

## 1 PART L

2 Intentionally Omitted

## 3 PART M

4 Intentionally Omitted

## 5 PART N

6 Intentionally Omitted

## 7 PART O

8 Section 1. Subdivision 3 of section 16-m of section 1 of chapter 174  
9 of the laws of 1968 constituting the New York state urban development  
10 corporation act, as amended by section 1 of part M of chapter 58 of the  
11 laws of 2017, is amended to read as follows:

12 3. The provisions of this section shall expire, notwithstanding any  
13 inconsistent provision of subdivision 4 of section 469 of chapter 309 of  
14 the laws of 1996 or of any other law, on July 1, [2018] 2019.

15 § 2. This act shall take effect immediately and shall be deemed to  
16 have been in full force and effect on and after July 1, 2018.

## 17 PART P

18 Section 1. Section 2 of chapter 393 of the laws of 1994, amending the  
19 New York state urban development corporation act, relating to the powers  
20 of the New York state urban development corporation to make loans, as  
21 amended by section 1 of part N of chapter 58 of the laws of 2017, is  
22 amended to read as follows:

23 § 2. This act shall take effect immediately provided, however, that  
24 section one of this act shall expire on July 1, [2018] 2019, at which  
25 time the provisions of subdivision 26 of section 5 of the New York state  
26 urban development corporation act shall be deemed repealed; provided,  
27 however, that neither the expiration nor the repeal of such subdivision  
28 as provided for herein shall be deemed to affect or impair in any manner  
29 any loan made pursuant to the authority of such subdivision prior to  
30 such expiration and repeal.

31 § 2. This act shall take effect immediately and shall be deemed to  
32 have been in full force and effect on and after April 1, 2018.

## 33 PART Q

34 Section 1. Subdivisions 2, 7, 8, 13, 15, 16, 19, 20, 21 and 22 of  
35 section 310 of the executive law, subdivisions 2 and 8 as added by chap-  
36 ter 261 of the laws of 1988, subdivisions 7 and 15 as amended by chapter  
37 22 of the laws of 2014, subdivision 13 as amended by chapter 506 of the  
38 laws of 2009, subdivision 16, as amended by section 3 of part BB of  
39 chapter 59 of the laws of 2006, subdivisions 19, 20, 21 and 22 as added  
40 by chapter 175 of the laws of 2010 are amended and a new subdivision 24  
41 is added to read as follows:

42 2. "Contracting agency" shall mean a state agency or state-funded  
43 entity which is a party or a proposed party to a state contract or, in  
44 the case of a state contract described in paragraph (c) of subdivision  
45 thirteen of this section, shall mean the New York state housing finance

1 agency, housing trust fund corporation or affordable housing corpo-  
2 ration, whichever has made or proposes to make the grant or loan for the  
3 state assisted housing project.

4 7. "Minority-owned business enterprise" shall mean a business enter-  
5 prise, including a sole proprietorship, partnership, limited liability  
6 company or corporation that is:

7 (a) at least fifty-one percent owned by one or more minority group  
8 members;

9 (b) an enterprise in which such minority ownership is real, substan-  
10 tial and continuing;

11 (c) an enterprise in which such minority ownership has and exercises  
12 the authority to control independently the day-to-day business decisions  
13 of the enterprise;

14 (d) an enterprise authorized to do business in this state and inde-  
15 pendently owned and operated; and

16 (e) [an enterprise owned by an individual or individuals, whose owner-  
17 ship, control and operation are relied upon for certification, with a  
18 personal net worth that does not exceed three million five hundred thou-  
19 sand dollars, as adjusted annually on the first of January for inflation  
20 according to the consumer price index of the previous year; and

21 (f)] an enterprise that is a small business pursuant to subdivision  
22 twenty of this section.

23 8. "Minority group member" shall mean a United States citizen or  
24 permanent resident alien who is and can demonstrate membership in one of  
25 the following groups:

26 (a) Black persons having origins in any of the Black African racial  
27 groups;

28 (b) [Hispanic] Hispanic/Latino persons of Mexican, Puerto Rican,  
29 Dominican, Cuban, Central or South American of either Indian or Hispanic  
30 origin, regardless of race;

31 (c) Native American or Alaskan native persons having origins in any of  
32 the original peoples of North America.

33 (d) Asian and Pacific Islander persons having origins in any of the  
34 Far East countries, South East Asia, the Indian subcontinent or the  
35 Pacific Islands.

36 13. "State contract" shall mean: (a) a written agreement or purchase  
37 order instrument, providing for a total expenditure in excess of twen-  
38 ty-five thousand dollars, whereby a contracting agency is committed to  
39 expend or does expend funds in return for labor, services including but  
40 not limited to legal, financial and other professional services,  
41 supplies, equipment, materials or any combination of the foregoing, to  
42 be performed for, or rendered or furnished to the contracting agency;

43 (b) a written agreement in excess of one hundred thousand dollars where-  
44 by a contracting agency is committed to expend or does expend funds for  
45 the acquisition, construction, demolition, replacement, major repair or  
46 renovation of real property and improvements thereon; [and] (c) a writ-  
47 ten agreement in excess of one hundred thousand dollars whereby the  
48 owner of a state assisted housing project is committed to expend or does  
49 expend funds for the acquisition, construction, demolition, replacement,  
50 major repair or renovation of real property and improvements thereon for  
51 such project; and (d) a written agreement or purchase order instrument,  
52 providing for a total expenditure in excess of one hundred thousand  
53 dollars, whereby the majority of the funds a state-funded entity is  
54 committed to expend or does expend are paid to the state-funded entity  
55 by the state of New York, including those paid to the state-funded enti-  
56 ty pursuant to an appropriation, for any product or service.



1 15. "Women-owned business enterprise" shall mean a business enter-  
2 prise, including a sole proprietorship, partnership, limited liability  
3 company or corporation that is:

4 (a) at least fifty-one percent owned by one or more United States  
5 citizens or permanent resident aliens who are women;

6 (b) an enterprise in which the ownership interest of such women is  
7 real, substantial and continuing;

8 (c) an enterprise in which such women ownership has and exercises the  
9 authority to control independently the day-to-day business decisions of  
10 the enterprise;

11 (d) an enterprise authorized to do business in this state and inde-  
12 pendently owned and operated; and

13 (e) [an enterprise owned by an individual or individuals, whose owner-  
14 ship, control and operation are relied upon for certification, with a  
15 personal net worth that does not exceed three million five hundred thou-  
16 sand dollars, as adjusted annually on the first of January for inflation  
17 according to the consumer price index of the previous year; and

18 (f)] an enterprise that is a small business pursuant to subdivision  
19 twenty of this section.

20 A firm owned by a minority group member who is also a woman may be  
21 certified as a minority-owned business enterprise, a women-owned busi-  
22 ness enterprise, or both, and may be counted towards either a minority-  
23 owned business enterprise goal or a women-owned business enterprise  
24 goal, in regard to any contract or any goal, set by an agency or author-  
25 ity, but such participation may not be counted towards both such goals.  
26 Such an enterprise's participation in a contract may not be divided  
27 between the minority-owned business enterprise goal and the women-owned  
28 business enterprise goal.

29 16. "Statewide advocate" shall mean the person appointed by the  
30 [commissioner] director to serve in the capacity of the minority and  
31 women-owned business enterprise statewide advocate.

32 [19. "Personal net worth" shall mean the aggregate adjusted net value  
33 of the assets of an individual remaining after total liabilities are  
34 deducted. Personal net worth includes the individual's share of assets  
35 held jointly with said individual's spouse and does not include the  
36 individual's ownership interest in the certified minority and women-  
37 owned business enterprise, the individual's equity in his or her primary  
38 residence, or up to five hundred thousand dollars of the present cash  
39 value of any qualified retirement savings plan or individual retirement  
40 account held by the individual less any penalties for early withdrawal.]

41 20. "Small business" as used in this section, unless otherwise indi-  
42 cated, shall mean a business which has a significant business presence  
43 in the state, is independently owned and operated, not dominant in its  
44 field and employs, based on its industry, a certain number of persons as  
45 determined by the director[, but not to exceed three hundred], taking  
46 into consideration factors which include, but are not limited to, feder-  
47 al small business administration standards pursuant to 13 CFR part 121  
48 and any amendments thereto. The director may issue regulations on the  
49 construction of the terms in this definition.

50 21. "The [2010] disparity study" shall refer to the most recent  
51 disparity study commissioned by the [empire state development corpo-  
52 ration] department of economic development, pursuant to section three  
53 hundred twelve-a of this article, and published on [April twenty-nine,  
54 two thousand ten] June thirtieth, two thousand seventeen.

55 22. "Diversity practices" shall mean the contractor's practices and  
56 policies with respect to:



1 (a) utilizing or mentoring certified minority and women-owned business  
2 enterprises in contracts awarded by a state agency or other public  
3 corporation, as subcontractors and suppliers; [and]

4 (b) entering into partnerships, joint ventures or other similar  
5 arrangements with certified minority and women-owned business enter-  
6 prises as defined in this article or other applicable statute or regu-  
7 lation governing an entity's utilization of minority or women-owned  
8 business enterprises; and

9 (c) the representation of minority group members and women as members  
10 of the board of directors or executive officers of the contractor.

11 24. "State-funded entity" shall mean any unit of local government,  
12 including, but not limited to, a county, city, town, village, or school  
13 district that is paid pursuant to an appropriation in any state fiscal  
14 year provided, however, a state-funded entity shall not include any unit  
15 of local government that, pursuant to local law, has a minority and  
16 women-owned business enterprise program.

17 § 1-a. Subdivision 3 of section 311 of the executive law, as added by  
18 chapter 261 of the laws of 1988, paragraphs (d) and (e) as amended by  
19 chapter 55 of the laws of 1992, paragraphs (g) and (h) as amended and  
20 paragraph (i) as added by section 1 of part BB of chapter 59 of the laws  
21 of 2006, is amended to read as follows:

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

23 (a) to encourage and assist contracting agencies in their efforts to  
24 increase participation by minority and women-owned business enterprises  
25 on state contracts and subcontracts so as to facilitate the award of a  
26 fair share of such contracts to them;

27 (b) to develop standardized forms and reporting documents necessary to  
28 implement this article;

29 (c) to conduct educational programs consistent with the purposes of  
30 this article;

31 (d) to review periodically the practices and procedures of each  
32 contracting agency with respect to compliance with the provisions of  
33 this article, and to require them to file periodic reports with the  
34 division of minority and women's business development as to the level of  
35 minority and women-owned business enterprises participation in the  
36 awarding of agency contracts for goods and services;

37 (d-1) to require all contracting state agencies to develop a three  
38 year growth plan to determine a means of promoting and increasing  
39 participation by minority-owned and women-owned business enterprises  
40 with respect to state contracts and subcontracts. Every three years,  
41 beginning May fifteenth, two thousand nineteen, each contracting state  
42 agency shall submit a three year growth plan as part of its annual  
43 report to the governor and legislature pursuant to section one hundred  
44 sixty-four of this chapter.

