# STATE OF NEW YORK

6232

2021-2022 Regular Sessions

# IN ASSEMBLY

March 10, 2021

Introduced by M. of A. BICHOTTE HERMELYN -- read once and referred to the Committee on Governmental Operations

AN ACT to establish a construction industry advisory council on public contracting reform

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

Section 1. Legislative intent. The legislature finds that construction contractors often face significant challenges when bidding and working on public works projects in New York state. Often, the inclusion of onerous or inequitable contract terms and conditions governing issues such as contractor payment, job delays and dispute resolution, which in many cases have been codified into statute or regulation, place an unfair burden on contractors. Furthermore, the legislature finds that many prior, piecemeal attempts to address these inequities through individual bills have proven unsuccessful, such as S.6906 (2016) and S.5933 (2019), and therefore a more equitable and comprehensive approach is warranted. The legislature also finds that current inefficiencies in the public contracting process are responsible for driving up the cost of construction, making New York a less competitive place to engage in such work in relation to other states, which in turn harms the New York state economy and costs jobs.

Therefore, it is the intent of the legislature to establish an independent advisory council charged with (a) studying the current public contracting process; and (b) adopting recommendations, best practices and legislative proposals in order to reform and improve the current state public contracting process, by making it more fair, predictable and equitable for all parties involved.

§ 2. There is hereby created a construction industry advisory council on public contracting reform (the "advisory council"), which shall consider and advise on matters concerning the improvement of the current public works contracting process in New York state.

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

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§ 3. The advisory council shall consist of 17 members appointed by the governor as follows: two members representing the various state agencies and authorities, one member representing the New York State Procurement Council, two members upon the recommendation of the speaker of the assembly, one member upon recommendation of the minority leader of the assembly, two members upon the recommendation of the temporary president of the senate, one member upon the recommendation of the minority leader of the senate, one member upon the recommendation of the comptroller, two members representing general contractors in the construction industry, one member representing upstate subcontractors in the construction industry, two members representing New York city subcontractors in the construction industry, one member representing employees in the construction industry and one member representing minority and women business-owned enterprise contractors. Appointments shall be made within sixty days of the effective date of this act. Vacancies in the advisory council shall be filled in the same manner provided for original appointments.

§ 4. The advisory council shall elect a chair, for a one year term, by majority vote and other necessary officers from among all appointed members, for one year terms.

§ 5. The advisory council shall meet on at least six occasions and shall have the power to convene public meetings. The advisory council may also meet at such other times as called by the chair at the request of a majority of the members of the advisory council. Meetings may be conducted via teleconference or other electronic means.

§ 6. The advisory council may also consult with other state agencies and authorities, contractors, subcontractors, and their representatives and consultants in the construction industry, and with such other persons as it shall determine.

§ 7. Members of the advisory council shall serve without compensation for their services as members but shall be reimbursed for their actual expenses incurred in the performance of their duties in the work of the advisory council.

§ 8. The advisory council shall make an annual report of its findings, including any recommendations for legislative, executive or regulatory action as it may deem necessary and appropriate, and suggest best practices for a more fair and efficient public works bidding process in New York.

§ 9. The first report required by section eight of this act shall be delivered to the governor, the temporary president of the senate, the speaker of the assembly, and the minority leaders of the senate and assembly, and shall be posted on an official state website no later than one year after the effective date of this act and the advisory council shall submit along with its report such legislative, executive or regulatory proposals as it deems necessary to implement its recommendations. The subsequent annual reports and proposals shall be delivered annually on the date such first report was delivered and shall be posted on such official state website.

§ 10. This act shall take effect immediately.