

# STATE OF NEW YORK

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6232

2021-2022 Regular Sessions

## IN ASSEMBLY

March 10, 2021

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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:

1 Section 1. Legislative intent. The legislature finds that construction  
2 contractors often face significant challenges when bidding and working  
3 on public works projects in New York state. Often, the inclusion of  
4 onerous or inequitable contract terms and conditions governing issues  
5 such as contractor payment, job delays and dispute resolution, which in  
6 many cases have been codified into statute or regulation, place an  
7 unfair burden on contractors. Furthermore, the legislature finds that  
8 many prior, piecemeal attempts to address these inequities through indi-  
9 vidual bills have proven unsuccessful, such as S.6906 (2016) and S.5933  
10 (2019), and therefore a more equitable and comprehensive approach is  
11 warranted. The legislature also finds that current inefficiencies in the  
12 public contracting process are responsible for driving up the cost of  
13 construction, making New York a less competitive place to engage in such  
14 work in relation to other states, which in turn harms the New York state  
15 economy and costs jobs.

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

22 § 2. There is hereby created a construction industry advisory council  
23 on public contracting reform (the "advisory council"), which shall  
24 consider and advise on matters concerning the improvement of the current  
25 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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1     § 3. The advisory council shall consist of 17 members appointed by the  
2 governor as follows: two members representing the various state agen-  
3 cies and authorities, one member representing the New York State  
4 Procurement Council, two members upon the recommendation of the speaker  
5 of the assembly, one member upon recommendation of the minority leader  
6 of the assembly, two members upon the recommendation of the temporary  
7 president of the senate, one member upon the recommendation of the  
8 minority leader of the senate, one member upon the recommendation of the  
9 comptroller, two members representing general contractors in the  
10 construction industry, one member representing upstate subcontractors in  
11 the construction industry, two members representing New York city  
12 subcontractors in the construction industry, one member representing  
13 employees in the construction industry and one member representing  
14 minority and women business-owned enterprise contractors. Appointments  
15 shall be made within sixty days of the effective date of this act.  
16 Vacancies in the advisory council shall be filled in the same manner  
17 provided for original appointments.

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

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

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

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

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

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

49     § 10. This act shall take effect immediately.