45 (e) on January first of each year report to the governor and the  
46 chairpersons of the senate finance and assembly ways and means commit-  
47 tees on the level of minority and women-owned business enterprises  
48 participating in each agency's contracts for goods and services and on  
49 activities of the office and effort by each contracting agency to  
50 promote employment of minority group members and women, and to promote  
51 and increase participation by certified businesses with respect to state  
52 contracts and subcontracts so as to facilitate the award of a fair share  
53 of state contracts to such businesses. The comptroller shall assist the  
54 division in collecting information on the participation of certified  
55 business for each contracting agency. Such report may recommend new  
56 activities and programs to effectuate the purposes of this article;



1 (f) to prepare and update periodically a directory of certified minor-  
2 ity and women-owned business enterprises which shall, wherever practica-  
3 ble, be divided into categories of labor, services, supplies, equipment,  
4 materials and recognized construction trades and which shall indicate  
5 areas or locations of the state where such enterprises are available to  
6 perform services, and to use this information to create an internet  
7 based, searchable, centralized state registry detailing certifications,  
8 denials, waivers and all documents submitted during the life of the  
9 contract;

10 (g) to appoint independent hearing officers who by contract or terms  
11 of employment shall preside over adjudicatory hearings pursuant to  
12 section three hundred fourteen of this article for the office and who  
13 are assigned no other work by the office;

14 (h) notwithstanding the provisions of section two hundred ninety-six  
15 of this chapter, to file a complaint pursuant to the provisions of  
16 section two hundred ninety-seven of this chapter where the director has  
17 knowledge that a contractor may have violated the provisions of para-  
18 graph (a), (b) or (c) of subdivision one of section two hundred ninety-  
19 six of this chapter where such violation is unrelated, separate or  
20 distinct from the state contract as expressed by its terms; [and]

21 (i) to streamline the state certification process to accept federal  
22 and municipal corporation certifications;

23 (j) to keep a record of partial and total waivers of compliance  
24 reported pursuant to paragraph (b) of subdivision six of section three  
25 hundred thirteen of this article and to make such record publicly avail-  
26 able on the division's website. The record shall provide, at a minimum:  
27 (i) information identifying the contract, including the value of the  
28 contract; (ii) information identifying the contracting agency; (iii) the  
29 name of the contractor receiving the waiver; and (iv) the date of the  
30 waiver;

31 (k) to perform inspections of minority or women-owned business's place  
32 of business, warehouse or storage facility to confirm the existence of a  
33 workforce, equipment and supplies;

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

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

40 § 2. Subdivision 4 of section 311 of the executive law, as amended by  
41 chapter 361 of the laws of 2009, is amended to read as follows:

42 4. The director [may] shall provide assistance to, and facilitate  
43 access to programs serving [certified businesses as well as applicants]  
44 minority and women-owned business enterprises to ensure that such busi-  
45 nesses benefit, as needed, from technical, managerial and financial, and  
46 general business assistance; training; marketing; organization and  
47 personnel skill development; project management assistance; technology  
48 assistance; bond and insurance education assistance; and other business  
49 development assistance. The director shall maintain a toll-free number  
50 at the department of economic development to be used to answer questions  
51 concerning the MWBE certification process. In addition, the director  
52 may, either independently or in conjunction with other state agencies:

53 (a) develop a clearinghouse of information on programs and services  
54 provided by entities that may assist such businesses;



1 (b) review bonding and paperwork requirements imposed by contracting  
2 agencies that may unnecessarily impede the ability of such businesses to  
3 compete; and

4 (c) seek to maximize utilization by minority and women-owned business  
5 enterprises of available federal resources including but not limited to  
6 federal grants, loans, loan guarantees, surety bonding guarantees, tech-  
7 nical assistance, and programs and services of the federal small busi-  
8 ness administration.

9 § 3. Section 311-a of the executive law, as added by section 4 of part  
10 BB of chapter 59 of the laws of 2006, is amended to read as follows:

11 § 311-a. Minority and women-owned business enterprise statewide advo-  
12 cate. 1. There is hereby established within the [department of econom-  
13 ic] division of minority and women's business development [an office of  
14 the minority and women-owned business enterprise] a statewide advocate.  
15 The statewide advocate shall be appointed by the commissioner with the  
16 advice of the small business advisory board as established in section  
17 one hundred thirty-three of the economic development law and shall serve  
18 in the unclassified service of the director. [The statewide advocate  
19 shall be located in the Albany empire state development office.]

20 2. The advocate shall act as a liaison for minority and women-owned  
21 business enterprises (MWBEs) to assist them in obtaining technical,  
22 managerial, financial and other business assistance for certified busi-  
23 nesses and applicants. The advocate shall receive and investigate  
24 complaints brought by or on behalf of MWBEs concerning certification  
25 delays and instances of violations of [law] the requirements of this  
26 article by contractors and state agencies. The statewide advocate shall  
27 assist certified businesses and applicants in the certification process.  
28 Other functions of the statewide advocate shall be directed by the  
29 commissioner. The advocate may request and the director may appoint  
30 staff and employees of the division of minority and women business  
31 development to support the administration of the office of the statewide  
32 advocate.

33 3. The statewide advocate [shall establish a toll-free number at the  
34 department of economic development to be used to answer questions  
35 concerning the MWBE certification process] shall conduct periodic audits  
36 of state agencies' compliance with the requirements of section three  
37 hundred fifteen of this article, which audits shall include a review of  
38 the books and records of state agencies concerning, among other things,  
39 annual agency expenditures, annual participation of minority and women-  
40 owned business enterprises as prime contractors and subcontractors in  
41 state agencies' state contracts, and documentation of state agencies'  
42 good faith efforts to maximize minority and women-owned business enter-  
43 prise participation in such state agencies' contracting.

44 4. The statewide advocate shall report to the director and commission-  
45 er by November fifteenth on an annual basis on all activities related to  
46 fulfilling the obligations of the office of the statewide advocate. The  
47 commissioner shall include the unedited text of the statewide advocate's  
48 report within the reports submitted by the department of economic devel-  
49 opment to the governor and the legislature.

50 § 4. Section 312-a of the executive law, as amended by section 1 of  
51 part Q of chapter 58 of the laws of 2015, is amended to read as follows:

52 § 312-a. Study of minority and women-owned business [enterprise  
53 programs] enterprises. 1. The director of the division of minority and  
54 [women-owned] women's business development [in the department of econom-  
55 ic development] is authorized and directed to recommission a statewide  
56 disparity study regarding the participation of minority and women-owned

1 business enterprises in state contracts since the amendment of this  
2 article to be delivered to the governor and legislature no later than  
3 August fifteenth, [two thousand sixteen] two thousand twenty-two. The  
4 study shall be prepared by an entity independent of the department and  
5 selected through a request for proposal process. The purpose of such  
6 study is:

7 (a) to determine whether there is a disparity between the number of  
8 qualified minority and women-owned businesses ready, willing and able to  
9 perform state contracts for commodities, services and construction, and  
10 the number of such contractors actually engaged to perform such  
11 contracts, and to determine what changes, if any, should be made to  
12 state policies affecting minority and women-owned business enterprises;  
13 and (b) to determine whether there is a disparity between the number of  
14 qualified minorities and women ready, willing and able, with respect to  
15 labor markets, qualifications and other relevant factors, to participate  
16 in contractor employment, management level bodies, including boards of  
17 directors, and as senior executive officers within contracting entities  
18 and the number of such group members actually employed or affiliated  
19 with state contractors in the aforementioned capacities, and to deter-  
20 mine what changes, if any, should be made to state policies affecting  
21 minority and women group populations with regard to state contractors'  
22 employment and appointment practices relative to diverse group members.  
23 Such study shall include, but not be limited to, an analysis of the  
24 history of minority and women-owned business enterprise programs and  
25 their effectiveness as a means of securing and ensuring participation by  
26 minorities and women, and a disparity analysis by market area and region  
27 of the state, the effectiveness of the current net worth thresholds, a  
28 statistical analysis of the participation of minority and women-owned  
29 business enterprises correlated with such business enterprises' net  
30 worth, whether minority and women-owned business enterprises' net worth  
31 at the time of certification has any effect on such business enter-  
32 prise's success or lack thereof in participation in statewide procure-  
33 ment, the effectiveness of the regulations adopted since the most recent  
34 disparity study, the extent of compliance by state agencies and state  
35 authorities with such regulations, an analysis of the number of minority  
36 and women-owned business enterprises seeking certification since the  
37 most recent disparity study, and the reasons, if any, for any increase  
38 or decrease in such certifications. Such study shall distinguish between  
39 minority males, minority females and non-minority females in the statis-  
40 tical analysis.

41 2. The director of the division of minority and [women-owned] women's  
42 business development is directed to transmit the disparity study to the  
43 governor and the legislature [not later than August fifteenth, two thou-  
44 sand sixteen], and to post the study on the website of the department of  
45 economic development.

46 § 5. Section 313 of the executive law, as amended by chapter 175 of  
47 the laws of 2010, is amended to read as follows:

48 § 313. Opportunities for minority and women-owned business enter-  
49 prises. 1. Goals and requirements for agencies and contractors. Each  
50 agency shall structure procurement procedures for contracts made direct-  
51 ly or indirectly to minority and women-owned business enterprises, in  
52 accordance with the findings of the [two thousand ten] disparity study,  
53 consistent with the purposes of this article, to attempt to achieve [the  
54 following] the recommended results with regard to [total] annual state-  
55 wide procurement for each of the following:



1 (a) construction industry for certified minority-owned business enter-  
2 prises[: fourteen and thirty-four hundredths percent];

3 (b) construction industry for certified women-owned business enter-  
4 prises[: eight and forty-one hundredths percent];

5 (c) construction related professional services industry for certified  
6 minority-owned business enterprises[: thirteen and twenty-one hundredths  
7 percent];

8 (d) construction related professional services industry for certified  
9 women-owned business enterprises[: eleven and thirty-two hundredths  
10 percent];

11 (e) non-construction related services industry for certified minori-  
12 ty-owned business enterprises[: nineteen and sixty hundredths percent];

13 (f) non-construction related services industry for certified women-  
14 owned business enterprises[: seventeen and forty-four hundredths  
15 percent];

16 (g) commodities industry for certified minority-owned business enter-  
17 prises[: sixteen and eleven hundredths percent];

18 (h) commodities industry for certified women-owned business enter-  
19 prises[: ten and ninety-three hundredths percent];

20 (i) overall agency total dollar value of procurement for certified  
21 minority-owned business enterprises[: sixteen and fifty-three hundredths  
22 percent];

23 (j) overall agency total dollar value of procurement for certified  
24 women-owned business enterprises[: twelve and thirty-nine hundredths  
25 percent]; and

26 (k) overall agency total dollar value of procurement for certified  
27 minority, women-owned business enterprises[: twenty-eight and ninety-two  
28 hundredths percent].

