

Intro. Res. No. 1236-2018

Laid on Table 3/6/2018

Introduced by Presiding Officer Gregory and Legislators Berland, Kennedy, Sunderman, Muratore, Lindsay, Hahn, Martinez, Anker, Calarco, McCaffrey, Krupski, Fleming, Cilmi, Flotteron, Trotta, Donnelly, Spencer

RESOLUTION NO. 259 -2018, ADOPTING LOCAL LAW NO. 15 -2018, A LOCAL LAW TO ENSURE SERVICE-DISABLED VETERANS PARTICIPATE IN COUNTY CONTRACTING PROCESS

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on March 6, 2018, a proposed local law entitled, "**A LOCAL LAW TO ENSURE SERVICE-DISABLED VETERANS PARTICIPATE IN COUNTY CONTRACTING PROCESS**"; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. 15 -2018, SUFFOLK COUNTY, NEW YORK

A LOCAL LAW TO ENSURE SERVICE-DISABLED VETERANS PARTICIPATE IN COUNTY CONTRACTING PROCESS

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that the State of New York enacted the Service-Disabled Veteran-Owned Business Act in 2014 to promote and encourage the development of businesses owned by service-disabled veterans and to facilitate their participation in the State contracting process.

This Legislature further finds that Suffolk County is home to a huge population of men and women who faithfully served our nation as members of the military and National Guard, some of whom became disabled during their service.

This Legislature determines that it is in the best interest of Suffolk County to follow the lead set by the State of New York and to enact a law to promote the continuing development of businesses owned by service-disabled veterans.

Therefore, the purpose of this local law is to honor the service and sacrifices of our disabled veterans by establishing protocols that will ensure that businesses owned by service-disabled veterans have a fair and sufficient opportunity to contract and do business with the County of Suffolk.

Section 2. Amendments.

Chapter 189 of the SUFFOLK COUNTY CODE is hereby amended as follows:

CHAPTER 189.

PURCHASING AND CONTRACTS

**Article VI.
Utilization of Minority[-and], Women[-Owned] and Service-Disabled Veteran-Owned Business**

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§ 189-23. Definitions.

As used in this article, the following term below shall have the meaning indicated:

Certified Business

A business verified as a minority- or women-owned business enterprise pursuant to § 189-27 of this article or a business that has been certified as a service-disabled veteran-owned business pursuant to Article 17-B of the New York Executive Law.

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Office

The Suffolk County of Minority Affairs.

Service-Disabled Veteran-Owned Business Enterprise

A business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:

- A. at least fifty-one (51%) percent owned by one or more service-disabled veterans;
- B. an enterprise in which such service-disabled veteran ownership is real, substantial, and continuing;
- C. an enterprise in which such service-disabled veteran ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
- D. an enterprise authorized to do business in this state and is independently-owned and operated;
- E. an enterprise that is a small business which has a significant business presence in the state, not dominant in its field and employs, based on its industry, a certain number of persons as determined by the director, but not to exceed three hundred (300), taking into consideration factors which include, but are not limited to, federal small business administration standards pursuant to 13 CFR part 121 and any amendments thereto; and
- F. certified by the New York State Office of General Services.

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§ 189-25. Contracting Department Requirements.

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- C. In the implementation of this section, the contracting department shall consider compliance with the requirements of any federal or state law concerning opportunities for minority[- and], women[-owned] and service-disabled veteran-owned business enterprises which effectuate the purpose of this section. The contracting department shall determine whether the imposition of the requirements of any such law duplicate or conflict with the provisions hereof, and if such duplication or conflict exists, the contracting department may waive the applicability of this article to the extent of such duplication or conflict.

§ 189-26. Rules for Utilization and subcontractors.

- A. The Director shall promulgate rules and regulations requiring that all contractors use best efforts to achieve participation in subcontracting by minority-owned business enterprises [and], women-owned business enterprises and service-disabled veteran-owned business enterprises in accordance with goals set by the Director to enhance opportunity for minority- and women-owned businesses and service-disabled veteran-owned businesses to reflect the percentage of minority[- and], women[-owned] and service-disabled veteran-owned businesses available to perform such work. The setting of such goals shall in part be based on the findings and conclusions of the disparity study completed in accordance with this article.

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- (2) Such rules and regulations shall allow a contractor to:

- (a) Apply for a partial or total waiver of the minority[- and], women[-owned] and service-disabled veteran-owned business enterprise participation requirements pursuant to Subsections E and F of this section
- (b) File a complaint with the Director in the event a contracting department has failed or refused to issue a waiver of the minority[- and], women[-owned] and service-disabled veteran-owned business enterprises participation requirements or has denied such request for a waiver.

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- E. Where it appears that a contractor, after making its best efforts, cannot comply with the minority[- and], women[-owned] and service-disabled veteran-owned business enterprise participation requirements set forth in a particular County contract, a contractor may file a written application with the contracting department requesting a partial or total waiver of such requirements setting forth the reasons for the contractor's inability to meet any or all of the participation requirements and an explanation of the efforts undertaken by the contractor to obtain the required minority[- and], women[-owned] and service-disabled veteran-owned business enterprise participation. In implementing the provisions of this section, the contracting department shall consider the number and types of minority[- and], women[-owned] and service-disabled veteran-owned business enterprises located in the County, the total dollar value of the County contract, the scope of work to be performed and the project size and term. Based on such considerations, if the contracting department determines there is not a reasonable availability of contractors on the list of certified businesses to furnish services for the project, it shall issue a waiver of compliance to the contractor. In making such

determination, the contracting department shall first consider the availability of other business enterprises located in the County and shall thereafter consider the financial ability of minority[- and], women[-owned] and service-disabled veteran-owned businesses located in the County to perform the County contract.

- F. For purposes of determining if a contractor has used best efforts to comply with the requirements of this section or is entitled to a waiver, the contracting department shall consider:
- (1) Whether the contractor has advertised in general circulation media, trade association, and minority-focus, [and] women-focus, veteran-focus media, and in such event:

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- H. If, after the review of a contractor's minority[- and], women[-owned] and service-disabled veteran-owned business utilization plan or review of a periodic compliance report and after such contractor has been afforded an opportunity to respond to a notice of deficiency issued by the contracting department in connection therewith, it appears that a contractor is failing or refusing to comply with the minority[- and], women[-owned] and service-disabled veteran-owned business participation requirements as set forth in the County contract and where no waiver from such requirements has been granted, the contracting department may file a written complaint with the Director pursuant to § 189-24 of this article setting forth the facts and circumstances giving rise to the contracting department's complaint together with a demand for relief. The contracting department shall serve a copy of such complaint upon the contractor by personal service or by certified mail, return receipt requested. The contractor shall be afforded an opportunity to respond to such complaint in writing.

§ 189-27. Countywide Certification Program.

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- D. The Director shall maintain a directory of businesses that have been certified as services-disabled veteran-owned businesses by the New York State Division of Service-Disabled Veteran's Business Developments.

Section 4. Applicability.

This law shall apply to actions occurring on or after the effective date of this law.

Section 5. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 6. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 7. Effective Date.

This law shall take effect on the 120th day immediately subsequent to its filing in the Office of the Secretary of State.

[] Brackets denote deletion of existing language
___ Underlining denotes addition of new language

DATED: April 24, 2018

APPROVED BY:

/s/ Steven Bellone
County Executive of Suffolk County

Date: May 21, 2018

After a public hearing duly held on May 10, 2018
Filed with the Secretary of State on June 18, 2018