportation law or the public  
16 authorities law to the contrary, provide for the reservation or set-a-  
17 side of certain procurements by state agencies in order to achieve the  
18 objectives of this article; provided, however, that such procurements  
19 shall remain subject to (i) priority of preferred sources pursuant to  
20 sections one hundred sixty-two and one hundred sixty-three of the state  
21 finance law; (ii) the approval of the comptroller of the state of New  
22 York pursuant to section one hundred twelve and section one hundred  
23 sixty-three of the state finance law and section twenty-eight hundred  
24 seventy-nine-a of the public authorities law; and (iii) the procurement  
25 record requirements pursuant to paragraph g of subdivision nine of  
26 section one hundred sixty-three of the state finance law; and

27 (h) provide for any other purposes to effectuate this article.

28 2. State agencies shall administer the rules and regulations promul-  
29 gated by the director for the implementation of this article.

30 § 369-p. Severability. If any clause, sentence, paragraph, section or  
31 part of this article shall be adjudged by any court of competent juris-  
32 diction to be invalid, the judgment shall not affect, impair or invali-  
33 date the remainder thereof, but shall be confined in its operation to  
34 the clause, sentence, paragraph, section or part of this article direct-  
35 ly involved in the controversy in which the judgment shall have been  
36 rendered.

37 § 2. The commissioner of the office of general services shall conduct  
38 a study to determine the percentage of contracts to be set aside under  
39 this act for veteran-owned businesses.

40 § 3. No later than ninety calendar days after this act shall have  
41 become a law, the commissioner of the office of general services shall  
42 complete the study pursuant to section two of this act.

43 § 4. This act shall take effect immediately and shall expire and be  
44 deemed repealed five years after such effective date.