29 1-a. The director shall ensure that each state agency has been  
30 provided with a copy of the [two thousand ten] most recent disparity  
31 study.

32 1-b. Each agency shall develop and adopt agency-specific goals based  
33 on the findings of the [two thousand ten] most recent disparity study.

34 1-c. The goals set pursuant to subdivision one of this section shall  
35 be consistent with the findings of the most recent disparity study.

36 2. The director shall promulgate rules and regulations pursuant to the  
37 goals established in subdivision one of this section that provide meas-  
38 ures and procedures to ensure that certified minority and women-owned  
39 businesses shall be given the opportunity for maximum feasible partic-  
40 ipation in the performance of state contracts and to assist in the agen-  
41 cy's identification of those state contracts for which minority and  
42 women-owned certified businesses may best bid to actively and affirma-  
43 tively promote and assist their participation in the performance of  
44 state contracts so as to facilitate the agency's achievement of the  
45 maximum feasible portion of the goals for state contracts to such busi-  
46 nesses.

47 2-a. The director shall promulgate rules and regulations that will  
48 accomplish the following:

49 (a) provide for the certification and decertification of minority and  
50 women-owned business enterprises for all agencies through a single proc-  
51 ess that meets applicable requirements;

52 (b) require that each contract solicitation document accompanying each  
53 solicitation set forth the expected degree of minority and women-owned  
54 business enterprise participation based, in part, on:

55 (i) the potential subcontract opportunities available in the prime  
56 procurement contract; [and]





1 (ii) the availability, as contained within the study, of certified  
2 minority and women-owned business enterprises to respond competitively  
3 to the potential subcontract opportunities, as reflected in the divi-  
4 sion's directory of certified minority and women-owned business enter-  
5 prises; and

6 (iii) the findings of the disparity study.

7 (c) require that each agency provide a current list of certified  
8 minority business enterprises to each prospective contractor;

9 (d) allow a contractor that is a certified minority-owned or women-  
10 owned business enterprise to use the work it performs to meet require-  
11 ments for use of certified minority-owned or women-owned business enter-  
12 prises as subcontractors;

13 (d-1) establish criteria for agencies to credit the participation of  
14 minority and women-owned business enterprises towards the achievement of  
15 the minority and women-owned business enterprise participation goals on  
16 a state contract based on the commercially useful function provided by  
17 each minority and women-owned business enterprise on the contract;

18 (e) provide for joint ventures, which a bidder may count toward meet-  
19 ing its minority and women-owned business enterprise participation;

20 (f) consistent with subdivision six of this section, provide for  
21 circumstances under which an agency or state-funded entity may waive  
22 obligations of the contractor relating to minority and women-owned busi-  
23 ness enterprise participation;

24 (g) require that an agency or state-funded entity verify that minority  
25 and women-owned business enterprises listed in a successful bid are  
26 actually participating to the extent listed in the project for which the  
27 bid was submitted;

28 (h) provide for the collection of statistical data by each agency  
29 concerning actual minority and women-owned business enterprise partic-  
30 ipation; [and]

31 (i) require each agency to consult the most current disparity study  
32 when calculating [agency-wide and contract specific] contract-specific  
33 participation goals pursuant to this article; and

34 (j) provide for the periodic collection of reports from state-funded  
35 entities in such form and at such time as the director shall require.

36 3. Solely for the purpose of providing the opportunity for meaningful  
37 participation by certified businesses in the performance of state  
38 contracts as provided in this section, state contracts shall include  
39 leases of real property by a state agency to a lessee where: the terms  
40 of such leases provide for the construction, demolition, replacement,  
41 major repair or renovation of real property and improvements thereon by  
42 such lessee; and the cost of such construction, demolition, replacement,  
43 major repair or renovation of real property and improvements thereon  
44 shall exceed the sum of one hundred thousand dollars. Reports to the  
45 director pursuant to section three hundred fifteen of this article shall  
46 include activities with respect to all such state contracts. Contracting  
47 agencies shall include or require to be included with respect to state  
48 contracts for the acquisition, construction, demolition, replacement,  
49 major repair or renovation of real property and improvements thereon,  
50 such provisions as may be necessary to effectuate the provisions of this  
51 section in every bid specification and state contract, including, but  
52 not limited to: (a) provisions requiring contractors to make a good  
53 faith effort to solicit active participation by enterprises identified  
54 in the directory of certified businesses provided to the contracting  
55 agency by the office; (b) requiring the parties to agree as a condition  
56 of entering into such contract, to be bound by the provisions of section



1 three hundred sixteen of this article; and (c) requiring the contractor  
2 to include the provisions set forth in paragraphs (a) and (b) of this  
3 subdivision in every subcontract in a manner that the provisions will be  
4 binding upon each subcontractor as to work in connection with such  
5 contract. Provided, however, that no such provisions shall be binding  
6 upon contractors or subcontractors in the performance of work or the  
7 provision of services that are unrelated, separate or distinct from the  
8 state contract as expressed by its terms, and nothing in this section  
9 shall authorize the director or any contracting agency to impose any  
10 requirement on a contractor or subcontractor except with respect to a  
11 state contract.

12 4. In the implementation of this section, the contracting agency shall  
13 (a) consult the findings contained within the disparity study evidencing  
14 relevant industry specific availability of certified businesses and  
15 disparities in the utilization of minority and women-owned businesses  
16 relative to their availability;

17 (b) implement a program that will enable the agency to evaluate each  
18 contract to determine the [appropriateness of the] appropriate goal  
19 pursuant to subdivision one of this section for participation by minori-  
20 ty-owned business enterprises and women-owned business enterprises;

21 (c) consider where practicable, the severability of construction  
22 projects and other bundled contracts; and

23 (d) consider compliance with the requirements of any federal law  
24 concerning opportunities for minority and women-owned business enter-  
25 prises which effectuates the purpose of this section. The contracting  
26 agency shall determine whether the imposition of the requirements of any  
27 such law duplicate or conflict with the provisions hereof and if such  
28 duplication or conflict exists, the contracting agency shall waive the  
29 applicability of this section to the extent of such duplication or  
30 conflict.

31 5. (a) Contracting agencies shall administer the rules and regulations  
32 promulgated by the director in a good faith effort to [meet] achieve the  
33 maximum feasible portion of the agency's goals adopted pursuant to this  
34 article and the regulations of the director. Such rules and regulations:  
35 shall require a contractor to submit a utilization plan after bids are  
36 opened, when bids are required, but prior to the award of a state  
37 contract; shall require the contracting agency to review the utilization  
38 plan submitted by the contractor and to post the utilization plan and  
39 any waivers of compliance issued pursuant to subdivision six of this  
40 section on the website of the contracting agency within a reasonable  
41 period of time as established by the director; shall require the  
42 contracting agency to notify the contractor in writing within a period  
43 of time specified by the director as to any deficiencies contained in  
44 the contractor's utilization plan; shall require remedy thereof within a  
45 period of time specified by the director; shall require the contractor  
46 to submit periodic compliance reports relating to the operation and  
47 implementation of any utilization plan; shall not allow any automatic  
48 waivers but shall allow a contractor to apply for a partial or total  
49 waiver of the minority and women-owned business enterprise participation  
50 requirements pursuant to subdivisions six and seven of this section;  
51 shall allow a contractor to file a complaint with the director pursuant  
52 to subdivision eight of this section in the event a contracting agency  
53 has failed or refused to issue a waiver of the minority and women-owned  
54 business enterprise participation requirements or has denied such  
55 request for a waiver; and shall allow a contracting agency to file a  
56 complaint with the director pursuant to subdivision nine of this section

1 in the event a contractor is failing or has failed to comply with the  
2 minority and women-owned business enterprise participation requirements  
3 set forth in the state contract where no waiver has been granted.

4 (b) The rules and regulations promulgated pursuant to this subdivision  
5 regarding a utilization plan shall provide that where enterprises have  
6 been identified within a utilization plan, a contractor shall attempt,  
7 in good faith, to utilize such enterprise at least to the extent indi-  
8 cated. A contracting agency may require a contractor to indicate, within  
9 a utilization plan, what measures and procedures he or she intends to  
10 take to comply with the provisions of this article, but may not require,  
11 as a condition of award of, or compliance with, a contract that a  
12 contractor utilize a particular enterprise in performance of the  
13 contract.

14 (c) Without limiting other grounds for the disqualification of bids or  
15 proposals on the basis of non-responsibility, a contracting agency may  
16 disqualify the bid or proposal of a contractor as being non-responsible  
17 for failure to remedy notified deficiencies contained in the contrac-  
18 tor's utilization plan within a period of time specified in regulations  
19 promulgated by the director after receiving notification of such defi-  
20 ciencies from the contracting agency. Where failure to remedy any noti-  
21 fied deficiency in the utilization plan is a ground for disqualifica-  
22 tion, that issue and all other grounds for disqualification shall be  
23 stated in writing by the contracting agency. Where the contracting agen-  
24 cy states that a failure to remedy any notified deficiency in the utili-  
25 zation plan is a ground for disqualification the contractor shall be  
26 entitled to an administrative hearing, on a record, involving all  
27 grounds stated by the contracting agency. Such hearing shall be  
28 conducted by the appropriate authority of the contracting agency to  
29 review the determination of disqualification. A final administrative  
30 determination made following such hearing shall be reviewable in a  
31 proceeding commenced under article seventy-eight of the civil practice  
32 law and rules, provided that such proceeding is commenced within thirty  
33 days of the notice given by certified mail return receipt requested  
34 rendering such final administrative determination. Such proceeding shall  
35 be commenced in the supreme court, appellate division, third department  
36 and such proceeding shall be preferred over all other civil causes  
37 except election causes, and shall be heard and determined in preference  
38 to all other civil business pending therein, except election matters,  
39 irrespective of position on the calendar. Appeals taken to the court of  
40 appeals of the state of New York shall be subject to the same prefer-  
41 ence.

