

STATE OF NEW YORK

6161

2023-2024 Regular Sessions

IN SENATE

March 31, 2023

Introduced by Sen. ASHBY -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

AN ACT to amend the veterans' services law, the cannabis law, the labor law, the state finance law and the state technology law, in relation to participation by veterans with respect to state contracts

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

1 Section 1. The article heading of article 3 of the veterans' services
2 law is amended to read as follows:
3 PARTICIPATION BY [~~SERVICE-DISABLED~~] VETERANS WITH RESPECT TO
4 STATE CONTRACTS
5 § 2. Subdivisions 1, 3 and 4 of section 40 of the veterans' services
6 law are amended to read as follows:
7 1. "Certified [~~service-disabled~~] veteran-owned business enterprise"
8 shall mean a business enterprise, including a sole proprietorship, part-
9 nership, limited liability company or corporation that is:
10 (a) at least fifty-one percent owned by one or more [~~service-disabled~~]
11 veterans;
12 (b) an enterprise in which such [~~service-disabled~~] veteran ownership
13 is real, substantial, and continuing;
14 (c) an enterprise in which such [~~service-disabled~~] veteran ownership
15 has and exercises the authority to control independently the day-to-day
16 business decisions of the enterprise;
17 (d) an enterprise authorized to do business in this state and is inde-
18 pendently-owned and operated;
19 (e) an enterprise that is a small business which has a significant
20 business presence in the state, not dominant in its field and employs,
21 based on its industry, a certain number of persons as determined by the
22 director, but not to exceed three hundred, taking into consideration
23 factors which include, but are not limited to, federal small business

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

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1 administration standards pursuant to 13 CFR part 121 and any amendments
2 thereto; and

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

4 3. "Director" shall mean the director of the division of [~~service-dis-~~
5 ~~abled~~] veterans' business development.

6 4. "Division" shall mean the division of [~~service-disabled~~] veterans'
7 business development in the office of general services.

8 § 3. Section 41 of the veterans' services law is amended to read as
9 follows:

10 § 41. Division of [~~service-disabled~~] veterans' business development.

11 1. The head of the division of [~~service-disabled~~] veterans' business
12 development shall be the director who shall be appointed by the governor
13 and who shall hold office at the pleasure of the commissioner.

14 2. The director may appoint such deputies, assistants, and other
15 employees as may be needed for the performance of the duties prescribed
16 herein subject to the provisions of the civil service law and the rules
17 and regulations of the civil service commission. The director may
18 request and shall receive from any (i) department, division, board,
19 bureau, or executive commission of the state or (ii) state agency, such
20 assistance as may be necessary to carry out the provisions of this arti-
21 cle.

22 3. The director shall have the following powers and duties:

23 (a) Develop, collect, summarize and disseminate information that will
24 be helpful to persons and organizations throughout the state in under-
25 taking or promoting the establishment and successful operation of a
26 [~~service-disabled~~] veteran-owned business.

27 (b) Develop and make available to state agencies a directory of certi-
28 fied [~~service-disabled~~] veteran-owned business enterprises which shall,
29 wherever practicable, be divided into categories of labor, services,
30 supplies, equipment, materials and recognized construction trades and
31 which shall indicate areas or locations of the state where such enter-
32 prises are available to perform services. Such directory shall be posted
33 on the office of general services website.

34 (c) Assist state agencies in the development of programs to foster and
35 promote the use of [~~service-disabled~~] veteran-owned business enterprises
36 on state contracts.

37 (d) Coordinate the plans, programs and operations of the state govern-
38 ment which affect or may contribute to the establishment, preservation
39 and development of [~~service-disabled~~] veteran-owned business enter-
40 prises.

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

44 (f) In conjunction with the commissioner, develop a comprehensive
45 statewide plan and operational guidelines to promote [~~service-disabled~~]
46 veteran-owned business enterprises and to assist them in obtaining
47 opportunities to participate in the procurement of goods and services by
48 the state, including identification of barriers to veterans' and
49 service-disabled veterans' business development and investigation and
50 evaluation of their impact on achieving the objectives of this article.

51 4. The commissioner shall:

52 (a) Coordinate training of all procurement personnel of state agen-
53 cies, emphasizing increased sensitivity and responsiveness to the unique
54 needs and requirements of [~~service-disabled~~] veteran-owned business
55 enterprises.

1 (b) Conduct a coordinated review of all existing and proposed state
2 training and technical assistance activities in direct support of the
3 [~~service-disabled~~] veterans' business development program to assure
4 consistency with the objectives of this article.

