STATE OF NEW YORK

9259--A

IN ASSEMBLY

February 9, 2022

Introduced by M. of A. PEOPLES-STOKES, BICHOTTE HERMELYN, COOK, HYNDMAN, WALKER, SEAWRIGHT, MEEKS -- Multi-Sponsored by -- M. of A. GALEF, SIMON -- read once and referred to the Committee on Governmental Operations -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive 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:

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

§ 314-a. Post completion certification. The director, in collaboration with the division of minority and women's business development and the department of small business services, shall develop the following standardized certification forms that must be completed under penalty of perjury prior to the prime contractor being paid:

1. certification from a representative of the prime contractor that the minority or women-owned business enterprise in fact performed the services or provided the materials that they were contracted to perform or provide; and

2. certification from a representative of the minority or women-owned business enterprise that they in fact performed the services or provided the materials that they were contracted to perform or provide.

§ 2. Paragraphs (f) and (j) of subdivision 3 of section 311 of the executive law, paragraph (f) as amended by chapter 96 of the laws of 2019 and paragraph (j) as amended by chapter 825 of the laws of 2021, are amended and three new paragraphs (l), (m) and (n) are added to read as follows:

(f) to prepare and update, no less than annually, a directory of certified minority and women-owned business enterprises which shall,

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

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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**, and to use this information to create an internet based, searchable, centralized state registry detailing certifications, waivers, and all documents submitted pertaining to certification or denial of certification, or compliance with goals for utilization of minority and women-owned business enterprises;**

(j) to make publicly available records of all waivers of compliance reported pursuant to paragraph (b) of subdivision six of section three hundred thirteen of this article on the division's website; [~~and~~]

(l) 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;

(m) to perform inspections of financial records of minority or women-owned business enterprises to ensure such enterprises are in compliance with applicable laws; and

(n) to ensure the protection of individuals who report suspected violations of this article and applicable laws related to minority and women-owned business enterprises.

§ 3. Subdivision 1 of section 314 of the executive law, as amended by chapter 96 of the laws of 2019, 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 convictions for fraudulently misrepresenting the status of minority or women-owned business enterprises. Such rules shall set forth the maximum personal net worth of a minority group member or woman who may be relied upon to certify a business as a minority-owned business enterprise or women-owned business enterprise with a minimum personal net worth threshold of fifteen million dollars, and may thereafter establish different maximum levels of personal net worth for minority group members and women on an industry-by-industry basis for such industries as the director shall determine. Such regulations relating to the classification of the industry-by-industry personal net worth thresholds above the fifteen million dollar threshold shall consider the personal net worth of the owners of both certified and non-certified businesses, including but not limited to, prime contractors and subcontractors, as well as any such other factors needed to establish such thresholds. 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**.

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

§ 316. Enforcement. **1.** Upon receipt by the director of a complaint by a contracting agency that a contractor has violated the provisions of a state contract which have been included to comply with the provisions of this article or of a contractor that a contracting agency has violated such provisions or has failed or refused to issue a waiver where one has been applied for pursuant to subdivision six of section three hundred thirteen of this article or has denied such application, the director shall attempt to resolve the matter giving rise to such complaint. If efforts to resolve such matter to the satisfaction of all parties are

unsuccessful, the director shall refer the matter, within thirty days of the receipt of the complaint, to the division's hearing officers. Upon conclusion of the administrative hearing, the hearing officer shall submit to the director his or her decision regarding the alleged violation of the contract and recommendations regarding the imposition of sanctions, fines or penalties. The director, within ten days of receipt of the decision, shall file a determination of such matter and shall cause a copy of such determination along with a copy of this article to be served upon the contractor by personal service or by certified mail return receipt requested. The decision of the hearing officer shall be final and may only be vacated or modified as provided in article seventy-eight of the civil practice law and rules upon an application made within the time provided by such article. The determination of the director as to the imposition of any fines, sanctions or penalties shall be reviewable pursuant to article seventy-eight of the civil practice law and rules. The penalties imposed for any violation which is premised upon either a fraudulent or intentional misrepresentation by the contractor or the contractor's willful and intentional disregard of the minority and women-owned participation requirement included in the contract may include a determination that the contractor shall be ineligible to submit a bid to any contracting agency or be awarded any such contract for a period not to exceed one year following the final determination; provided however, if a contractor has previously been determined to be ineligible to submit a bid pursuant to this section, the penalties imposed for any subsequent violation, if such violation occurs within five years of the first violation, may include a determination that the contractor shall be ineligible to submit a bid to any contracting agency or be awarded any such contract for a period not to exceed five years following the final determination. The division of minority and women's business development shall maintain a website listing all contractors that have been deemed ineligible to submit a bid pursuant to this section and the date after which each contractor shall once again become eligible to submit bids.

2. Any fines, or portion thereof, imposed pursuant to the foregoing subdivision, or imposed by a court of competent jurisdiction related to convictions involving fraud related to this article or otherwise involving a minority or women-owned business enterprise, may be required by the entity imposing such fines to be paid to the minority and women-owned business enterprise fund established pursuant to section ninety-seven-k of the state finance law.

§ 5. The state finance law is amended by adding a new section 97-k to read as follows:

§ 97-k. Minority and women-owned business enterprise fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special fund to be known as the "minority and women-owned business enterprise fund".

2. Such funds shall consist of all moneys appropriated for the purpose of such fund, all moneys transferred or paid to such fund pursuant to law, including pursuant to section three hundred sixteen of the executive law, and contributions consisting of grants, including grants or other financial assistance from any agency of government and all moneys required by the provisions of this section or any other law to be paid into or credited to this fund.

3. Monies of the fund, following appropriation by the legislature, shall be expended to acquire software, employ personnel to audit, investigate and prosecute minority and women-owned business enterprise fraud

and to underwrite minority and women-owned business enterprise programs to assist minority and women business enterprise owners to develop sustainable businesses.

§ 6. This act shall take effect immediately; provided, however, that the amendments to article 15-A 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.