42 6. (a) Where it appears that a contractor cannot, after a good faith  
43 effort, comply with the minority and women-owned business enterprise  
44 participation requirements set forth in a particular state contract, a  
45 contractor may file a written application with the contracting agency  
46 requesting a partial or total waiver of such requirements setting forth  
47 the reasons for such contractor's inability to meet any or all of the  
48 participation requirements together with an explanation of the efforts  
49 undertaken by the contractor to obtain the required minority and women-  
50 owned business enterprise participation. In implementing the provisions  
51 of this section, the contracting agency shall consider the number and  
52 types of minority and women-owned business enterprises [located] avail-  
53 able to provide goods or services required under the contract in the  
54 region in which the state contract is to be performed, the total dollar  
55 value of the state contract, the scope of work to be performed and the  
56 project size and term. If, based on such considerations, the contracting

1 agency determines there is not a reasonable availability of contractors  
2 on the list of certified business to furnish services for the project,  
3 it shall issue a waiver of compliance to the contractor. In making such  
4 determination, the contracting agency shall first consider the avail-  
5 ability of other business enterprises located in the region and shall  
6 thereafter consider the financial ability of minority and women-owned  
7 businesses located outside the region in which the contract is to be  
8 performed to perform the state contract.

9 (b) Within thirty days of the issuance of a partial or total waiver of  
10 compliance as provided in paragraph (a) of this subdivision, the  
11 contracting agency shall:

12 (i) report the issuance of the waiver to the director; and

13 (ii) publish on the contracting agency's website: (A) information  
14 identifying the contract, including the value of the contract; (B) the  
15 name of the contractor receiving the waiver; (C) the date of the waiver;  
16 (D) whether the waiver was a total or partial waiver; and (E) the  
17 specific contract provisions to which the waiver applies.

18 7. For purposes of determining a contractor's good faith effort to  
19 comply with the requirements of this section or to be entitled to a  
20 waiver therefrom the contracting agency shall consider:

21 (a) whether the contractor has advertised in general circulation  
22 media, trade association publications, and minority-focus and women-fo-  
23 cus media and, in such event, (i) whether or not certified minority or  
24 women-owned businesses which have been solicited by the contractor  
25 exhibited interest in submitting proposals for a particular project by  
26 attending or having attended a pre-bid conference, if any, scheduled by  
27 the state agency awarding the state contract with certified minority and  
28 women-owned business enterprises; and

29 (ii) whether certified businesses which have been solicited by the  
30 contractor have responded in a timely fashion to the contractor's solici-  
31 tations for timely competitive bid quotations prior to the contracting  
32 agency's bid date; and

33 (b) whether [there has been] the contractor provided timely written  
34 notification of subcontracting opportunities on the state contract to  
35 appropriate certified businesses that appear in the directory of certi-  
36 fied businesses prepared pursuant to paragraph (f) of subdivision three  
37 of section three hundred eleven of this article; and

38 (c) whether the contractor can reasonably structure the amount of work  
39 to be performed under subcontracts in order to increase the likelihood  
40 of participation by certified businesses.

41 8. In the event that a contracting agency fails or refuses to issue a  
42 waiver to a contractor as requested within twenty days after having made  
43 application therefor pursuant to subdivision six of this section or if  
44 the contracting agency denies such application, in whole or in part, the  
45 contractor may file a complaint with the director pursuant to section  
46 three hundred sixteen of this article setting forth the facts and  
47 circumstances giving rise to the contractor's complaint together with a  
48 demand for relief. The contractor shall serve a copy of such complaint  
49 upon the contracting agency by personal service or by certified mail,  
50 return receipt requested. The contracting agency shall be afforded an  
51 opportunity to respond to such complaint in writing.

52 9. If, after the review of a contractor's minority and women owned  
53 business utilization plan or review of a periodic compliance report and  
54 after such contractor has been afforded an opportunity to respond to a  
55 notice of deficiency issued by the contracting agency in connection  
56 therewith, it appears that a contractor is failing or refusing to comply

1 with the minority and women-owned business participation requirements as  
2 set forth in the state contract and where no waiver from such require-  
3 ments has been granted, the contracting agency may file a written  
4 complaint with the director pursuant to section three hundred sixteen of  
5 this article setting forth the facts and circumstances giving rise to  
6 the contracting agency's complaint together with a demand for relief.  
7 The contracting agency shall serve a copy of such complaint upon the  
8 contractor by personal service or by certified mail, return receipt  
9 requested. The contractor shall be afforded an opportunity to respond to  
10 such complaint in writing.

11 § 6. Section 314 of the executive law, as added by chapter 261 of the  
12 laws of 1988, subdivision 2-a as amended by chapter 175 of the laws of  
13 2010, subdivision 4 as amended and subdivision 5 as added by chapter 399  
14 of the laws of 2014, is amended to read as follows:

15 § 314. Statewide certification program. 1. The director shall promul-  
16 gate rules and regulations providing for the establishment of a state-  
17 wide certification program including rules and regulations governing the  
18 approval, denial or revocation of any such certification, including  
19 revocations for felony convictions for fraudulently misrepresenting the  
20 status of minority or women-owned business enterprises. Such rules and  
21 regulations shall include, but not be limited to, such matters as may be  
22 required to ensure that the established procedures thereunder shall at  
23 least be in compliance with the code of fair procedure set forth in  
24 section seventy-three of the civil rights law and consistent with the  
25 provisions of article twenty-three of the correction law.

26 2. For the purposes of this article, the office shall be responsible  
27 for verifying businesses as being owned, operated, and controlled by  
28 minority group members or women and for certifying such verified busi-  
29 nesses. The director shall prepare a directory of certified businesses  
30 for use by contracting agencies and contractors in carrying out the  
31 provisions of this article. The director shall periodically update the  
32 directory.

33 2-a. (a) The director shall establish a procedure enabling the office  
34 to accept New York municipal corporation certification verification for  
35 minority and women-owned business enterprise applicants in lieu of  
36 requiring the applicant to complete the state certification process. The  
37 director shall promulgate rules and regulations to set forth criteria  
38 for the acceptance of municipal corporation certification. All eligible  
39 municipal corporation certifications shall require business enterprises  
40 seeking certification to meet the following standards:

41 (i) have at least fifty-one percent ownership by a minority or a  
42 women-owned enterprise and be owned by United States citizens or perma-  
43 nent resident aliens;

44 (ii) be an enterprise in which the minority and/or women-ownership  
45 interest is real, substantial and continuing;

46 (iii) be an enterprise in which the minority and/or women-ownership  
47 has and exercises the authority to control independently the day-to-day  
48 business decisions of the enterprise;

49 (iv) be an enterprise authorized to do business in this state;

50 (v) be subject to a physical site inspection to verify the fifty-one  
51 percent ownership requirement; and

52 (vi) [be owned by an individual or individuals, whose ownership,  
53 control and operation are relied upon for certification, with a personal  
54 net worth that does not exceed three million five hundred thousand  
55 dollars, as adjusted annually for inflation according to the consumer  
56 price index; and



(vii)] be an enterprise that is a small business pursuant to subdivision twenty of section three hundred ten of this article.

(b) The director shall work with all municipal corporations that have a municipal minority and women-owned business enterprise program to develop standards to accept state certification to meet the municipal corporation minority and women-owned business enterprise certification standards.

(c) The director shall establish a procedure enabling the division to accept federal certification verification for minority and women-owned business enterprise applicants, provided said standards comport with those required by the state minority and women-owned business program, in lieu of requiring the applicant to complete the state certification process. The director shall promulgate rules and regulations to set forth criteria for the acceptance of federal certification.

2-b. (a) Each business applying for minority or women-owned business enterprise certification pursuant to this section must agree to allow: (i) the department of taxation and finance to share its tax information with the division and (ii) the department of labor to share its tax and employer information with the division.

(b) Such information provided pursuant to paragraph (a) of this subdivision shall be kept confidential by the division in the same manner and under the same conditions as such information is kept by the department of taxation and finance or the department of labor.

2-c. The director shall establish a procedure enabling the office to approve an application by a business entity that is wholly owned by an Indian nation or tribe, as defined in section two of the Indian law, in lieu of requiring the applicant to complete the state certification process.

3. Following application for certification pursuant to this section, the director shall provide the applicant with written notice of the status of the application, including notice of any outstanding deficiencies, within [thirty] fifteen days. Within [sixty] thirty days of submission of a final completed application, the director shall provide the applicant with written notice of a determination by the office approving or denying such certification and, in the event of a denial a statement setting forth the reasons for such denial. Upon a determination denying or revoking certification, the business enterprise for which certification has been so denied or revoked shall, upon written request made within thirty days from receipt of notice of such determination, be entitled to a hearing before an independent hearing officer designated for such purpose by the director. In the event that a request for a hearing is not made within such thirty day period, such determination shall be deemed to be final. The independent hearing officer shall conduct a hearing and upon the conclusion of such hearing, issue a written recommendation to the director to affirm, reverse or modify such determination of the director. Such written recommendation shall be issued to the parties. The director, within thirty days, by order, must accept, reject or modify such recommendation of the hearing officer and set forth in writing the reasons therefor. The director shall serve a copy of such order and reasons therefor upon the business enterprise by personal service or by certified mail return receipt requested. The order of the director shall be subject to review pursuant to article seventy-eight of the civil practice law and rules.

4. The director may, after performing an availability analysis and upon a finding that industry-specific factors coupled with personal net worth or small business eligibility requirements pursuant to subdivi-



sions nineteen and twenty of section three hundred ten of this article, respectively, have led to the significant exclusion of businesses owned by minority group members or women in that industry, grant provisional MWBE certification status to applicants from that designated industry, provided, however, that all other eligibility requirements pursuant to subdivision seven or fifteen of section three hundred ten of this article, as applicable, are satisfied. Any industry-based determination made under this section by the director shall be made widely available to the public and posted on the division's website.

5. With the exception of provisional MWBE certification, as provided for in subdivision twenty-three of section three hundred ten of this article, all minority and women-owned business enterprise certifications shall be valid for a period of three years.

§ 6-a. 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.