5 (c) Evaluate and assess availability of firms for the purpose of
6 increasing participation of such firms in state contracting in consulta-
7 tion with relevant state entities including, but not limited to, the New
8 York state department of veterans' services.

9 (d) Provide advice and technical assistance to promote [~~service-disa-
10 bled~~] veteran-owned business enterprises' understanding of state
11 procurement laws, practices and procedures to facilitate and increase
12 the participation of [~~service-disabled~~] veteran-owned business enter-
13 prises in state procurement.

14 (e) Establish regular performance reporting systems regarding imple-
15 mentation of the programs designed to increase [~~service-disabled~~] veter-
16 an-owned business participation in procurement contracts by state agen-
17 cies.

18 (f) Submit a report by the thirty-first of December each year, to the
19 governor, the temporary president of the senate, the speaker of the
20 assembly and the chairpersons of the senate finance and assembly ways
21 and means committees. Such report shall include information including,
22 but not limited to, the number of contracts entered into pursuant to
23 this article, the average amount of such contracts, the number of
24 [~~service-disabled~~] veteran-owned business enterprises certified, the
25 number of applications for certification as a [~~service-disabled~~] veter-
26 an-owned business enterprise, the number of denials for such certif-
27 ication, the number of appeals of such denials, and the outcome of such
28 appeals and the average time that is required for such certification to
29 be completed. Also to be included shall be the level of [~~service-disa-
30 bled~~] veteran-owned businesses participating in each agency's contracts
31 for goods and services and on activities of the division and efforts by
32 each contracting agency to promote utilization of [~~service-disabled~~]
33 veteran-owned businesses and to promote and increase participation by
34 certified [~~service-disabled~~] veteran-owned businesses with respect to
35 state contracts and subcontracts to such businesses. Such report may
36 recommend new activities and programs to effectuate the purposes of this
37 article.

38 5. Certification. (a) The director, or in the absence of the director,
39 the commissioner, within ninety days of the effective date of this arti-
40 cle, shall promulgate rules and regulations providing for the establish-
41 ment of a statewide certification program including rules and regu-
42 lations governing the approval, denial, or revocation of any such
43 certification. Such rules and regulations shall include, but not be
44 limited to, such matters as may be required to ensure that the estab-
45 lished procedures thereunder shall at least be in compliance with the
46 code of fair procedure set forth in section seventy-three of the civil
47 rights law.

48 (b) The division of [~~service-disabled~~] veterans' business development
49 shall be responsible for verifying businesses as being owned, operated,
50 and controlled by a [~~service-disabled~~] veteran and for certifying such
51 verified businesses. Status as a [~~service-disabled~~] veteran pursuant to
52 paragraph (a) of this subdivision shall be documented by a copy of the
53 veteran's certificate of release or discharge from active duty, includ-
54 ing but not limited to, a DD-214 form or an honorable service
55 certificate/report of casualty from the Department of Defense, a letter
56 of certification by the United States Department of Veterans Affairs or

1 the United States Department of Defense and any additional information
2 that may be required by the division of [~~service-disabled~~] veterans'
3 business development. In the case of the New York guard or the New York
4 naval militia and/or reserves thereof, status as a [~~service-disabled~~]
5 veteran pursuant to this paragraph shall be documented pursuant to rules
6 and regulations promulgated by the director, or in the absence of the
7 director, the commissioner.

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

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

34 § 4. Section 42 of the veterans' services law is amended to read as
35 follows:

36 § 42. Opportunities for certified [~~service-disabled~~] veteran-owned
37 business enterprises. 1. The director, or in the absence of the direc-
38 tor, the commissioner, within ninety days of the effective date of this
39 article shall promulgate rules and regulations for the following
40 purposes:

41 (a) provide measures and procedures to ensure that certified
42 [~~service-disabled~~] veteran-owned business enterprises are afforded the
43 opportunity for meaningful participation in the performance of state
44 contracts and to assist in state agencies' identification of those state
45 contracts for which certified [~~service-disabled~~] veteran-owned business
46 enterprises may best perform;

47 (b) provide for measures and procedures that assist state agencies in
48 the identification of state contracts where [~~service-disabled~~] veteran
49 contract goals are practical, feasible and appropriate for the purpose
50 of increasing the utilization of [~~service-disabled~~] veteran-owned busi-
51 ness enterprise participation on state contracts;

52 (c) achieve a statewide goal for participation on state contracts by
53 [~~service-disabled~~] veteran-owned business enterprises of six percent;