§ 7. Subdivisions 3, 4, 5, 6 and 7 of section 315 of the executive law, subdivision 3 as amended and subdivisions 4, 5, 6 and 7 as added by chapter 175 of the laws of 2010, are amended to read as follows:

3. Each contracting agency shall report to the director with respect to activities undertaken to promote employment of minority group members and women and promote and increase participation by certified businesses with respect to state contracts and subcontracts. Such reports shall be submitted periodically, but not less frequently than annually, as required by the director, and shall include such information as is necessary for the director to determine whether the contracting agency and contractor have complied with the purposes of this article, including, without limitation, a summary of all waivers of the requirements of subdivisions six and seven of section three hundred thirteen of this article allowed by the contracting agency during the period covered by the report, including a description of the basis of the waiver request and the rationale for granting any such waiver as well as any instances in which the state agency has deemed a contractor to have committed a violation pursuant to section three hundred sixteen-a of this article, and such other information as the director shall require. Each agency shall also include in such annual report whether or not it has been required to prepare a remedial plan, and, if so, the plan and the extent to which the agency has complied with each element of the plan.

4. The division of minority and women's business development shall issue an annual report which: (a) summarizes the report submitted by each contracting agency pursuant to subdivision three of this section; (b) contains such comparative or other information as the director deems appropriate, including but not limited to goals compared to actual participation of minority and women-owned business enterprises in state contracting, to evaluate the effectiveness of the activities undertaken



1 by each such contracting agency to promote increased participation by  
2 certified minority or women-owned businesses with respect to state  
3 contracts and subcontracts; (c) contains a summary of all waivers of the  
4 requirements of subdivisions six and seven of section three hundred  
5 thirteen of this article allowed by each contracting agency during the  
6 period covered by the report, including a description of the basis of  
7 the waiver request and the contracting agency's rationale for granting  
8 any such waiver; (d) describes any efforts to create a database or other  
9 information storage and retrieval system containing information relevant  
10 to contracting with minority and women-owned business enterprises; [and]  
11 (e) contains a summary of: (i) all determinations of violations of this  
12 article by a contractor or a contracting agency made during the period  
13 covered by the annual report pursuant to section three hundred sixteen-a  
14 of this article; and (ii) the penalties or sanctions, if any, assessed  
15 in connection with such determinations and the rationale for such penal-  
16 ties or sanctions; and (f) contains information on each contract identi-  
17 fying the following: (i) whether it is a contract for goods or  
18 services; (ii) whether the contract was awarded to a certified minori-  
19 ty-owned business enterprise or a certified women-owned business enter-  
20 prise and identify which minority group member the minority-owned busi-  
21 ness enterprise relies on for certification pursuant to this article;  
22 (iii) the name and business address of prime contractors and subcontrac-  
23 tors providing services under such contract; and (iv) the dollar value  
24 of such contract; and (g) contains a summary of all certified minority  
25 and women-owned business enterprises, categorized by the minority group  
26 member that such minority-owned business enterprise relies on for  
27 certification pursuant to this article and by gender. Copies of the  
28 annual report shall be provided to the commissioner, the governor, the  
29 comptroller, the temporary president of the senate, the speaker of the  
30 assembly, the minority leader of the senate, the minority leader of the  
31 assembly and shall also be made widely available to the public via,  
32 among other things, publication on a website maintained by the division  
33 of minority and women's business development.

34 5. Each agency shall include in its annual report to the governor and  
35 legislature pursuant to section one hundred sixty-four of [the executive  
36 law] this chapter its annual goals for contracts with minority-owned and  
37 women-owned business enterprises, the number of actual contracts issued  
38 to minority-owned and women-owned business enterprises; and a summary of  
39 all waivers of the requirements of subdivisions six and seven of section  
40 three hundred thirteen of this article allowed by the reporting agency  
41 during the preceding year, including a description of the basis of the  
42 waiver request and the rationale for granting such waiver. Each agency  
43 shall also include in such annual report whether or not it has been  
44 required to prepare a remedial plan, and, if so, the plan and the extent  
45 to which the agency has complied with each element of the plan. Each  
46 agency shall also include in such annual report its three year growth  
47 plan prepared pursuant to section three hundred eleven of this article.

48 6. Each contracting agency that substantially fails to meet the goals  
49 supported by the disparity study or make a good faith effort, as defined  
50 by regulation of the director, to achieve the maximum feasible partic-  
51 ipation of minority and women-owned business enterprises in such agen-  
52 cy's contracting shall be required to submit to the director a remedial  
53 action plan to remedy such failure.

54 7. If it is determined by the director that any agency has failed to  
55 act in good faith to implement the remedial action plan, pursuant to  
56 subdivision six of this section within one year, the director shall





1 provide written notice of such a finding, which shall be publicly avail-  
2 able, and direct implementation of remedial actions to:

3 (a) assure that sufficient and effective solicitation efforts to women  
4 and minority-owned business enterprises are being made by said agency;

5 (b) divide contract requirements, when economically feasible, into  
6 quantities that will expand the participation of women and minority-  
7 owned business enterprises;

8 (c) eliminate extended experience or capitalization requirements, when  
9 programmatically and economically feasible, that will expand partic-  
10 ipation by women and minority-owned business enterprises;

11 (d) identify specific proposed contracts as particularly attractive or  
12 appropriate for participation by women and minority-owned business  
13 enterprises with such identification to result from and be coupled with  
14 the efforts of paragraphs (a), (b), and (c) of this subdivision; and

15 (e) upon a finding by the director that an agency has failed to take  
16 affirmative measures to implement the remedial plan and to follow any of  
17 the remedial actions set forth by the director, and in the absence of  
18 any objective progress towards the agency's goals, require some or all  
19 of the agency's procurement, for a specified period of time, be placed  
20 under the direction and control of another agency or agencies, unless  
21 such agency is a state funded entity.

22 § 7-a. Section 316 of the executive law, as amended by chapter 175 of  
23 the laws of 2010, is amended to read as follows:

24 § 316. Enforcement. 1. Upon receipt by the director of a complaint by  
25 a contracting agency that a contractor has violated the provisions of a  
26 state contract which have been included to comply with the provisions of  
27 this article or of a contractor that a contracting agency has violated  
28 such provisions or has failed or refused to issue a waiver where one has  
29 been applied for pursuant to subdivision six of section three hundred  
30 thirteen of this article or has denied such application, the director  
31 shall attempt to resolve the matter giving rise to such complaint. If  
32 efforts to resolve such matter to the satisfaction of all parties are  
33 unsuccessful, the director shall refer the matter, within thirty days of  
34 the receipt of the complaint, to the division's hearing officers. Upon  
35 conclusion of the administrative hearing, the hearing officer shall  
36 submit to the director his or her decision regarding the alleged  
37 violation of the contract and recommendations regarding the imposition  
38 of sanctions, fines or penalties. The director, within ten days of  
39 receipt of the decision, shall file a determination of such matter and  
40 shall cause a copy of such determination along with a copy of this arti-  
41 cle to be served upon the contractor by personal service or by certified  
42 mail return receipt requested. The decision of the hearing officer shall  
43 be final and may only be vacated or modified as provided in article  
44 seventy-eight of the civil practice law and rules upon an application  
45 made within the time provided by such article. The determination of the  
46 director as to the imposition of any fines, sanctions or penalties shall  
47 be reviewable pursuant to article seventy-eight of the civil practice  
48 law and rules. The penalties imposed for any violation which is premised  
49 upon either a fraudulent or intentional misrepresentation by the  
50 contractor or the contractor's willful and intentional disregard of the  
51 minority and women-owned participation requirement included in the  
52 contract may include a determination that the contractor shall be ineli-  
53 gible to submit a bid to any contracting agency or be awarded any such  
54 contract for a period not to exceed one year following the final deter-  
55 mination; provided however, if a contractor has previously been deter-  
56 mined to be ineligible to submit a bid pursuant to this section, the



1 penalties imposed for any subsequent violation, if such violation occurs  
2 within five years of the first violation, may include a determination  
3 that the contractor shall be ineligible to submit a bid to any contract-  
4 ing agency or be awarded any such contract for a period not to exceed  
5 five years following the final determination. The division of minority  
6 and women's business development shall maintain a website listing all  
7 contractors that have been deemed ineligible to submit a bid pursuant to  
8 this section and the date after which each contractor shall once again  
9 become eligible to submit bids.

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

17 § 8. Section 316-a of the executive law, as added by chapter 175 of  
18 the laws of 2010, is amended to read as follows:

19 § 316-a. Prohibitions in contracts; violations. Every contracting  
20 agency shall include a provision in its state contracts expressly  
21 providing that any contractor who willfully and intentionally fails to  
22 comply with the minority and women-owned participation requirements of  
23 this article as set forth in such state contract shall be liable to the  
24 contracting agency for liquidated or other appropriate damages and shall  
25 provide for other appropriate remedies on account of such breach. A  
26 contracting agency that elects to proceed against a contractor for  
27 breach of contract as provided in this section shall be precluded from  
28 seeking enforcement pursuant to section three hundred sixteen of this  
29 article; provided however, that the contracting agency shall include a  
30 summary of all enforcement actions undertaken pursuant to this section  
31 in its annual report submitted pursuant to [subdivision three of]  
32 section three hundred fifteen of this article.

33 § 9. Subdivision 6 of section 163 of the state finance law, as amended  
34 by chapter 569 of the laws of 2015, is amended to read as follows:

35 6. Discretionary buying thresholds. Pursuant to guidelines established  
36 by the state procurement council: the commissioner may purchase services  
37 and commodities in an amount not exceeding eighty-five thousand dollars  
38 without a formal competitive process; state agencies may purchase  
39 services and commodities in an amount not exceeding fifty thousand  
40 dollars without a formal competitive process; and state agencies may  
41 purchase commodities or services from small business concerns or those  
42 certified pursuant to articles fifteen-A and seventeen-B of the execu-  
43 tive law, or commodities or technology that are recycled or remanufac-  
44 tured, or commodities that are food, including milk and milk products,  
45 grown, produced or harvested in New York state in an amount not exceed-  
46 ing [two] four hundred thousand dollars without a formal competitive  
47 process.

48 § 10. Subparagraph (i) of paragraph (b) of subdivision 3 of section  
49 2879 of the public authorities law, as amended by chapter 174 of the  
50 laws of 2010, is amended to read as follows:

51 (i) for the selection of such contractors on a competitive basis, and  
52 provisions relating to the circumstances under which the board may by  
53 resolution waive competition, including, notwithstanding any other  
54 provision of law requiring competition, the purchase of goods or  
55 services from small business concerns or those certified as minority or  
56 women-owned business enterprises, or goods or technology that are recy-



1 cled or remanufactured, in an amount not to exceed [two] four hundred  
2 thousand dollars without a formal competitive process;

3 § 11. Paragraph a of subdivision 3 of section 139-j of the state  
4 finance law is amended by adding two new subparagraphs 10 and 11 to read  
5 as follows:

6 (10) Complaints by minority-owned business enterprises or women-owned  
7 business enterprises, certified as such by the division of minority and  
8 women's business development, to the minority and women-owned business  
9 enterprise statewide advocate concerning the procuring governmental  
10 entity's failure to comply with the requirements of section three  
11 hundred fifteen of the executive law;

12 (11) Communications between the minority and women-owned business  
13 enterprise statewide advocate and the procuring governmental entity in  
14 furtherance of an investigation of the minority and women-owned business  
15 enterprise statewide advocate pursuant to section three hundred twelve-a  
16 of the executive law;

17 § 12. Subdivision 6 of section 8 of the public buildings law, as  
18 amended by chapter 840 of the laws of 1980, is amended to read as  
19 follows:

20 6. All contracts for amounts in excess of five thousand dollars for  
21 the work of construction, reconstruction, alteration, repair or improve-  
22 ment of any state building, whether constructed or to be constructed  
23 must be offered for public bidding and may be awarded to the lowest  
24 responsible and reliable bidder, as will best promote the public inter-  
25 est, by the said department or other agency with the approval of the  
26 comptroller for the whole or any part of the work to be performed, and,  
27 in the discretion of the said department or other agency, such contracts  
28 may be sublet; provided, however, that no such contract shall be awarded  
29 to a bidder other than the lowest responsible and reliable bidder,  
30 except for certain contracts awarded to minority or women-owned business  
31 enterprises as provided herein, without the written approval of the  
32 comptroller. When a proposal consists of unit prices of items specified  
33 to be performed, the lowest bid shall be deemed to be that which specif-  
34 ically states the lowest gross sum for which the entire work will be  
35 performed, except for certain contracts awarded to minority or women-  
36 owned business enterprises as provided herein, including all the items  
37 specified in the proposal thereof. The lowest bid shall be determined by  
38 the commissioner of general services on the basis of the gross sum for  
39 which the entire work will be performed, arrived at by a correct compu-  
40 tation of all the items specified in the proposal therefor at the unit  
41 prices contained in the bid. Provided, however, that where a responsible  
42 and reliable bidder certified as a minority-owned business enterprise or  
43 women-owned business enterprise pursuant to article fifteen-A of the  
44 executive law submits a bid of one million four hundred thousand dollars  
45 or less, as adjusted annually for inflation beginning January first, two  
46 thousand nineteen, the bid of the minority or women-owned business  
47 enterprise shall be deemed the lowest bid unless it exceeds the bid of  
48 the lowest bidder by more than ten percent.

49 § 13. The state finance law is amended by adding a new section 97-j to  
50 read as follows:

51 § 97-j. Minority and women-owned business enterprise fund. 1. There  
52 is hereby established in the joint custody of the state comptroller and  
53 the commissioner of taxation and finance a special fund to be known as  
54 the "minority and women-owned business enterprise fund".

55 2. Such funds shall consist of all moneys appropriated for the purpose  
56 of such fund, all moneys transferred or paid to such fund pursuant to



1 law, including pursuant to section three hundred sixteen of the execu-  
2 tive law, and contributions consisting of grants, including grants or  
3 other financial assistance from any agency of government and all moneys  
4 required by the provisions of this section or any other law to be paid  
5 into or credited to this fund.

6 3. Monies of the fund, following appropriation by the legislature,  
7 shall be expended to acquire software, employ personnel to audit, inves-  
8 tigate and prosecute minority and women-owned business enterprise fraud  
9 and to underwrite minority and women-owned business enterprise programs  
10 to assist minority and women business enterprise owners to develop  
11 sustainable businesses.

12 § 14. The opening paragraph of subdivision (h) of section 121 of chap-  
13 ter 261 of the laws of 1988, amending the state finance law and other  
14 laws relating to the New York state infrastructure trust fund, as  
15 amended by section 1 of part CCC of chapter 59 of laws of 2017, is  
16 amended to read as follows:

17 The provisions of sections sixty-two through sixty-six of this act  
18 shall expire [April fifteenth, two thousand eighteen, provided, however,  
19 that if the statewide disparity study regarding the participation of  
20 minority and women-owned business enterprises in state contracts  
21 required pursuant to subdivision one of section three hundred twelve-a  
22 of the executive law is completed and delivered to the governor and the  
23 legislature on or before June thirtieth, two thousand seventeen, then  
24 the provisions of sections sixty-two through sixty-six of this act shall  
25 expire] and be deemed repealed on December thirty-first, two thousand  
26 [eighteen] twenty-three, except that:

27 § 15. The executive law is amended by adding a new article 28 to read  
28 as follows:

## 29 ARTICLE 28

### 30 WORKFORCE DIVERSITY PROGRAM

#### 31 Section 821. Definitions.

32 822. Workforce participation goals.

33 823. Reporting.

34 824. Enforcement.

35 825. Powers and responsibilities of the division.

36 826. Severability.

37 § 821. Definitions. As used in this article, the following terms shall  
38 have the following meanings:

39 1. "Contractor" shall mean an individual, a business enterprise,  
40 including a sole proprietorship, a partnership, a corporation, a not-  
41 for-profit corporation, or any other party to a state contract, or a  
42 bidder in conjunction with the award of a state contract or a proposed  
43 party to a state contract.

44 2. "Department" shall mean the department of labor.

45 3. "Director" shall mean the director of the division of minority and  
46 women's business development.

47 4. "Disparity study" shall mean the most recent study of disparities  
48 between the utilization of minority group members and women in the  
49 performance of state contracts and the availability of minority group  
50 members and women to perform such work by the director pursuant to arti-  
51 cle fifteen-A of this chapter.

52 5. "Division" shall mean the department of economic development's  
53 division of minority and women's business development.

54 6. "List of non-compliant contractors" shall mean a list of contrac-  
55 tors and subcontractors, maintained by the division and published on the



1 website of the division, that are ineligible to participate as contrac-  
2 tors or subcontractors in the performance of state contracts for a term  
3 determined by the director.

4 7. "Minority group member" shall mean a United States citizen or  
5 permanent resident alien who is and can demonstrate membership in one of  
6 the following groups:

7 (a) Black persons having origins in any of the Black African racial  
8 groups;

9 (b) Hispanic/Latino persons of Mexican, Puerto Rican, Dominican,  
10 Cuban, Central or South American of either Indian or Hispanic origin,  
11 regardless of race;

12 (c) Native American or Alaskan native persons having origins in any of  
13 the original peoples of North America;

14 (d) Asian and Pacific Islander persons having origins in any of the  
15 Far East countries, South East Asia, the Indian subcontinent or the  
16 Pacific Islands.

17 8. "Non-compliant contractor" shall mean a contractor or subcontractor  
18 that has failed to make a good faith effort to meet the workforce  
19 participation goal established by a state agency on a state contract,  
20 and has been listed by the division on its list of non-compliant  
21 contractors.

22 9. "State agency" shall mean (a) (i) any state department, or (ii) any  
23 division, board, commission or bureau of any state department, or (iii)  
24 the state university of New York and the city university of New York,  
25 including all their constituent units except community colleges and the  
26 independent institutions operating statutory or contract colleges on  
27 behalf of the state, or (iv) a board, a majority of whose members are  
28 appointed by the governor or who serve by virtue of being state officers  
29 or employees as defined in subparagraph (i), (ii) or (iii) of paragraph  
30 (i) of subdivision one of section seventy-three of the public officers  
31 law.

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

34 Albany County Airport Authority;

35 Albany Port District Commission;

36 Alfred, Almond, Hornellsville Sewer Authority;

37 Battery Park City Authority;

38 Cayuga County Water and Sewer Authority;

39 (Nelson A. Rockefeller) Empire State Plaza Performing Arts Center

40 Corporation;

41 Industrial Exhibit Authority;

42 Livingston County Water and Sewer Authority;

43 Long Island Power Authority;

44 Long Island Rail Road;

45 Long Island Market Authority;

46 Manhattan and Bronx Surface Transit Operating Authority;

47 Metro-North Commuter Railroad;

48 Metropolitan Suburban Bus Authority;

49 Metropolitan Transportation Authority;

50 Natural Heritage Trust;

51 New York City Transit Authority;

52 New York Convention Center Operating Corporation;

53 New York State Bridge Authority;

54 New York State Olympic Regional Development Authority;

55 New York State Thruway Authority;

56 Niagara Falls Public Water Authority;



1 Niagara Falls Water Board;  
2 Port of Oswego Authority;  
3 Power Authority of the State of New York;  
4 Roosevelt Island Operating Corporation;  
5 Schenectady Metroplex Development Authority;  
6 State Insurance Fund;  
7 Staten Island Rapid Transit Operating Authority;  
8 State University Construction Fund;  
9 Syracuse Regional Airport Authority;  
10 Triborough Bridge and Tunnel Authority;  
11 Upper Mohawk valley regional water board;  
12 Upper Mohawk valley regional water finance authority;  
13 Upper Mohawk valley memorial auditorium authority;  
14 Urban Development Corporation and its subsidiary corporations.  
15 (c) the following only to the extent of state contracts entered into for  
16 its own account or for the benefit of a state agency as defined in para-  
17 graph (a) or (b) of this subdivision:  
18 Dormitory Authority of the State of New York;  
19 Facilities Development Corporation;  
20 New York State Energy Research and Development Authority;  
21 New York State Science and Technology Foundation.  
22 10. "State contract" shall mean: (a) a written agreement or purchase  
23 order instrument, providing for a total expenditure in excess of twen-  
24 ty-five thousand dollars, whereby a state agency is committed to expend  
25 or does expend or grant funds in return for labor, services including  
26 but not limited to legal, financial and other professional services,  
27 supplies, equipment, materials or any combination of the foregoing, to  
28 be performed on behalf of, for, or rendered or furnished to the state  
29 agency; (b) a written agreement in excess of one hundred thousand  
30 dollars whereby a state agency is committed to expend or does expend or  
31 grant funds for the acquisition, construction, demolition, replacement,  
32 major repair or renovation of real property and improvements thereon;  
33 and (c) a written agreement in excess of one hundred thousand dollars  
34 whereby the owner of a state assisted housing project is committed to  
35 expend or does expend funds for the acquisition, construction, demoli-  
36 tion, replacement, major repair or renovation of real property and  
37 improvements thereon for such project.  
38 11. "Subcontractor" shall mean any individual or business enterprise  
39 that provides goods or services to any individual or business for use in  
40 the performance of a state contract, whether or not such goods or  
41 services are provided to a party to a state contract.  
42 § 822. Workforce participation goals. 1. The director, in consulta-  
43 tion with the department, shall develop aspirational goals for the  
44 utilization of minority group members and women in construction trade,  
45 profession, and occupation.  
46 (a) Aspirational goals for the utilization of minority group members  
47 and women must set forth the expected participation of minority group  
48 members and women in each construction trade, profession, and occupa-  
49 tion, and shall be expressed as a percentage of the total hours of work  
50 to be performed by each trade, profession, and occupation based on the  
51 availability of minority group members and women within each trade,  
52 profession, and occupation.  
53 (i) The aspirational goals shall set forth separate levels of expected  
54 participation by men and women for each minority group, and for Cauca-  
55 sian women, in each construction trade, profession, and occupation.