54 (d) provide for procedures relating to submission and receipt of
55 applications by [~~service-disabled~~] veteran-owned business enterprises
56 for certification;

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

3 (f) provide for the requirement that state agencies submit regular
4 reports, as determined by the director, with respect to their [~~service-~~
5 ~~disabled~~] veteran-owned business enterprise program activity, including
6 but not limited to, utilization reporting and state contract monitoring
7 and compliance;

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

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

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

24 § 5. Subdivision 28 of section 4 of the veterans' services law is
25 amended to read as follows:

26 28. To include within the annual report as required by subdivision
27 seventeen of this section an accounting of the number of veteran-owned
28 small businesses in the state of New York, to be listed by the following
29 designations: small business concern owned and controlled by veterans as
30 set forth in 15 U.S.C. section 632(Q)(3), as amended from time to time,
31 and [~~service-disabled~~] veteran-owned business enterprise as set forth in
32 article three of this chapter. Such listing shall include but not be
33 limited to the name of the veteran owner or owners of each business,
34 location of each such business, the type of each such business and when-
35 ever practicable, be divided into categories of labor, services, equip-
36 ment, materials and recognized construction trades. The department shall
37 request this information annually from the U.S. department of veterans
38 affairs, any other appropriate federal agencies and the department of
39 [~~service-disabled~~] veterans' business development within the New York
40 state office of general services.

41 § 6. Clause (B) of subparagraph (v) of paragraph (a) of subdivision 3
42 of section 35 of the cannabis law is amended to read as follows:

43 (B) whether the registered organization is a minority and/or woman
44 owned business enterprise, a [~~service-disabled~~] veteran-owned business,
45 or from communities disproportionately impacted by the enforcement of
46 cannabis prohibition;

47 § 7. The section heading, subdivision 1, paragraph (f) of subdivision
48 2, and paragraph (f) of subdivision 5 of section 87 of the cannabis law,
49 paragraph (f) of subdivision 5 as amended by section 29 of part PP of
50 chapter 56 of the laws of 2022, are amended to read as follows:

51 Social and economic equity, minority and women-owned businesses,
52 distressed farmers and [~~service-disabled~~] veterans; incubator program.

53 1. The board, in consultation with the chief equity officer and execu-
54 tive director, and after receiving public input shall create and imple-
55 ment a social and economic equity plan and actively promote applicants
56 from communities disproportionately impacted by cannabis prohibition,

1 and promote racial, ethnic, and gender diversity when issuing licenses
2 for adult-use cannabis related activities, including mentoring potential
3 applicants, by prioritizing consideration of applications by applicants
4 who are from communities disproportionately impacted by the enforcement
5 of cannabis prohibition or who qualify as a minority or women-owned
6 business, distressed farmers, or [~~service-disabled~~] veterans. Such qual-
7 ifications shall be determined by the board, with recommendations from
8 the state cannabis advisory board, the chief equity officer and execu-
9 tive director, by regulation.

10 (f) [~~service-disabled~~] veterans.

11 (f) "~~[Service-disabled veterans]~~ Veterans" shall mean persons quali-
12 fied under article three of the veterans' services law.

13 § 8. Subdivision 6 of section 224-d of the labor law, as amended by
14 section 30 of part PP of chapter 56 of the laws of 2022, is amended to
15 read as follows:

16 6. Each owner and developer subject to the requirements of this
17 section shall comply with the objectives and goals of certified minority
18 and women-owned business enterprises pursuant to article fifteen-A of
19 the executive law and certified [~~service-disabled~~] veteran-owned busi-
20 nesses pursuant to article three of the veterans' services law. The
21 department in consultation with the commissioner of the division of
22 minority and women's business development and the director of the divi-
23 sion of [~~service-disabled~~] veterans' business development shall make
24 training and resources available to assist minority and women-owned
25 business enterprises and [~~service-disabled~~] veteran-owned business
26 enterprises on covered renewable energy systems to achieve and maintain
27 compliance with prevailing wage requirements. The department shall make
28 such training and resources available online and shall afford minority
29 and women-owned business enterprises and [~~service-disabled~~] veteran-
30 owned business enterprises an opportunity to submit comments on such
31 training.