1 (ii) Aspirational goals for the expected participation of minority  
2 group members and women shall be established for each county of the  
3 state. The director may establish aspirational goals for the expected  
4 participation of minority group members and women for municipalities  
5 where the director deems feasible and appropriate.

6 (iii) The director shall, in establishing the aspirational goals,  
7 consider the findings of the most recent disparity study and any rele-  
8 vant data published by the United States Census Bureau.

9 (b) The director shall update the aspirational goals on a periodic  
10 basis, no less than annually.

11 2. State agencies shall, for each invitation for bids, request for  
12 proposals, or other solicitation that will result in the award of a  
13 state contract, set forth the expected degree of workforce participation  
14 by minority group members and women.

15 (a) Each workforce participation goal established by a state agency  
16 shall set forth the expected level of participation by minority group  
17 members and women in the performance of each trade, profession, and  
18 occupation required in the performance of the contract.

19 (b) Goals for the participation of minority group members and women  
20 shall set forth separate goals for each of the following groups in each  
21 trade, profession, and occupation:

22 (i) Black men;

23 (ii) Black women;

24 (iii) Hispanic/Latino men;

25 (iv) Hispanic/Latino women;

26 (v) Native American men;

27 (vi) Native American women;

28 (vii) Asian men;

29 (viii) Asian women;

30 (ix) Caucasian women.

31 (c) In establishing workforce participation goals, state agencies  
32 shall consider factors including, but not limited to:

33 (i) the findings of the most recent disparity study;

34 (ii) any relevant data published by the United States Census Bureau;  
35 and

36 (iii) if applicable, any aspirational goal established by the divi-  
37 sion.

38 (d) In any case where a state agency establishes a workforce partic-  
39 ipation goal on an invitation for bids, request for proposals, or other  
40 solicitation that will result in the award of a state contract for  
41 construction that deviates from the aspirational goal for construction  
42 work in the county or municipality in which the work will be performed,  
43 the state agency shall document numerical evidence demonstrating that  
44 the application of the aspirational goal would not be practical, feasi-  
45 ble, or appropriate.

46 3. Every contractor responding to an invitation for bids, request for  
47 proposals, or other solicitation that will result in the award of a  
48 state contract subject to workforce participation goals pursuant to this  
49 section shall agree to make a good faith effort to achieve such work-  
50 force participation goal or request a waiver of such goal.

51 (a) A contractor that certifies that it will make a good faith effort  
52 to achieve a workforce participation goal shall provide with its  
53 response to the applicable invitation for bids, request for proposals,  
54 or other solicitation:

55 (i) A certification stating that the contractor will make a good faith  
56 effort to achieve the applicable workforce participation goal and will



1 contractually require any subcontractors to the contractor to make a  
2 good faith effort to achieve the applicable workforce participation goal  
3 in any subcontracted work, which certification shall acknowledge that  
4 failure by the contractor or any of its subcontractors to make a good  
5 faith effort to achieve the applicable workforce participation goal may  
6 result in a determination by the contracting state agency that the  
7 contractor or its subcontractor is a non-compliant contractor;

8 (ii) The level of anticipated participation by minority group members  
9 and women as employees to the contractor, or, if the state agency has  
10 specifically indicated that such documentation is not required as part  
11 of the response to the invitation for bids, request for proposals, or  
12 other solicitation, a date certain for the submission of such documenta-  
13 tion after the award of the state contract;

14 (iii) A list of all subcontractors anticipated to perform work on the  
15 state contract and the level of anticipated participation by minority  
16 group members and women as employees to each subcontractor, or, if the  
17 state agency has specifically indicated that such documentation is not  
18 required as part of the response to the invitation for bids, request for  
19 proposals, or other solicitation, a date certain for the submission of  
20 such documentation after the award of the state contract; and

21 (iv) Such other information as the contracting state agency shall  
22 require.

23 (b) A contractor that requests a waiver of a workforce participation  
24 goal shall provide with its response to the applicable invitation for  
25 bids, request for proposals, or other solicitation:

26 (i) Numerical evidence setting forth why the achievement of the work-  
27 force participation goal is not practical, feasible, or appropriate in  
28 light of the trades, professions, and occupations required to perform  
29 the work of the state contract;

30 (ii) Documentation of the contractor's efforts, and any efforts by  
31 subcontractors to the contractor, to promote the inclusion of minority  
32 group members and women in trades, professions, and occupations required  
33 in the performance of the state contract;

34 (iii) The maximum feasible level of participation by minority group  
35 members and women in each of the trades, professions, and occupations  
36 required in the performance of the work of the state contract;

37 (iv) The level of anticipated participation by minority group members  
38 and women as employees to the contractor;

39 (v) A list of all subcontractors anticipated to perform work on the  
40 state contract and the level of anticipated participation by minority  
41 group members and women as employees to each subcontractor; and

42 (vi) Any other relevant information evidencing that the contractor's  
43 achievement of the workforce participation goal would not be practical,  
44 feasible, or appropriate.

45 4. A state agency shall not award a state contract to a contractor  
46 unless the contractor has (i) certified that it will make a good faith  
47 effort to achieve the applicable workforce participation goal and  
48 provided documentation of the workforce anticipated to perform the work  
49 of the state contract or (ii) submitted a waiver request which the state  
50 agency deems to reflect the maximum feasible participation of minority  
51 group members and women in each of the trades, professions, and occupa-  
52 tions required in performance of the work of the state contract.

53 (a) In the event that a contractor submits a certification or waiver  
54 request that is accepted by the state agency, the state agency shall  
55 establish in the state contract the expected level of participation by  
56 minority group members and women in each of the trades, professions, and





1 occupations required in performance of the work of the state contract,  
2 require that the contractor make good faith efforts to achieve such  
3 workforce participation goals, require that the contractor require any  
4 subcontractors to make a good faith effort to achieve the applicable  
5 workforce participation goal in any subcontracted work, and indicate  
6 that the failure of the contractor or any of its subcontractors to make  
7 a good faith effort to achieve the workforce participation goal may  
8 result in the contractor or subcontractor being deemed a non-compliant  
9 contractor.

10 (b) In the event that a contractor fails to submit a certification,  
11 waiver request, or any other information required by the state agency,  
12 or the state agency determines that a contractor's waiver request does  
13 not demonstrate that the applicable workforce participation goal is  
14 impractical, unfeasible, or inappropriate, the state agency shall notify  
15 the contractor of the deficiency in writing and provide the contractor  
16 ten business days to remedy the noticed deficiency. A state agency shall  
17 reject any bid or proposal of a contractor that fails to timely respond  
18 to a notice of deficiency or to provide documentation remedying the  
19 deficiency to the satisfaction of the state agency.

20 (i) Where failure to remedy any notified deficiency in the workforce  
21 utilization plan is a ground for disqualification, that issue and all  
22 other grounds for disqualification shall be stated in writing by the  
23 contracting state agency. The contractor shall be entitled to an admin-  
24 istrative hearing, on a record, involving all grounds stated by the  
25 contracting state agency in its notice of the contractor's disqualifica-  
26 tion. Such hearing shall be conducted by the division to review the  
27 determination of disqualification. Contractors required to submit to  
28 such hearing shall have an opportunity to be heard. A final administra-  
29 tive determination made following such hearing shall be reviewable in a  
30 proceeding commenced under article seventy-eight of the civil practice  
31 law and rules, provided that such proceeding is commenced within one  
32 hundred twenty days of the notice given by certified mail return receipt  
33 requested rendering such final administrative determination. Such  
34 proceeding shall be commenced in the supreme court and such proceeding  
35 shall be preferred over all other civil causes except election causes,  
36 and shall be heard and determined in preference to all other civil busi-  
37 ness pending therein, except election matters, irrespective of position  
38 on the calendar. Appeals taken to the court of appeals of the state of  
39 New York shall be subject to the same preference.

40 § 823. Reporting. 1. State contracts shall require contractors to  
41 submit, and to require any subcontractors to submit, to the contracting  
42 state agency reports documenting the hours worked by employees of the  
43 contractor and any subcontractors in the performance of the work of the  
44 state contract. Such reports shall be submitted no less frequently than  
45 monthly for state contracts for construction and quarterly for all other  
46 state contracts. Such reports shall identify the race, ethnicity,  
47 gender, and trade, profession, and occupation of each employee perform-  
48 ing work on a state contract.

49 2. State agencies shall submit periodic reports to the director, or  
50 the designee of the director, concerning the participation of minority  
51 group members and women in state contracts let by such agencies and such  
52 state agencies' compliance with this article. Such reports shall be  
53 submitted at such time, and include such information, as the director  
54 shall require in regulations. State agencies shall make available their  
55 facilities, books, and records for inspection, upon reasonable notice,  
56 by the director or the director's designee.



1     3. The department shall provide such assistance as the director shall  
2 require in carrying out the requirements of this section.

3     § 824. Enforcement. 1. Where it appears that a contractor cannot,  
4 after a good faith effort, meet the workforce participation goals set  
5 forth in a particular state contract, a contractor may file a written  
6 application with the contracting state agency requesting a partial or  
7 total waiver of such requirements. Such request shall set forth the  
8 reasons for such contractor's inability to meet the workforce partic-  
9 ipation goal, specifically describe the reasons for any deviations from  
10 the anticipated workforce participation set forth in the contractor's  
11 bid or proposal leading to the award of the state contract, and describe  
12 the efforts by the contractor and any subcontractors to achieve the  
13 maximum feasible participation of minority group members and women in  
14 the performance of the work of the state contract. Where the contrac-  
15 tor's inability to achieve the workforce participation goal on a state  
16 contract is attributable to the failure of one or more subcontractors to  
17 make good faith efforts to achieve the maximum feasible participation of  
18 minority group members and women in the performance of the work of the  
19 state contract, the contractor shall identify such subcontractor or  
20 subcontractors to the contracting state agency.