32 § 9. Subdivision 1 of section 143 of the state finance law, as amended
33 by section 27 of part PP of chapter 56 of the laws of 2022, is amended
34 to read as follows:

35 1. Notwithstanding any inconsistent provision of any general or
36 special law, the board, division, department, bureau, agency, officer or
37 commission of the state charged with the duty of preparing plans and
38 specifications for and awarding or entering into contracts for the
39 performance of public work may require the payment of a fixed sum of
40 money, not exceeding one hundred dollars, for each copy of such plans
41 and specifications, by persons or corporations desiring a copy thereof.
42 Any person or corporation desiring a copy of such plans and specifica-
43 tions and making the deposit required by this section shall be furnished
44 with one copy of the plans and specifications. Notwithstanding the fore-
45 going, where payment is required it shall be waived upon request by
46 minority- and women-owned business enterprises certified pursuant to
47 article fifteen-A of the executive law or by [~~service-disabled~~] veter-
48 an-owned business enterprises certified pursuant to article three of the
49 veterans' services law. Such payment may also be waived when such plans
50 and specifications are made available and obtained electronically or in
51 any non-paper form from the board, division, department, bureau, agency,
52 officer or commission of the state.

53 § 10. Paragraph j of subdivision 1 and subdivision 6-d of section 163
54 of the state finance law, as amended by section 28 of part PP of chapter
55 56 of the laws of 2022, are amended to read as follows:

1 j. "Best value" means the basis for awarding contracts for services to
2 the offerer which optimizes quality, cost and efficiency, among respon-
3 sive and responsible offerers. Such basis shall reflect, wherever possi-
4 ble, objective and quantifiable analysis. Such basis may also identify a
5 quantitative factor for offerers that are small businesses, certified
6 minority- or women-owned business enterprises as defined in subdivisions
7 one, seven, fifteen and twenty of section three hundred ten of the execu-
8 tive law or [~~service-disabled~~] veteran-owned business enterprises as
9 defined in subdivision one of section forty of the veterans' services
10 law to be used in evaluation of offers for awarding of contracts for
11 services.

12 6-d. Pursuant to the authority provided in subdivision six of this
13 section, state agencies shall report annually on a fiscal year basis by
14 July first of the ensuing year to the director of the division of minor-
15 ity and women-owned business development the total number and total
16 value of contracts awarded to businesses certified pursuant to article
17 fifteen-A of the executive law, and with respect to contracts awarded to
18 businesses certified pursuant to article three of the veterans' services
19 law such information shall be reported to the division of [~~service-disa-
20 bled~~] veteran-owned business enterprises for inclusion in their respec-
21 tive annual reports.

22 § 11. Subdivision 3 of section 103-a of the state technology law, as
23 amended by section 31 of part PP of chapter 56 of the laws of 2022, is
24 amended to read as follows:

25 3. The director shall conduct an outreach campaign informing the
26 public of the iCenter and shall conduct specific outreach to minority
27 and women-owned business enterprises certified pursuant to article
28 fifteen-A of the executive law, small businesses as such term is defined
29 in section one hundred thirty-one of the economic development law, and
30 [~~service-disabled~~] veteran owned business enterprises certified pursuant
31 to article three of the veterans' services law to inform such businesses
32 of iCenter initiatives.

33 § 12. This act shall take effect on the ninetieth day after it shall
34 have become a law; provided, however, that:

35 (a) if section 2 of part PP of chapter 56 of the laws of 2022 shall
36 not have taken effect on or before such date then sections one, two,
37 three, four, five and six of this act shall take effect on the same date
38 and in the same manner as such chapter of the laws of 2022 takes effect;

39 (b) if section 29 of part PP of chapter 56 of the laws of 2022 shall
40 not have taken effect on or before such date then section seven of this
41 act shall take effect on the same date and in the same manner as such
42 chapter of the laws of 2022 takes effect;

43 (c) if section 30 of part PP of chapter 56 of the laws of 2022 shall
44 not have taken effect on or before such date then section eight of this
45 act shall take effect on the same date and in the same manner as such
46 chapter of the laws of 2022 takes effect;

47 (d) if section 27 of part PP of chapter 56 of the laws of 2022 shall
48 not have taken effect on or before such date then section nine of this
49 act shall take effect on the same date and in the same manner as such
50 chapter of the laws of 2022 takes effect;

51 (e) if section 28 of part PP of chapter 56 of the laws of 2022 shall
52 not have taken effect on or before such date then section ten of this
53 act shall take effect on the same date and in the same manner as such
54 chapter of the laws of 2022 takes effect;

55 (f) if section 31 of part PP of chapter 56 of the laws of 2022 shall
56 not have taken effect on or before such date then section eleven of this

1 act shall take effect on the same date and in the same manner as such
2 chapter of the laws of 2022 takes effect; and
3 (g) the amendments to section 163 of the state finance law made by
4 section ten of this act shall not affect the repeal of such section and
5 shall be deemed repealed therewith.