21     2. A state agency shall grant a request for a waiver of workforce  
22 participation goals on a state contract where:

23     (a) The contractor demonstrates that the contractor and its subcon-  
24 tractors made good faith efforts to achieve the workforce participation  
25 goal on the state contract, and that insufficient minority group members  
26 or women were available in the trades, professions, and occupations  
27 required to perform the work of the state contract; or,

28     (b) The contractor contractually required each of its subcontractors  
29 to make a good faith effort to achieve the maximum feasible partic-  
30 ipation of minority group members and women in the performance of the  
31 subcontracted work, periodically monitored such subcontractors' deploy-  
32 ment of minority group members and women in the performance of the  
33 subcontracted work, provided notice to such subcontractors of any defi-  
34 ciencies in their deployment of minority group members and women in the  
35 performance of such subcontracted work, and could not achieve the work-  
36 force participation goal for one or more trades, professions, or occupa-  
37 tions without the good faith efforts of such subcontractors.

38     3. Where a state agency denies a contractor's request for a waiver of  
39 workforce participation goals pursuant to this section, the state agency  
40 may recommend to the director and the department that the contractor be  
41 deemed a non-compliant contractor.

42     4. Where a state agency grants a request for a waiver of workforce  
43 participation goals pursuant to this section based on one or more  
44 subcontractors' failure to make good faith efforts to achieve the maxi-  
45 mum feasible participation of minority group members and women in the  
46 performance of the subcontracted work, the state agency may recommend to  
47 the director and the department that the subcontractor be deemed a non-  
48 compliant contractor.

49     5. Upon receipt of a recommendation from a state agency that a  
50 contractor or subcontractor should be deemed a non-compliant contractor,  
51 the director shall, with the assistance of the department, review the  
52 facts and circumstances forming the basis of the recommendation and  
53 issue a determination as to whether or not the contractor or subcontrac-  
54 tor should be deemed a non-compliant contractor and, if so, the duration  
55 of such status as a non-compliant contractor. Such status shall last for  
56 a maximum of four years in duration. In determining the duration of a



1 contractor's or subcontractor's status as a non-compliant contractor,  
2 the director shall consider:

3 (i) whether the contractor or subcontractor has previously been deemed  
4 a non-compliant contractor;

5 (ii) the number of hours of expected participation by minority group  
6 members and women lost as a result of the contractor's or subcontrac-  
7 tor's failure to make good faith efforts to include minority group  
8 members or women in the performance of one or more state contracts; and

9 (iii) whether the contractor or subcontractor has offered to provide  
10 employment opportunities, training, or other remedial benefits to minor-  
11 ity group members or women in relevant trades, professions, or occupa-  
12 tions.

13 6. A contractor or subcontractor deemed a non-compliant contractor by  
14 the director may request an administrative hearing before an independent  
15 hearing officer to appeal the determination of the director. The deci-  
16 sion of the hearing officer shall be final and may only be vacated or  
17 modified as provided in article seventy-eight of the civil practice law  
18 and rules upon an application made within the time provided by such  
19 article.

20 7. Upon a final determination that a contractor or subcontractor is a  
21 non-compliant contractor, the director shall list the contractor or  
22 subcontractor as such on its website and indicate the term of such  
23 contractor's or subcontractor's status as a non-compliant contractor. A  
24 non-compliant contractor shall be ineligible to participate as a  
25 contractor or subcontractor on any state contract.

26 § 825. Powers and responsibilities of the division. 1. The director  
27 shall post to the website of the division on or before April first of  
28 each year the aspirational goals for the utilization of minority group  
29 members and women in construction required pursuant to section eight  
30 hundred twenty-two of this article.

31 2. The director shall promulgate rules and regulations for the imple-  
32 mentation of this article, including, but not limited to, procedures for  
33 the submission of certifications and workforce utilization plans by  
34 contractors, criteria for granting waivers of workforce participation  
35 goals, and the contents of reports by state agencies concerning their  
36 implementation of the requirements of this article.

37 3. The division shall, from time to time, review the facilities,  
38 books, and records of state agencies to ascertain the accuracy of their  
39 reports and their compliance with the requirements of this article. The  
40 department shall provide such assistance as the director shall require  
41 in carrying out the requirements of this section.

42 § 826. Severability. If any clause, sentence, paragraph, section or  
43 part of this article shall be adjudged by any court of competent juris-  
44 diction to be invalid, the judgment shall not affect, impair or invali-  
45 date the remainder thereof, but shall be confined in its operation to  
46 the clause, sentence, paragraph, section or part of this article direct-  
47 ly involved in the controversy in which the judgment shall have been  
48 rendered.

49 § 16. The executive law is amended by adding a new section 312-b to  
50 read as follows:

51 § 312-b. Study of the feasibility of a minority and women-owned busi-  
52 ness enterprise capacity mentorship program. 1. The empire state devel-  
53 opment corporation shall conduct a study to explore the feasibility of a  
54 minority and women-owned business enterprise capacity mentorship  
55 program. The study should focus on which agencies and industries would  
56 benefit most from such program, the utilization of any existing minority

1 and women-owned business enterprise mentorship programs, and any fiscal  
2 implications. The study shall specifically focus on:

3 (a) which state agencies would benefit most from such program concen-  
4 trating in construction;

5 (b) which state agencies would benefit most from such program concen-  
6 trating in professional services;

7 (c) which state agencies would benefit most from such program concen-  
8 trating in non-professional services;

9 (d) which state agencies would benefit most from such program concen-  
10 trating in purchases of commodities;

11 (e) the duration of time minority and women-owned business enterprises  
12 should participate in each program concentration described in paragraphs  
13 (a) through (d) of this subdivision;

14 (f) the feasibility that such successful completion of such program  
15 could be used as a factor for prequalifying participating minority and  
16 women-owned business enterprises; and

17 (g) how such program can be tailored to better prepare minority and  
18 women-owned business enterprises for bidding on contracts with such  
19 agencies upon successful completion of the program.

20 2. Within twelve months of the effective date of this section, the  
21 empire state development corporation shall issue a report of its find-  
22 ings and recommendations to the governor, the temporary president of the  
23 senate and the speaker of the assembly. Such report shall include, but  
24 not be limited to, the following:

25 (a) actions that can be implemented to establish such capacity mentor-  
26 ship program, a plan of action for such implementation, and the esti-  
27 mated cost of the program including any additional division personnel  
28 that may be required;

29 (b) any regulatory actions required by any agency in order to imple-  
30 ment such program, a plan of action for implementing such actions, and  
31 the estimated cost of such implementation;

32 (c) actions that require statutory changes in order to be implemented  
33 and the estimated cost of such implementation; and

34 (d) the extent to which any existing minority and women-owned business  
35 enterprise mentorship program, including pursuant to section one hundred  
36 forty-seven of the state finance law, has been implemented, and the  
37 relative success of such programs.

38 3. Within twenty-four months of the effective date of this section,  
39 the empire state development corporation shall issue a report detailing  
40 the actions taken to implement the recommendations of such study to the  
41 governor, the temporary president of the senate and the speaker of the  
42 assembly. Such report shall include a full examination of all aspects  
43 of a minority and women-owned business enterprise capacity mentorship  
44 program, the benefits of such program, a proposed plan of action for the  
45 permanent establishment of such program and the estimated cost of such  
46 program.

47 § 17. This act shall take effect April 1, 2018; provided, however,  
48 that:

49 (a) the amendments to article 15-A of the executive law, made by  
50 sections one, one-a, two, three, four, five, six, six-a, seven, seven-a,  
51 eight and sixteen of this act, shall not affect the expiration and  
52 repeal of such article and shall expire and be deemed repealed there-  
53 with;

54 (b) the amendments to section 163 of the state finance law, made by  
55 section nine of this act, shall not affect the expiration and repeal of  
56 such section, and shall expire and be deemed repealed therewith;



1 (c) the amendments to section 139-j of the state finance law, made by  
2 section eleven of this act, shall not affect the expiration and repeal  
3 of such section, and shall expire and be deemed repealed therewith;

4 (d) section fifteen of this act shall expire and be deemed repealed  
5 December 31, 2023; and

6 (e) section 97-j of the state finance law, as added by section thir-  
7 teen of this act, shall expire and be deemed repealed on the same date  
8 as article 15-A of the executive law, pursuant to subdivision (h) of  
9 section 121 of chapter 261 of the laws of 1988, as amended.

10 PART R

11 Intentionally Omitted

12 PART S

13 Section 1. Section 2 of chapter 21 of the laws of 2003, amending the  
14 executive law relating to permitting the secretary of state to provide  
15 special handling for all documents filed or issued by the division of  
16 corporations and to permit additional levels of such expedited service,  
17 as amended by section 1 of part Q of chapter 58 of the laws of 2017, is  
18 amended to read as follows:

19 § 2. This act shall take effect immediately, provided however, that  
20 section one of this act shall be deemed to have been in full force and  
21 effect on and after April 1, 2003 and shall expire March 31, [2018]  
22 2019.

23 § 2. This act shall take effect immediately and shall be deemed to  
24 have been in full force and effect on and after March 31, 2018.

25 PART T

26 Intentionally Omitted

27 PART U

28 Section 1. Section 970-r of the general municipal law, as added by  
29 section 1 of part F of chapter 1 of the laws of 2003, subdivision 1,  
30 paragraph f of subdivision 3 and paragraph h of subdivision 6 as amended  
31 by section 1 of part F of chapter 577 of the laws of 2004, paragraph a  
32 of subdivision 1 as amended and paragraph h of subdivision 1 as added by  
33 chapter 386 of the laws of 2007, paragraph i of subdivision 1 as added  
34 and paragraph e of subdivision 1, paragraph a of subdivision 2, para-  
35 graph d of subdivision 2, the opening paragraph of paragraph e of subdi-  
36 vision 2, subparagraph 6 of paragraph e of subdivision 2, paragraph f of  
37 subdivision 2, paragraph g of subdivision 2, paragraph b of subdivision  
38 3, the opening paragraph of paragraph f of subdivision 3, subparagraph 6  
39 of paragraph f of subdivision 3, paragraph g of subdivision 3, paragraph  
40 h of subdivision 3, paragraph i of subdivision 3, and subdivisions 7 and  
41 9 as amended by chapter 390 of the laws of 2008, paragraph b of subdivi-  
42 sion 2 as amended by section 26 and subparagraphs 2 and 5 of paragraph c  
43 of subdivision 2 as amended by section 27, paragraph a of subdivision 3  
44 as amended by section 28, subparagraphs 2 and 5 of paragraph e of subdivi-  
45 sion 3 and subdivision 4 as amended by section 29, paragraph a and  
46 subparagraphs 2 and 5 of paragraph e of subdivision 6 as amended by  
47 section 30 and subdivision 10 as added by section 31 of part BB of chap-  
48 ter 56 of the laws of 2015, is amended to read as follows:

